

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

10. O.A. No. 3 of 2017

Ex. Nk. (TS) Shivaji Dattu Dabade By Legal Practitioner for the Applicant	Applicant
Union of India & Others By Legal Practitioner for Respondents	Respondents
Versus	

Notes of the Registry	Orders of the Tribunal
	<p><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> <p>On the case being taken up for hearing no one is present on behalf of the applicant.</p> <p>Heard 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> <p><i>Sd/-</i> (Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p><i>Sd/-</i> (Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/MH/-</p>

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2. O.A. No. 3 of 2017

Ex. Nk. (TS) Shivaji Dattu Dabade
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><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> <ol style="list-style-type: none">1. Heard Shri A.J. Mishra, Ld. Counsel for the respondents2. 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:-<ol style="list-style-type: none">(a) <i>This Hon'ble Court be pleased to order directing the Respondents to grant the benefit of broad banding disability pension to be round off to the extent of 50% from the date of invalidated from service i.e. w.e.f. 01.07.2005 for the life.</i>(b) <i>This Hon'ble Court be pleased to set aside the impugned order dated 05.04.2016 passed by Respondent No. 3 and there by rejecting claim of the applicant.</i>(c) <i>Cost of this appeal be granted.</i>(d) <i>Such other and equitable order as the circumstances of the case may be granted.</i>3. Briefly stated facts of the case are that the applicant was enrolled in the Maratha Light Infantry of Indian Army on 16.03.1978 and was discharged on 31.03.1993. He was re-enrolled in DSC on 14.06.1995 and was discharged from DSC service on 30.6.2005 (AN). The Release Medical Board identified his disability "PRIMARY HYPERTENSION" and assessed it @ 30% for life as aggravated by military service, but the Principal Controller of Defence Accounts (PCDA) (P), Allahabad has accepted it @20% for life and accordingly, disability element of disability pension was granted. The applicant's claim for grant of benefit of rounding off was rejected by the respondents vide letter dated 05.04.2016. 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.4. The applicant had pleaded that since he 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 Axtar & ors</i> (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.

5. On the other hand, though Ld. Counsel for the respondents conceded receipt of 20% disability element of disability pension by the applicant but contended that the applicant is not entitled to the benefit of rounding off of disability pension on the ground that the applicant's services were not cut short as he was not invalidated out on account of his disability. In the instant case the applicant was discharged from service on completion of his terms of engagement, therefore, the Ld. Counsel claimed that he is not eligible for the benefit of rounding off.

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 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."

7. In the instant case, there is no dispute that applicant is in receipt of 20% disability element 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 benefit of rounding off to 50% for life with effect from **his discharge from DSC service**, however, arrears shall be restricted to three years only from the date original application is filed.

8. In view of the above, the Original Application No. 03 of 2017 is allowed. The applicant is held entitled to the benefit of rounding off of disability element from 20% for life to 50% for life with effect from three years prior to the date of filing of Original Application. The date of filing of Original Application is 13.07.2016. 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 @ 9% per annum from the due date till actual payment.

9. No order as to costs.

Sd/-

Sd/-

(Vice Admiral ~~Abhay~~ Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

AKD/Mh/-