

**AFR**  
**Reserved**

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 443 of 2019**

Friday, this the 19<sup>th</sup> day of February, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)**  
**Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ex. Nk (ACP Hav) Pandu Kumar Reddy, (No. 14445968F),  
S/o Sri V Buchi Reddy, 489A Baghambari Gaddi, Allahabad (U.P.)

..... **Applicant**

Counsel for the : **Col AK Srivastava (Retd) and**  
Applicant **Shri Dharam Raj Singh**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi - 110011.
3. The AG, IHQ of MoD (Army), South Block, New Delhi - 110011.
4. OC Records, Arty Centre, Nashik Road.
5. Principal Controller of Defence Account (Pension), PCDA (P), Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the : **Shri Ram Saran Awasthi, Advocate**  
Respondents. **Central Govt. Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. A short question which arises for consideration in the instant Original Application is as below:-

“Whether disability occurred to an armed forces personnel on account of injury sustained in a vehicular accident while on casual/annual leave performing journey to get reservation ticket to perform journey to reach station of posting may be treated causally connected with military service for the grant of disability pension”.

2. Facts giving rise to Original Application in brief are that applicant was enrolled in Indian Army on 19.03.2002. He was granted 25 days part of annual leave from 27.12.2010 to 20.01.2011. While on leave, on 16.01.2011, he met with an accident at Secunderabad and sustained injury. He was operated in Military Hospital (MH) and was placed in low medical category. The court of inquiry held to investigate the circumstances under which the applicant sustained injury opined that injury sustained by the applicant is not attributable to military service. The applicant gave his willingness and he was given sheltered appointment. Due to non availability of sheltered appointment, his further retention was not recommended by the Officer Commanding unit. Accordingly, after having rendered more than 16 years of pensionable service applicant was discharged from service on 01.09.2018 under Rule 13

(3) III (ii) (a) (i). At the time of discharge, applicant was brought before a Release Medical Board at MH, Devlali on 26.04.2018 and his disability (i) **Compound Fracture Tibia Fibula (RT) OPTE (ICD CODE-S82.2)** was assessed as 30% for life and (ii) **Foot DEOP (RT) (ICD CODE M21.3)** was assessed as 50% for life and regarded as neither attributable to nor aggravated by military service and not connected with military service. His claim for grant of disability pension was rejected by the respondents vide letter dated 14.01.2019 being neither attributable to nor aggravated by military service. Applicant preferred first appeal for the grant of disability pension, but the same was also rejected by the respondents vide letter dated 04.07.2019. Being aggrieved, the applicant has approached this Tribunal for the grant of disability pension.

3. Learned counsel for the applicant submitted that applicant was granted 25 days part of annual leave including 5 days balance of annual leave for the year 2010 and 20 days part of annual leave for the year 2011 from 27.12.2010 to 20.01.2011. On 16.01.2011, while going to Secunderabad railway station on motorcycle as pillion rider to get his return journey reservation ticket to Ambala, motorcycle slipped and he met with an accident and sustained injuries. He was treated in MH and was placed in low medical category. A court of inquiry was held to investigate the circumstances under which the applicant sustained injuries. The Court of Inquiry opined that applicant is not to be blamed for the accident as he was having

proper Driving Licence, he was wearing a helmet and was not intoxicated. Applicant being on annual leave was on duty when he sustained injury, which ultimately resulted into 70% permanent disability, because of disabilities “**Compound Fracture Tibia Fibula (RT) OPTE (ICD CODE-S82.2** and “**Foot DEOP (RT) (ICD CODE M21.3)**”.

4. Learned counsel for the applicant submitted that the applicant was returning from Secunderabad Railway Station after purchasing return journey reservation ticket, hence there is causal connection with military duty and applicant's injury is attributable to military service. He further submitted that various Benches of AFT, Hon'ble High Courts and the Hon'ble Apex Court, in the matter of disability has held that if an armed forces personnel suffers with disability during the course of service, which was never reported earlier when he/she was enrolled/recruited in the army, the said disability would be treated to be attributable to or aggravated by military service and he/she shall be entitled to the disability pension for the same. Thus, he submitted that applicant's case is fully covered by above judgment, as he also suffered injury while on duty and same being not reported earlier at the time of his enrolment, he is entitled to disability pension.

5. Learned Counsel for the Applicant also submitted that it is settled principle of law that a soldier on leave, be it casual leave or

annual leave, is subject to the Army Act and can be recalled at any time as the leave is at the discretion of the authorities concerned and in view of the same, impugned orders rejecting disability claim of the applicant are ultra vires, arbitrary, unjust and illegal as they violate Articles 14, 16 and 21 of the Constitution of India. He pleaded that a person on annual leave/casual leave is deemed to be on duty and there must be an apparent nexus between the normal day to day life of a person subject to military service while on leave and the injuries suffered by him. Thus, non-grant of disability pension merely because the applicant was on annual leave is illegal, arbitrary and made with non-application of mind.

