

E-CourtARMED FORCES TRIBUNAL, REGIONAL BENCH,
SRINAGAR AT JAMMUSrl. No. 24

ORIGINAL APPLICATION No. 239 of 2021

Tuesday, this the 24th day of January, 2023"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Lt. Gen. Ravendra Pal Singh, Member (A)"

Sumith Sharma

..... Applicant

Ld. Counsel for the : **Shri Ravi Badyal**, Advocate.
Applicant

Versus

Union of India and Others

.....Respondents

Ld. Counsel for the : **Shri Rajesh Thappa** , Advocate
Respondents. Central Govt. Standing CounselORDER"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) *Directions for quashing the Annexure A-4, A-5 and A-6.*
- b) *Directing the respondents to grant the disability element @50% against 11-14% from 01.10.2018.*
- c) *Any other order or direction which this Hon'ble Court deem fit and proper in the peculiar facts and circumstances of the case may kindly be passed in favour of the applicant."*

2. Briefly stated, applicant was enrolled in the Indian Army on 18.11.1997. During the course of service with 20 Dogra, the applicant sustained injury in both ears during field firing on 20.06.2014 and was admitted to Military Hospital Faizabad on the same day. The applicant was diagnosed as "(i) Baro Trauma Both Ears (ii) B/L Hearing loss" and transferred to Command Hospital (Central Command), Lucknow on 03.07.2014. After detailed examination and treatment, the applicant was discharged from the Hospital. In September 2016, the applicant was again admitted to 92 Base Hospital for the diagnosis "**B/L SENSORINEURAL HEARING LOSS (ICD-H-90.3)**" and downgraded to low medical category H2 (T-24) with effect from 09.09.2016 for six months. Thereafter, the applicant's medical category was reviewed by 92 Base Hospital where he was downgraded to H2 (Permanent) with effect from 24.02.2017 for two years. The applicant was discharged on 30.09.2018 in Low Medical Category before completion of terms of engagement 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 92 Base Hospital on 06.06.2018 assessed his disability '**Bilateral Sensorineural Hearing Loss (ICD Code-H 90.3)**' @11-14% (below 20%) for life and opined the disability to be attributable to military service. The disability claim of the applicant was however rejected by the respondents vide letter dated 21.10.2018 on the ground that it is assessed less than 20%. The applicant preferred First Appeal dated 08.11.2018 but the same

was rejected by the Appellate Committee on 1st Appeal (ACFA) vide letter dated 04.04.2019. Thereafter, the applicant preferred 2nd appeal dated 16.07.2019 and the same was rejected vide letter dated 25.11.2020 stating that the disability has been assessed at 11-14% for life which is less than 20% and hence the applicant is not entitled to disability element. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that the RMB has assessed the applicant's disability as **attributable to military service @11-14%** for life but the disease with which applicant suffers is a hearing loss and as per table at para 20 of Amendment to Chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) the degree of disablement in case of hearing loss cannot be assessed less than 20%. 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% for life.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that the RMB has assessed the applicant's disability @11-14% for life as attributable to military service, but since the disability element is less than 20%, therefore, condition for grant of disability pension is not fulfilled in terms of Regulation 53 of Pension Regulations for the Army, 2008 (Part – I). Therefore, the respondents have rightly denied the benefit of disability element of



disability pension to applicant. He pleaded for dismissal of 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 assessment of 11-14% of disability in the case of hearing loss is in accordance with extant rules/guidelines?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. On careful scrutiny of the documents, we find that the RMB has assessed the applicant's disability @11-14% for life as attributable to military service. In this regard when we see the said provisions, we observe that in the table at para 20 of Amendment to Chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) it is clear that degree of disablement in case of hearing loss cannot be less than 20%. Therefore, we are of the view that applicant's disability should be assessed @20% in accordance with rules/guidelines on the subject, issued by the Ministry of Defence.

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 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 invalidated 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. As such, in view of the decision of Hon'ble Supreme Court in the case of **Ram Avtar** (*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 retirement.

9. In view of the above, the **Original Application No. 239 of 2021** 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 of disability pension @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 of disability pension to the applicant @20% for life which would stand rounded off to 50% for life from the next date of his discharge from service. 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 actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed off.

(Lt. Gen. Ravendra Pal Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 24th January, 2023

Tilak/SB