

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

16. O.A. No. 168 of 2017

Lt. Commander Mohit Ruwali (Retd.) By Legal Practitioner for the Applicant	Versus	Applicant Respondents
Union of India & Others By Legal Practitioner for Respondents		

Notes of the Registry	Orders of the Tribunal
	<p><u>06.06.2022</u></p> <p><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri Satendra Kumar, Ld. Counsel for the applicant and Shri A.J. Mishra, Ld. Counsel for the respondents.</p> <p>Original Application is allowed.</p> <p>For order, see our Judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p> <div style="background-color: yellow; width: 100%; height: 40px; margin-top: 10px;"></div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"><div style="text-align: center;">sd/- (Vice Admiral Abhay Raghunath Karve) Member (A)</div><div style="text-align: center;">sd/- (Justice Umesh Chandra Srivastava) Member (J)</div></div> <p style="text-align: left; margin-top: 10px;">AKD/Mh/-</p>

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Lt. Commander Mohit Ruwali (Retd.)
By Legal Practitioner for the Applicant
Union of India & Others
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Applicant
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Notes of the Registry	Orders of the Tribunal
<u>06.06.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u>	<p>1. Heard Shri Satyendra Kumar, Ld. Counsel for the applicant and Shri A.J. Mishra, Ld. Counsel for the respondents.</p> <p>2. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p>A. That this Hon'ble Tribunal be pleased to declare that the applicant is entitled to rounded off disability pension from 20% to 50% along with arrears from the date of discharge.</p> <p>B. That this Hon'ble Tribunal be pleased to declare that the Applicant is entitled to service element of disability pension from the date of discharge.</p> <p>C. For such other and further relief as this Hon'ble Tribunal may deemed fit and proper.</p> <p>E. Cost of Application.</p> <p>3. Briefly stated facts of the case are that the applicant was commissioned in Indian Navy on 01.01.2003 and was retired from service on 31.03.2016 (AN) in low medical category at his own request. The Release Medical Board held on 29.03.2016 identified his disability "SEIZURE DISORDER ICD G-40.6" and assessed it @20% for life, aggravated by military service. The applicant has been granted broad banding of disability pension from 20% to 50% with effect from 01.04.2016 as per 7th CPC but PCDA (N), Mumbai vide letter dated 09.12.2016 has stated that officer has taken premature retirement on his own request and has not put up 20 years of service required for pension therefore he is eligible for DCRG & Retiring Gratuity and Disability Element only. Presently the applicant is in receipt of 20% disability element of disability pension for life and has moved this Original Application for grant of benefit of rounding off of disability element of disability pension from 20% to 50% for life and for grant of service element of disability pension.</p> <p>4. Ld. Counsel for the applicant argued that since the applicant is already in receipt of 20% disability element for life, therefore, in view of the Hon'ble Apex Court judgment in the case of <i>Union of India and Ors vs Ram Avtar &</i></p>

ors (Civil appeal No. 418 of 2012 decided on 10th December 2014), the applicant is also entitled to benefit of rounding off of disability element @ 50% for life. He further submitted that the applicant is also entitled for service element of disability pension.

5. On the other hand, though *Ld. Counsel* for the respondents conceded receipt of 20% disability element of disability pension by the applicant and its rounding off but contended that the applicant is not entitled to the benefit of service element of disability pension on the ground that the applicant has been discharged on his own request before completion of 20 years of service, he is not entitled for service element of disability pension.

6. The law on the point of rounding off of disability pension is no more *RES INTEGRA* in view of the 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) wherein the Hon'ble Apex Court has noded 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."

7. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that "In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity." In view of aforesaid letter, the applicant is entitled for grant of disability pension which includes service element also even if he

has been retired on his own request on compassionate grounds.

8. In the instant case, there is no dispute that applicant is in receipt of 20% disability element for life which has been rounded off to 50% for life as this fact has been accepted by the respondents. In view of the settled law on this matter, we are of the considered opinion that the applicant is entitled to the disability pension which includes service element also and its rounding off to 50% for life with effect from the date the applicant is getting disability element of disability pension.

9. In view of the above, the Original Application No. 168 of 2017 is allowed. The applicant is held entitled to disability pension which includes service element also and rounding off of disability pension @20% for life to 50% for life from the date from which the applicant is getting disability element of disability pension. Respondents are directed to grant service element of disability pension also to the applicant from the date from which the applicant is getting disability element of disability pension @20% for life to be rounded off to 50% for life. The respondents are directed to give effect to this order within a period of four months from the date applicant submits mandatory documents alongwith certified copy of this order. Defaults will invite interest @ 8% per annum from the due date till actual payment.

10. No order as to costs.

Sd/-

Sd/-

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/Mh/-