6. In support, learned counsel for the applicant placed reliance on the judgments of Punjab & Haryana High Court in the case of ***Barkat Masih vs Union of India & Others***, 2014 SCC on line P&H 10564, decided on 23 May 2014, Hon'ble Delhi High Court in the case of ***Vardip Singh & Anr v. Union of India & Ors***, 2004 (3) SLR 506, decided on 13 Jan 2004, the Hon'ble Apex Court in the cases of ***Lance Dafedar Joginder Singh v. Union of India & Ors***, 1995 Supp (3) SCC 232, decided on 16 Aug 1993 and in Appeal (Civil) 1646 of 1999, ***Controller of Defence Accounts (Pension) & Ors v. S Balachandran Nair***, decided on 21 Oct 2005, Hon'ble Apex Court in Civil Appeal No 4949 of 2013 arising out of SLP (C) No 6940 of 2010, ***Dharamvir Singh vs. Union of India*** decided on

02.07.2013 and Hon'ble Apex Court judgment rendered in Civil Appeal No. 5591 of 2006, ***KJS Buttar vs Union of India and Ors*** decided on 31.03.2011 and Civil Appeal No 418 of 2012, ***Union of India & Others vs Ram Avtar*** decided on 10.12.2014.

7. Per contra, learned counsel for the respondents submitted that after being placed in low medical category on account of the injury sustained, the applicant was granted sheltered employment from time-to-time to complete his pensionable service. However, later due to not availability of sheltered employment, his further retention was not recommended by the Officer Commanding unit on 07.08.2017 and the applicant was discharged from service on 01.09.2018. Release Medical Board dated 26.04.2018 has viewed applicant's composite disabilities (i) **Compound Fracture Tibia Fibula (RT) OPTE (ICD CODE-S82.2** and (ii) **Foot DEOP (RT) (ICD CODE M21.3)** as 70% for life, but disability qualifying element for grant of disability pension was assessed as NIL being neither attributable to nor aggravated by military service. He further submitted that to grant disability pension, it is not only required that armed Forces personnel should be on duty, but there must be some causal connection also between the injury and military service. He submitted that since in the given facts, despite applicant being on leave when he met with accident, there was no causal connection between the injury

sustained and military service, therefore, applicant is was not held entitled to disability pension, as he claimed. He further submitted that in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for grant of disability pension has been rightly rejected and needs no interference.

8. We have heard Col AK Srivastava (Retd), learned counsel for the applicant and Shri Ram Saran Awasthi, learned counsel for the respondents and have also perused the record.

9. After having heard the submissions of learned counsel of both sides the factual position that has been emerged is that applicant was enrolled in the army on 19.03.2002 and discharged from service on 01.09.2018. He met with an accident on 10.01.2011 while on annual leave and was placed in low medical category for the disabilities **“Compound Fracture Tibia Fibula (RT) OPTE (ICD CODE-S82.2 and “Foot DEOP (RT) (ICD CODE M21.3)”** and his total disability was assessed as 70% for life. The disability claim of the applicant was rejected on 14.01.2019 being NANA and his appeal was also rejected vide letter dated 04.07.2019. Learned counsel for the respondents has conceded during the course of hearing that when applicant sustained injury resulting in this disability, he was on duty as casual leave as well as annual leave are treated as duty. The respondents have denied disability pension

to the applicant on the reason that his disability was not attributable to military service and there was no causal connection between the disability and military service.

10. In order to examine the correctness of the aforesaid submission we feel appropriate to refer Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982 wherein it is enumerated that a person of the Armed Forces is treated on duty while performing anyone of the functions mentioned in paragraph (a), (b) and (c) of the Pension Regulations:-

*“Rule 12: Duty:- The Entitlement Rules 1982 A person subject to the disciplinary code of the Armed Forces is on duty:-*

*(a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him;*

*(b) When moving from one place of duty to another place of duty irrespective of the mode of movement;*

*(c) During the period of participation in recreation and other unit activities organized or permitted by service authorities and during the period of travelling in a body or singly by a prescribed or organized route.*

*Note 1: x x x x x x x x x*

*Note 2: (d) Personnel while travelling between place of duty to leave station and vice versa to be treated on duty irrespective of whether they are in physical possession of railway warrant/concession vouchers/cash TA etc or not. An individual on authorized leave would be deemed to be entitled to travel at public expense.*

*(e) The time of occurrence of injury should fall within the time an individual would normally take in reaching the leave station from duty station or vice versa using the commonly authorized mode(s) of transport. However, injury beyond this time period during the leave would not be covered.*

*(f) An accident which occurs when a man is not strictly ‘on duty’ as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India.”*



11. It would appear that in terms of Rule 12 of The Entitlement Rules 1982, the disability sustained during the course of an accident, which occurs when the personnel of the Armed Forces are not strictly on duty may also be attributable to service on fulfilling certain conditions enumerated therein, but there has to be a reasonable causal connection between the injuries resulting in disability and the military service.

