

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 153 of 2023**Tuesday, this the 4th day of July, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 14825597W Hav. Sanjay Mishra (Retd.), S/o Late Shri Kant Mishra, House NO. 33/S Maurya Tola, Dargahiya Post Kunra Ghat, District Gorakhpur, Uttar Pradesh-273008.

..... ApplicantLd. Counsel for the Applicant : **Shri Raj Kumar Mishra**, Advocate.
Ms. Upasna Mishra, Advocate
Shri Kapil Sharma, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block-III, DHQ PO, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.
4. The Officer-in-Charge Records, ASC (South), Bangalore, Karnataka-560007.

.....RespondentsLd. Counsel for the Respondents. : **Ms. Anju Singh**, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *To issue/pass an order or direction of appropriate nature to the respondents to set aside/quash the impugned order dated 20.04.2022, 09.11.2022 and RMB dated 03.01.2022.*
- (b) *To issue /pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date next to the date of discharge i.e. 01.06.2022 and interest thereon at the rate of 18% per annum.*
- (c) *Issue/pass an order or direction to the respondents to round off the disability pension from 20% for life to 50% for life in terms of benefit of broad banding as held in Ram Avtar’s case.*
- (d) *Issue/pass any other order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*
- (e) *Allow this application with exemplary costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 31.05.1996 and discharged on 31.05.2022 (AN) in Low Medical Category on fulfilling the terms of engagement under Rule 13(3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Command Hospital (Northern Command), Udhampur on 10.03.2015 assessed his disability **‘BILATERAL CHRONIC SUPPURATIVE OTITIS MEDIA (OPTD) WITH RESIDUAL PERFORATION (R) (ICD-H66)’ @20% for life as attributable to service**, which has been reduced to 10% for life due to unwilling for surgery. The applicant’s claim for grant of disability pension

was rejected vide letter dated 20.04.2022. The applicant preferred First Appeal which too was rejected vide letter dated 09.11.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the applicant's disability has been assessed @20% as attributable to service which has been reduced to 10% due to unwilling for surgery. The degree of disablement of cannot be reduced on the ground of unwillingness certificate given for surgery by the applicant. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that since the disability qualifying for disability pension with duration of the applicant has been reduced to @10% for life by the RMB on the ground of unwilling for surgery by the applicant, hence in terms of Regulation 53 of the Pension Regulations for the Army, 2008 (Part-I) the applicant is not entitled to disability element of disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical

Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the RMB can reduce the degree of disablement on the ground of unwilling for surgery?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. In the instant case the disability has been assessed @ 20% for life by the RMB. At page 8 of the RMB proceedings, in the columns of *“Percentage of disablement with duration”* the RMB endorsed that *“10% for life 20%) (twenty percentage was given, 10% (ten percent) reduced due to unwilling for surgery”*. We are of the opinion that the degree of disablement cannot be reduced by the RMB on the ground of unwilling for surgery by the applicant. Accordingly, we hold that the assessment degree of disability is @20% for life.

7. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th January 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of

superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard Learned Counsel for the parties to the lis.

6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us.”

8. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is

provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

9. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D (Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

10. In view of the above, the **Original Application No. 153 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held @20% for life. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life from the next date of his discharge. The respondents are further directed to give effect to this order within a period of four months from the date of receipt

of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment

11. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 04 July, 2023

AKD/-