

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI
(Sl. No. 43)

O.A. No. 36 of 2019 with M.A. No. 25 of 2019 and M.A. No. 04 of 2020

Ex. Hav. N. Tomba Singh Applicant
By Legal Practitioner for the Applicant : Shri A.R. Tahbildar, 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><u>05.04.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></p> <p style="text-align: center;">Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Shri P.K. Garodia, Ld. Counsel for the respondents.</p> <p>The instant Original Application has been filed on behalf of applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought relief for grant of benefit of rounding off of the disability pension from the next date of his discharge i.e. 01.05.2010.</p> <p>Submission of learned counsel for the applicant is that the applicant was enrolled in the Regiment of Artillery of Indian Army on 23.04.1991 and was discharged from service on 30.04.2010 (AN) in low medical category at his own request on extreme compassionate grounds before fulfilling the conditions of his enrolment under Rule 13 (3) Item III (iv). The Release Medical Board held at Military Hospital, Ambala on 20.02.2010 assessed his disability "NONSPECIFIC POLY ARTHRITIS" @30% for life as aggravated by military service and accordingly applicant is entitled to 30% disability element of disability pension for life duly rounded off to 50% for life w.e.f. 01.05.2010 but benefit of rounding of disability element of disability pension from 30% to 50% has not been granted to the applicant from 01.05.2010 in view of the Govt. of India, Ministry of Defence letter dated 31.01.2001.</p>

On the other hand, Ld. Counsel for the respondents conceded receipt of 30% disability element of disability pension. His further stated that the applicant is not entitled to the benefit of rounding off of disability element from 01.05.2010, as the applicant was discharged from service before fulfilling the conditions of his enrolment and his case is not a case of invalidation and therefore, benefit of Govt. of India, Ministry of Defence letter dated 31.01.2001 is not applicable to him.

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.

In the instant case, there is no dispute that applicant is in receipt of 30% disability element for life as this fact has been accepted by both the parties. However, with regard to dispute whether applicant will be entitled to rounding off benefit from the date of discharge from service treating a case of invalidation or from 01.01.2016 as per PCDA (P) Prayagraj Circular No. 596 dated 09.02.2018 as granted by the respondents treating a case of normal discharge.

In the present case, if applicant's case is deemed invalidation, then applicant will be entitled to the benefit of rounding off from 30% to 50% for life from the date of invaliding out from service as per 31.01.2001 policy, However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others (2007 (3) SLR 445)***, the arrears of rounding off of disability element will be restricted to three years preceding the date of filing of the instant Original Application and the date of filing of this Original Application is 29.07.2019. Thus, applicant will be entitled/paid arrears of disability element w.e.f. 29.07.2016 but, if we give the benefit of rounding off from the date of discharge from service treating it a normal discharge, then as

per PCDA (P), Allahabad Circular No. 596 dated 09.02.2018, arrears of rounding off benefit will be paid from 01.01.2016. Therefore, on comparison of both options/clauses, it will be beneficial/favourable to the applicant if he is granted benefit of rounding off of disability element @ 50% for life from 01.01.2016 as per PCDA (P) Circular No. 596 and not from 01.05.2010 by imposing law of limitation in granting arrears preceding three years from the date of filing of Original Application

In view of the above, the Original Application is disposed off. The applicant is entitled to the benefit of rounding off of disability element from 30% to 50% for life as per PCDA (P), Allahabad Circular No. 596 dated 09.02.2018, granting benefit of rounding off of disability element w.e.f. 01.01.2016. The respondents are directed to issue PPO granting disability element @ 50% for life from 01.01.2016, if not already issued.

No order as to costs.

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

(Air Marshal Balakrishnan Suresh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/MC/-