12. The Learned Counsel for the Applicant has also referred Rule 10 of the Leave Rules for the Services which reads as under:

*“Casual leave counts as duty except as provided for in Rule 11 (a).”*

13. As per this rule, when army personnel are on casual leave, same is counted as duty unless he comes under any one of the exceptions under Rule 11 (a) of the rules.

14. It is not the case of the Respondents that the applicant comes under any such exceptions.

15. Our attention has been drawn to decision of Hon'ble The Apex Court in ***Madan Singh Shekhawat vs Union of India & Ors*** reported in (1999) AIR (SCW) 3342. The Apex Court in this judgment has referred Rule 48 of the Defence Service Regulations which being relevant is quoted below: -

***“Disability Pension when admissible-***

*“(c) a person is also deemed to be on duty during the period of participation, organized or permitted by Service Authorities and of travelling in a body or singly under organized arrangements. A person is also considered to be on*

*duty when proceeding to his leave station or returning to duty from his leave station at public expenses.”*

16. While dealing with Rule 48 referred to above, in para 7 of the judgment the Hon'ble The Apex Court has observed that “this rule is a deeming provision which provides for situations under which a person on duty, if he suffers disability, is entitled to the grant of disability pension. The last part of this sub-rule provides that a person incurring disability when proceeding to his leave station or returning to duty from his leave station at public expense is also entitled to the grant of disability pension”. Dwelling on expression “public expenses”, Hon'ble the Apex Court in para 12 of the said decision has observed that “applying the above rule, we are of the opinion that the rule makers did not intend to deprive army personnel of the benefit of the disability pension solely on the ground that the cost of journey was not borne by the public exchequer. If the journey was authorized, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself”.

17. Keeping in view the controversy involved, the question which need to be answered is of three folds :-

(a) Whether, when Armed Forces personnel proceed on annual leave or leave of any kind, he is to be treated on duty?

(b) Whether the injury or death caused, if any, to the armed forces personnel on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(c) What is the effect and purpose of Court of Inquiry convened after such an injury suffered by armed forces person?

18. In number of cases, the Hon'ble Apex Court and Armed Forces Tribunals have held that when armed forces personnel are availing casual leave or annual leave, she or he is to be treated on duty.

19. As far as causal connection between disability and military duty is concerned, it has been held that for granting disability pension, there must be some causal connection with military duty. In the instant case, a court of inquiry was held and on perusal of court of inquiry it transpires that when incident took place, applicant was returning from Secunderabad after purchasing his train ticket for return journey from Secunderabad to Ambala. Distance from Secunderabad to Ambala is very long and it is not possible to travel on long train journeys without reserved ticket for which the applicant was granted free railway warrant. Hence, in view of this it can be said that there is causal connection between the incident and military duty.

20. As regards question (c), if a causal connection has been found established between the disabilities and military service, the injury shall be treated as attributable to military service and applicant would be entitled to the disability pension. In the instant case, since the applicant sustained injury while returning home after getting reservation ticket to perform journey for joining duty, this act has causal connection with military duty. Hon'ble Apex Court as well as the various Benches of the Armed Forces Tribunal have held that if injury suffered by the individual has causal connection between military duty, resulting in disability, the injury would be considered attributable to or aggravated by military service and individual shall be entitled for disability pension.

21. 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 those 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.”

22. We have considered the applicant's case in view of above guiding factors and we find that, applicant was on bona fide military duty when he sustained injury resulting in disability of a permanent nature to the extent of 70%, on account of injuries “**Compound Fracture Tibia Fibula (RT) OPTE (ICD CODE-S82.2** and “**Foot DEOP (RT) (ICD CODE M21.3)**”. The activity in which he sustained injury being connected with his military duty, he is entitled to the disability pension. The mere fact of a person being on 'duty' or

otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'. Perusal of Court of Inquiry reveals that applicant was a disciplined soldier. Unfortunately, he met with accident while returning from Secunderabad after purchasing return journey ticket. Service record of the applicant reveals that he is the resident of Village, Post Office, Police Station and Tehsil - Kothakota, District Wana Parthy, State- Telangana and his District Soldier Board is Mahabub Nagar. After the accident he was admitted in Mahabub Nagar hospital. The circumstances of the incident have causal connection with military service and his disability is considered attributable to military duty and his injuries are considered as connected with military duty. We therefore find that reasons given by the respondents that the disability is not attributable to military service are no reasons in the eye of law.

23. In view of the above, Original Application No. 443 of 2019 deserves to be allowed, hence **allowed**. The impugned orders dated 04.07.2019 and 14.01.2019 rejecting claim for grant of disability element are set aside. The disability of the applicant is treated to be aggravated by military service. The applicant is

already in receipt of service element hence respondents are directed to grant disability element of the pension @ 70%, which shall stand rounded off to 75% from the date of discharge. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment.

24. No order as to costs.

25. Pending applications, if any, are disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 19 February, 2021

Ukt/-