

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 475 of 2023

Thursday, this the 16th day of January, 2025

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Sunil Kumar Singh (No. 13996630L Ex. Hav/AA), son of Tej Bahadur Singh, resident of Village – Kanha Nagar Colony (Babu Khera Yadav), Post Office – Kalli Paschim, Tehsil – Sadar, District – Lucknow (Uttar Pradesh) – 226301.

..... **Applicant**

Counsel for the : **Shri Yashpal Singh**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General Personnel Services, Adjutant General’s Branch/PS-4 (1st Appeal), Integrated Headquarters of Ministry of Defence (Army), 5th Floor, ‘A’ Block, Room No. 527, Defence Offices Complex, KG Marg, New Delhi-110001.
3. Officer-in-Charge Records, Army Medical Corps Record Office, PIN-900450, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

.....**Respondents**

Counsel for the : **Shri Amit Jaiswal**, Advocate
Respondents. Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

- (a) *Issue/pass an order setting aside the order/letter dated 30.12.2022 rejecting the claim for disability pension after summoning the relevant original records.*
- (b) *Issue/pass an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from the date of discharge including arrears with interest; and also the benefit of rounding off and other consequential benefits of ex-serviceman.*
- (c) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (d) *allow this application with cost.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Army Medical Corps of Indian Army on 18.12.1996 and was discharged from service on 31.12.2022 (AN) in Low Medical Category on completion of terms of engagement under Rule 13(3) Item III (i) of the Army Rules, 1954 after rendering 26 years and 14 days of service. The applicant is in receipt of Service Pension. During service, while posted at 326 Field Ambulance the applicant was granted 50 days balance of Annual Leave for the year 2004 with effect from 16.05.2004 to 04.07.2004. The leave address of the applicant was his native place i.e. Village – Paliya Bir Singh Pur, Tehsil – Lalganj, District – Raibareli (U.P.). For reporting to his Unit the applicant had train reservation upto Jammu Tawi in the Himgiri Express with scheduled departure on 03.07.2004 at 07.35 pm from Lucknow. To rejoiner duty, the applicant left his native Village on 03.07.2004 at about 03.00 PM by scooter along with his brother to board a train at Lalganj for Lucknow for onward scheduled journey to Jammu Tawi but before reaching the Railway Station he met with a

severe road accident and he sustained severe injury and his brother died on the spot. Being severe injury, Court of Inquiry was conducted, wherein Commanding Officer 326 Ambulance on 12.04.2005 made remarks that *"1. I concur with the opinion of the court. 2. No. 13996630 L Sep/Amb Asst SK Singh sustained injury in the process of rejoining his duty while on Annual Leave on 03.07.2004 under circumstances which were beyond his control. 3. "The disability is not attributable to military service".* At the time of discharge from service, Release Medical Board (RMB) held at 155 Base Hospital on 12.07.2022 assessed his disability '**OPEN COMMINUTED FRACTURE FEMUR SHAFT (RT) (OPTD) (S-72.3)**' @30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 30.12.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant after availing 50 days balance Annual Leave for the year 2004 from 16.05.2004 to 04.07.2004. To rejoiner duty, the applicant while returning his native Village on 03.07.2004 at about 03.00 PM by scooter along with his brother to board a train at Lalganj for Lucknow for onward scheduled journey to Jammu Tawi met with a severe road accident and he sustained severe injury, which ultimately resulted into 30% of disability for life, because of '**OPEN COMMINUTED FRACTURE FEMUR SHAFT (RT) (OPTD) (S-72.3)**'. In spite of that

Court of Inquiry as well as RMB have denied the attributability on the ground that injury sustained while on leave. He submitted that the Hon'ble Apex Court, various Hon'ble High Courts and the Benches of AFT, 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. Further, Ld. Counsel for the applicant specifically relied upon the law laid down by the Hon'ble Apex Court in the case of ***Union of India (UOI) and Others Vs. Surendra Pandey*** (Civil Appeal No. 2433 of 2011, decided on 18.09.2014), reported in (2014) 09 SC CK 0172. Thus, he submitted that applicant's case being fully covered with above, as he also suffered injury while returning from Home to rejoin his Unit after availing Balance Annual Leave, he is entitled to disability element of disability pension and its rounding off to @50%.

4. Per contra, learned counsel for the respondents conceded that applicant was granted 50 days balance Annual Leave from 16.04.2004 to 04.07.2004 and on 03.07.2004 while returning from home (Paliya Bir Singh Pur) to board the train at Lalgunj for Lucknow and onward to Jammu he met with a road accident and sustained injury. The applicant was subsequently diagnosed as a case of '**OPEN COMMINUTED FRACTURE FEMUR SHAFT (RT) (OPTD) (S-72.3)**'.

He further contended that disability of the applicant @30% for life has been regarded as NANA by the RMB on the basis of Injury Report dated 30.04.2005 and Court of Inquiry dated 12.04.2005, hence applicant is not entitled to disability element of disability pension in terms of Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that "*An individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more*". He pleaded for dismissal of the Original Application.

