

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 629 of 2020**Friday, this the 08th day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14636477N Ex. Cfn/VM (AFV) Bhupendra Kumar, S/o Shri Jitendra Kumar Tiwari, Village and PO – Banrauli Katara, District Agra, PIN-282006.

..... Applicant

Ld. Counsel for the : **Col. Y.R. Sharma (Retd.)**, Advocate.
Applicant

Versus

1. Ministry of Defence, Through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Army Headquarters, South Block, New Delhi-110011.
3. Adjutant General, ADG (PS) AG’s Branch, IHQ of MOD (Army), Army Headquarters, New Delhi-110011.
4. Officer in Charge Records, EME Records, PIN-900453, C/o 56 APO.
5. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**Ld. Counsel for the : **Ms. Appli Srivastava**, Advocate
Respondents. 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) *Set aside the Additional Directorate General Personnel Services, Adjutant General’s Branch, Integrated HQ of MOD (Army), New Delhi letter No. B/12048/2473/Gen/EME pers/750/2012/AG/PS-4 (Legal) dated 14 Nov 2012, the Impugned Order (Annexure A-7) forwarded by Records EME vide their letter No. 2708/RTI Cell/866 dated 29.07.2020.*
- (b) *Pass an order or Direction in the appropriate manner to Respondents to grant disability pension consisting of ‘Service Element and Disability Element’ of pension for life to the applicant.*
- (c) *Pass an Order or Direction in an appropriate manner to Respondents, to broadband the existing 20% Disability Element to 50% as per existing Rules.*
- (d) *Direct the Respondents to pay an interest @12% per annum on the arrears on disability pension.*
- (e) *Allow this Original Application with costs.*

2. Briefly stated, applicant was enrolled in the Corps of Electrical and Mechanical Engineers (EME) of Indian Army on 09.11.1996 and was discharged on 30.09.2006 in Low Medical Category on his own request on extreme compassionate grounds under Rule 13 (3) Item III (iv) of the Army Rules, 1954. At the time

of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Nasirabad on 31.07.2006 assessed his disability '**FRACTURE SURGICAL NECK OF HUMERUS (RT)**' @20% for life and opined the disability to be **Attributable to service**. In compliance of order dated 16.07.2012 passed by the Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No.538 of 2011, the applicant was granted Disability Element of Disability Pension only @20% for life vide letter dated 14.11.2012 with effect from 30.09.2006. The applicant preferred petition dated 13.10.2018 for grant of service element of disability pension for life and its broad banding which was rejected vide letter dated 14.01.2019. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability pension was denied to the applicant on the ground that applicant has been discharged in low medical category on his own request. The applicant filed Original Application No. 538 of 2011 before the Armed Forces Tribunal, Principal Bench, New Delhi for grant of disability pension which was disposed of vide order dated 16.07.2012 with direction to the respondents to decide the issue of grant of disability pension to the applicant as per letter dated 29.09.2009 which has come into effect from 01.01.2006. In compliance of said order, Government has accorded sanction and granted Disability Element of Disability Pension to the applicant @20% with effect from 30.09.2006 for life vide letter dated 14.11.2012. Accordingly, P.P.O. dated 18.01.2013 was issued. The applicant preferred petition dated 13.10.2018 for grant of service element of disability pension for life and broad banding benefits of disability element @50% against 20% for life. The said petition was replied vide letter dated 14.01.2019. 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 the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the applicant is also entitled for service element of disability pension?

(b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. Regulation 47 of the Pension Regulations for the Army, 1961

(Part – I) reads as under :-

48.(a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20 percent or more.

(b) The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.

**Service element of disability Pension is being notified on permanent basis w.e.f. 1/1/73 and even if at some stage the percentage of disability of the pensioners, goes below 20% his service element notified initially, continues to remain in force for life of the pensioners. However in the case of pre 1/1/73 disability pensioners, the service element is contingent upon the continuance of disability element unless and until the pensioner has put in minimum of 10 years of service before 1/3/68 and 5 years of service since after that date up to 31/12/72, after which the service element becomes permanent feativv as explained above.*

7. We have considered the rival submissions made by the Ld. Counsel for the parties and gone through the Regulation 47 (a) of the Pension Regulations for the Army, 1961 (Part-I) which provides that ***“Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is***

assessed at 20 percent or more.” In the instant case the disability of the applicant has been assessed @20% for life as **Attributable to Military Service** but only Disability Element was Disability Pension was granted by the respondents which is contrary to the above Regulation. Therefore, we are of the view that applicant is also entitled for service element of disability pension.

8. 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 December 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."*

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)***, we are of the considered view that benefit of rounding off of **disability pension @ 20%** for life, **which includes disability element as well as service element**, to be rounded off to 50% for life may be extended to the applicant the next date of his discharge.

10. In view of the above, the **Original Application No. 629 of 2020** deserves to be allowed, hence **allowed**. The impugned orders rejecting the applicant's claim for grant of service element of disability pension, are set aside. The applicant is already in receipt of disability element. **The applicant is held entitled for service element of disability pension also** from the next date of his

discharge. Accordingly, respondents are directed to issue Corrigendum P.P.O. with regard to **disability pension @20% for life, which includes disability element as well as service element, which would stand rounded off to 50% for life** from the next date of his discharge. The amount already received by the applicant towards disability element shall be adjusted from the arrears. 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 Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 08 October, 2021

AKD/-