

Form No. 4  
{See rule 11(1)}  
ORDER SHEET  
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI  
(Sl. No. 28)

O.A. No. 07 of 2020

**Ex. Nb. Sub. Ritam Chandra Dey**

Applicant

By Legal Practitioner for the Applicant : Shri D.N. Sarma, Advocate  
Shri Gaurab J. Sharma, Advocate

**Versus**

**Union of India & Others**

Respondents

By Legal Practitioner for Respondents : Shri P.K. Garodia, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b><u>06.04.2023</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></b></p> <p>On the case being taken up for hearing no one is present on behalf of the applicant.</p> <p>Heard Shri P.K. Garodia, Ld. Counsel for the respondents.</p> <p>Original Application is <b>allowed</b> for the grant of disability of pension only.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <p style="text-align: center;"><b>(Air Marshal Balakrishnan Suresh)</b> Member (A)</p> <p style="text-align: center;"><b>(Justice Umesh Chandra Srivastava)</b> Member (J)</p> <p>AKD/MC/-</p>

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI**

**ORIGINAL APPLICATION No.07 of 2020**

Thursday the 6<sup>th</sup> day of April, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Air Marshal Balakrishnan Suresh, Member (A)”**

**Ex. Naib Sub. Ritam Chandra Dey**

**.....Applicant**

Ld. Counsel for the Applicant : **Shri D.N. Sarma, Advocate  
Shri Gaurab J. Sharma, Advocate**

Versus

**Union of India & Others.**

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri P.K. Garodia , 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 :-

- (i) *Direct the respondents to grant disability pension to the applicant w.e.f. 31.07.2017 i.e. the date on which he was invalidated out of service with rounding of benefit with interest on the arrears @ 12% p.a.*
- (ii) *The cost of application*
- (iii) *To pass such other or further order(s) as deem fit and proper.*

2. Briefly stated, applicant was appointed as Postal Assistant in Tripura Division of the Post and Telegraph, Department of Union of India in the year 1997. While serving in the said Department, he was voluntarily joined the Army Postal Service on 20.05.1997 on deputation as Warrant Officer. On 02.01.2017, the applicant was directed to report to Depot Coy centre for repatriation drill vide letter dated 31.12.2016 and he was repatriated on 31.07.2017. Before repatriation, Release Medical Board held on 26.04.2017 which assessed the applicant's disability "**Primary Hypertension (I-10)**" @30% for life and opined the disability to be **aggravated to military service**. The applicant has not been granted the disability element of pension. 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 joining the Army Postal Service on deputation, the applicant was found mentally and physically fit for service in the Army Postal Service and there is no note in the service documents that he was suffering from any disease at the time of joining in Army Postal Service. The disease of the applicant was contracted during the Army Postal 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 and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that although the disability of the applicant @ 30% for life has been regarded aggravated by service by the RMB, but since the applicant was not invalided out of service rather applicant was released in terms of Rule 16 of the Army Rules, 1954 and repatriated to his civil parent department i.e. Department of Posts, hence 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 persons appointed on deputation in Army Postal Service are eligible for the grant of Disability Pension?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, D(Pension/Policy), New Delhi issued policy MoD ID No. 1(2)/2002/D(Pen/Pol)/Vol-II dated 06.10.2022 for adjudication of cases with reference to Army Postal Service (APS) Deputationists which provides that "***Where an individual is discharged/released from the Army in circumstances entitling him to the grant of disability pensionary awards, Defence Service Estimates will pay only the disability***

***element of disability pension and Constant Attendance Allowance, where admissible, at the rates and under the conditions as are applicable from time to time. The individual concerned will get this in addition to invalid pension and civil rules if he is invalided from civil service also or otherwise in addition to his pay in civil appointment. Sanction for such award shall be issued by CDA (Pen), Allahabad***". In view of the above policy, we hold that the

applicant is entitled for the grant of disability element of disability pension.

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 10<sup>th</sup> 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.”*

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 pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his repatriation from Army Postal Service.



10. In view of the above, the **Original Application No. 07 of 2020** deserves to be allowed, hence **allowed**. The impugned order, if any, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from the next date of repatriation from Army Postal Service. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of repatriation from the Army Postal 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 the actual payment.

11. No order as to costs.

(Air Marshal Balakrishnan Suresh)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 06 April, 2023

AKD/KK/GM