5. We have heard Shri Yashpal Singh, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents and have also perused the record.

6. After having heard the submissions of learned counsel of both sides we found that there are certain facts admitted to both the parties, i.e., applicant was enrolled in the Indian Army on 18.12.1996 and discharged from service on 31.12.2022 (AN). He sustained injury on 03.07.2004 while he was going to board a train at Lalganj for Lucknow for onward scheduled journey to Jammu Tawi and met with a severe road accident. The disability of the applicant was assessed @30% for

life by the RMB as NANA, but the disability claim of the applicant was rejected on 30.12.2022.

7. The respondents have denied disability element of disability pension to the applicant on the reason that for getting disability pension, in respect of injury sustained during the course of employment, there must be some causal connection between the disability and Military service, and this being lacking in applicant's case, as there was no causal connection between the disability and Military service, he is not entitled for the same.

8. This question has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the Hon'ble Apex Court. In a more or less similar matter, **Secretary, Govt of India & Others Vs. Dharamveer Singh**, decided on 20 September 2019, in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with '**Faciomaxillary and Compound Fracture 1/3 Femur (LT)**'. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave Report, dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under Column 3 (c) was that "No one was to be blamed for the accident. In fact respondent lost control of his own scooter". In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days.

In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of ***Madan Singh Shekhawat v. Union of India & Ors***, (1999) 6 SSC 459 was allowed by the Tribunal holding that respondent was entitled to disability pension. Aggrieved by the same, this Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 points for consideration:-

- (a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?.
- (b) Whether the injury or death caused if any, the armed forces personnel is 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 into an injury suffered by armed forces personnel?.

9. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

10. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

“ In view of Regulations 423 clauses (a) , (b), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury be connected with military service howsoever remote it may be. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributed to risk common to human being. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service”.

11. Regarding question number 3, the Hon'ble Apex Court held that if a causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well as the various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and, for such injury, resulting in disability, the injury would be considered attributable to or aggravated by military service.

12. The Hon'ble Apex Court while summing up took note of following guiding factors by the Armed Forces Tribunal, Regional Bench, Chandigarh, in the case of **Jagtar Singh v. Union of India & Ors**, Decided on November 02, 2020 in TA No 61 of 2010 approved in the case of **Sukhwant Singh** and **Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability pension is required to be dealt with accordingly. Those guiding factors are reproduced below for reference:-

“(a) 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. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. 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'.

(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under

Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior”.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service.”

13. The respondents submitted that as per report of Court of Inquiry the injury sustained by the applicant was declared as ‘not attributable to military service (NANA)’ on the ground that the applicant was on annual leave.

14. We have considered the applicant’s case in view of above guiding factors and we find that to rejoiner duty, the applicant left his native Village on 03.07.2004 at about 03.00 PM by scooter along with his brother to board a train at Lalganj for Lucknow for onward scheduled journey to Jammu Tawi but before reaching the Railway Station he met with a severe road accident resulting into disability to the extent of 30% for life, on account of **‘OPEN COMMINUTED FRACTURE FEMUR SHAFT (RT) (OPTD) (S-72.3)’** which establishes causal connection with military duty.

15. We also find that the RMB at page 7 of the RMB proceedings in the column of “*Details of Justification*” stated that “*The individual sustained Open Comminuted Fracture Femur Shaft Right on 03 Jul 2004 during annual Leave. The injury is not attributable to military service as per (IAFY-2006) Injury Report dt 30 Apr 2005 and Court of Inquiry dt 12 April 2005 (copy enclosed)*”. We also find that during the Court of Inquiry the Commanding Officer 326 Ambulance on 12.04.2005 had in para 2 made remarks that “*No. 13996630 L*

Sep/Amb Asst SK Singh sustained injury in the process of rejoining his duty while on Annual Leave on 03.07.2004 under circumstances which were beyond his control". Further, in para 1, 2 and 3 of the "Findings of the Court" it has been stated that "1) No. 13996630-L Sep/AA S.K Singh was coming from his village (Paliya Bir Singh Pur) by Scooter along with his elder brother, after expiry of his BAL 50 days to board Himgiri Exp at Lucknow via Lalganj to Jammu on 03 July 2004 at 1500 H. 2) His brother who was driving scooter was obeying (he is no more now) road traffic rule at the time of accident. 3) About 2.5 Km away from his home head on collision occurred with Passenger carrying Jeep coming from opposite direction."

Therefore, considering the facts and circumstances of the case, we are of the opinion that the reasoning of RMB for denying the attributability of the applicant's disability are cryptic, not convincing and doesn't reflect the complete truth on the matter. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in and the disability of the applicant should be considered as attributable to military service as the injury sustained by the applicant while returning from Home to rejoin his Unit.

16. 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 10th 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 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.”

17. 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), we are of the considered view that benefit of rounding off of disability element of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

18. In view of the above, the **Original Application No. 475 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held as attributable to military Service. The applicant is entitled to get disability element of disability pension @30% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element of disability pension to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his discharge. 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

19. No order as to cost.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 16th January, 2025

AKD/-