

Form No.4
[(SEE RULE 11(1))]
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION NO. O.A. No. 76/2016

APPLICANT (S)

CAPT UMA THAPAR

RESPONDENT (S)

UNION OF INDIA & ORS.

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

In person

Mr. Anand Bhandari

<u>ORDERS OF THE TRIBUNAL</u>	
<u>Order Serial Number :</u> 6	<u>Dated : 10-11-2016</u>
<p>Present : None for the applicant. Mr. Anand Bhandari, learned Advocate for the respondents. Maj Narender Singh for OIC Legal Cell.</p> <p>Order was reserved on 14.09.2016 by Division Bench consisting of Justice S.S.Satheesachandran, Member (Judicial) and Lt Gen Gautam Moorthy, Member (Administrative). It is put up for pronouncement.</p> <p>Order is pronounced today in open court under Rule 98 of the Armed Forces Tribunal (Practice) Rules, 2009 for and on behalf of the Division Bench.</p> <p>Signed Order passed by the Division Bench in separate sheets be kept on record.</p> <p>Plain copy of this order be handed over to both the parties upon observing usual practice.</p> <p style="text-align: right;">(Lt Gen Gautam Moorthy) Member(Administrative)</p>	

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO:O.A.NO.76/2016

ON THIS 14 SEPTEMBER,2016

**CORAM: HON'BLE JUSTICE SS SATHEESACHANDRAN, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)**

**WS00012P Captain Uma Thapar
daughter of Lt Col Dharampal Thapar,
residing at O-7/5 clyde Row, Hastings,
Kolkata – 700022, West Bengal.**

.....Applicant.

-VS-

- 1. Union of India, service through the Secretary,
Ministry of Defence, Government of India,
South Block,DHQ PO, New Delhi-110 011.**
- 2. The Chief of Army Staff, IHQ of MoD (Army)
South Block, New Delhi-110 011.**
- 3. Additional Deputy General of
Manpower(Policy & Planning) MP-6(d)
Adjutant General Branch, Integrated
Headquarters Ministry of Defence (Army)
Wing No.3, Ground Floor, West Block -III
R.K.Puram, New Delhi – 110 066.**
- 4. Officer-in-Charge, Principal Controller of
Defence Accounts (Pension), Sadar Bazar,
Draupadighat, Allahabad – 211 014.**
- 5. Addl Dte Gen Personnel Services,
Adjutant General Branch, IHQ of MoD (Army)
Sena Bhavan, New Delhi -110 011.**

....Respondents.

For the Applicant : CAPT Uma Thapar (In person)

For the Respondents : Mr.Anand Bhandari, Advocate.

ORDER

PER HON'BLE JUSTICE SS SATHEESACHANDRAN, MEMBER (JUDICIAL):

The applicant CAPT Uma Thapar (Retd.) has filed the above application under section 14 of the Armed Forces Tribunal Act, 2007 (for short the Act), for issue of directions to the respondents to grant her rounding off benefits of her disability element of disability pension.

2. The applicant was commissioned in the Indian Army on 06.03.1993 and on completion of 10 years and 01 month of commissioned service she was discharged from service on 03.04.2003. At the time of her release/discharge she was found in Low Medical Category and the Release Medical Board had assessed her disability at 20% for life holding that it was attributable to/aggravated by military service. Accepting the recommendation of the Board she was granted disability element of disability pension of 20% for life. Her claim for granting of rounding off benefits of disability element of pension on the basis of Circular No.1(2)/97/D(Pen-C) dated 31st January, 2001 despite considerable lapse of time has not been favourably considered

even after government letter No. 3(11)2010-D(Pen/Legal) Pt V dated 18th April, 2016 and, therefore, she has moved the above OA for the reliefs aforesaid.

3. Notice given. Respondents have entered appearance through learned counsel Mr. Anand Bhandari.

4. We have heard the learned counsel for the respondents as well as the applicant, who appeared in person.

5. The issue covered in this OA is squarely covered by the decision rendered by the Hon'ble Apex Court in **Union of India vs. Ram Avatar and others in Civil Appeal No. 418 of 2012**. Repelling the stand of the government that the rounding off benefits under Circular No. 1(2)/97/D(Pen-C) dated 31st January, 2001 is confined only to those defence personnel who had been actually invalidated out from military service the Apex Court in unequivocal terms has held in the decision cited (supra) that such benefits are available to Armed Forces personnel who retired or discharged on completion of term of engagement with disability of 20% or more attributable to or aggravated by military service. We also notice that pursuant to the judicial pronouncement as above by the Apex Court, the Government

have issued Circular No. 3(11) 2010-D (Pen/Legal) – Pt V dated 18th April, 2016 over the broadbanding of disability element of Armed Forces personnel who have been retired/discharged on completion of terms of engagement with disability of 20% or more, which is attributable to or aggravated by military service. However, it is with a rider that monetary benefits are to be given from the date mentioned in the Court Order. Circular would indicate that only if a Court Order is available in favour of a party, who is even otherwise entitled to broadbanding, then alone, it can be given effect to, from the date of the respective Court Order. When a legal right has been conferred and so recognized by the highest forum of the land, the respondents are duty bound to give effect to the benefits of rounding off to those eligible Armed Forces personnel without the intervention and Orders of the Tribunal/Court. The applicant as of right is entitled to have the benefits of rounding off her element of disability pension by enhancement from 20% to 50%.

6. In the result, the OA is allowed directing the respondents to grant rounding off benefits of disability element of disability pension to the applicant by enhancing it from 20% to 50%.

Arrears on monetary benefits is to be given from the date of grant of her disability pension earlier fixing her disability at 20%.

The respondents shall pay the sum due to the applicant in terms of the direction given within a period of three months from the date of receipt of a copy of this order, failing which the unpaid amount shall carry interest at the rate of 8% per annum till the date of realization.

7. No order as to costs.

8. With the above, the OA stands disposed of.

9. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be handed over to the parties after observance of usual formalities.

(LT GEN GAUTAM MOORTHY)

Member (Administrative)

(JUSTICE S.S.SATHEESACHANDRAN)

Member (Judicial)

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