

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 84 of 2024****Wednesday, this the 8th day of January, 2025****“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 3213545H Ex Sepoy Gaurav Kumar
S/o Sri Joginder Singh
Vill : Shihali Nagar, PO – Uncha Gaon,
Distt – Bulandshahar (UP)

..... Applicant

Counsel for the Applicant : **Shri K.K. Misra**, Advocate

Versus

1. Chief of Army Staff, Army HQs, New Delhi.
2. Officer-in-Charge, Records, The JAT Regt, Bareilly.
3. PCDA (P) Allahabad.

.....Respondents

Counsel for the : **Ms. Kavita Mishra**,
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:-

- (i) *To quash Records, JAT Regtl, Bareilly letter No 32013545/Appeal/DP/JR dt 14 June 2023 (Annexures A-5 to this OA) and direct the respondents to grant disability pension to the applicant, as per his entitlement, duly rounded of to 50% along with its arrears with interest.*

(ii) Any other applicant relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.

(iii) Cost of the case may be awarded in favour of the applicant.

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Army on 10.06.2017 and was deemed to be invalided out of service on 30.04.2023 (AN) in Low Medical Category under Rule 13 (3) III (iii) (a) (1) of the Army Rules, 1954 due to non availability of suitable shelter appointment in the unit. During leave period, on 24.01.2021, the applicant went from his home (Sihali Nagar) to Jahagirabad, Bulandshahar (UP) by motorcycle for air ticket reservation. After completion of the said work, at around 1730 hours, while he was returning back from Jahagirabad to his home by motorcycle, enroute he suddenly felt numbness in right side of his body due to which he was unable to control his motorcycle, fell down and was unconscious. As per injury report, the applicant was downgraded to low medical category P3 (T-24) w.e.f. 30.03.2021 due to disability **“CVA-(L) MCA ISCHEMIC STROKE (I-63.5)”** and in subsequent review medical board, the applicant was finally downgraded to P2 (Permanent) w.e.f. 29.03.2022. A Court of Inquiry was conducted, wherein the disability sustained by the applicant was declared as ‘not attributable to military service’. At the time of discharge from service, Release Medical Board (RMB) held at Military Hospital, Meerut on 15.04.2023 assessed his disability **“CVA-(L) MCA ISCHEMIC STROKE (I-63.5)”** @ 10% 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 by the competent authority and decision of the competent authority was communicated to the applicant vide JAT Records letter dated 14.06.2023. The applicant preferred first appeal dated 10.07.2023 which was also rejected vide letter dated 28.11.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that during annual leave, on 24.01.2021 applicant went to nearby city, Jahangirabad in district Bulandshahar for return journey reservation by air and while returning back to his village, enroute he became unconscious. The applicant was given initial treatment in a civil hospital in Noida and thereafter he was transferred to Base Hospital, Delhi Cantt. The applicant was placed in low medical category by the medical board. Since, unit of the applicant (45 RR Bn) was located in High Altitude Area, applicant was directed to report to Depot Company of JAT Regimental Centre, Bareilly and was attached with Record Office. During attachment with Record Office, applicant was served a Show Cause Notice by his Commanding Officer to explain as to why he should not be discharged from service as no sheltered appointment was available in the unit. In reply letter dated 08.08.2022, applicant requested to continue in service. Since his unit (12 JAT) was placed in peace Station, Meerut, applicant was directed to report and he

reported there on 29.09.2022 but discharge order of the applicant was issued by the Record Office with direction to report to Depot Company of the Centre for discharge formalities in low medical category P2 (Permanent). Release Medical Board was held at MH Meerut and applicant's disability, 'CVA (Lt) MCA ISCHEMIC STROKE (1.43.5)' was assessed @ 10% for life as neither attributable to nor aggravated by military service. The applicant was discharged from service on 01.05.2023 on medical grounds. In the Court of Inquiry held in the unit, the applicant was never asked to appear before it and his injury was opined as not attributable to military service which is incorrect. The applicant was neither granted service pension nor disability pension treating his disability as neither attributable to nor aggravated by military service. Since the applicant was invalided out from service before completion of his terms of engagement, he is entitled to get disability pension.

4. Learned counsel for the applicant 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 being fully covered with above, as the disease developed while the applicant was

posted in super High Altitude Area and same being not reported earlier at the time of his enrolment, he is entitled to disability pension.

5. Per contra, learned counsel for the respondents submitted that applicant sustained injury during annual leave on 24.01.2021 due to motorcycle accident while he was returning back from Jahagirabad to his home after return reservation to go back to his unit by air. As per injury report, the applicant was downgraded to low medical category P3 (T-24) w.e.f. 30.03.2021 due to disability **“CVA-(L) MCA ISCHEMIC STROKE (I-63.5)”** and in subsequent review medical board, the applicant was finally downgraded to P2 (Permanent) w.e.f. 29.03.2022. A Court of Inquiry was also held in 45 RR Battalion (JAT) wherein the disability sustained by the applicant was declared as ‘not attributable to military service’. At the time of discharge from service, Release Medical Board (RMB) held at Military Hospital, Meerut on 15.04.2023 assessed his disability **“CVA-(L) MCA ISCHEMIC STROKE (I-63.5)”** @ 10% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. After rendering 05 years, 10 months and 20 days of service, the applicant was deemed to be invalided out of service on 30.04.2023 (AN) in Low Medical Category under Rule 13 (3) III (iii) (a) (1) of the Army Rules, 1954 due to non availability of suitable shelter appointment in the unit. The applicant’s claim for grant of disability pension was rejected by the competent authority and decision of the competent authority was communicated to the applicant vide JAT Records letter dated

14.06.2023. The applicant preferred first appeal dated 10.07.2023 which was also rejected vide letter dated 28.11.2023. He further contended that disability of the applicant @10% for life has been regarded as NANA by the RMB and the circumstances of the motorcycle accident have no causal connection with military service, hence, the applicant is not entitled to disability pension as per Rule 173 and 198 of the Pension Regulations for the Army, 1961 (Part-1). He pleaded for dismissal of the Original Application.

6. We have heard learned counsel for the parties and perused the record.

7. 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 10.06.2017 and discharged from service on 30.04.2023 (AN). He sustained injury due to motorcycle accident during leave on 24.01.2021 while returning back from Jahagirabad to his home having done return reservation to go back to unit by air and became unconscious. The disability of the applicant, **“CVA-(L) MCA ISCHEMIC STROKE (I-63.5)”** was assessed at 10% for life by the RMB, but the disability claim of the applicant was rejected which was communicated to the applicant vide JAT Records letter dated 14.06.2023.

8. The respondents have denied disability pension to the applicant on the reason that for getting disability pension, in respect of injury sustained during the leave period, 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 and disability being NANA, he is not entitled for the same.

9. 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?.

10. 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.

11. 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”.

12. 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.

13. 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.”

14. 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' on the ground that the applicant was on leave and injured himself due to motor cycle accident.

15. We have considered the applicant's case in view of above guiding factors and we find that the applicant during annual leave period on 24.01.2021, went from his home (Sihali Nagar) to Jahagirabad, Bulandshahar (UP) by motorcycle for air ticket reservation for return journey to back to his unit after expiry of leave. After completion of the said work, while he was returning from Jahagirabad to his home by motorcycle, suddenly he felt numbness on right side of his body due to which he was unable to control his motorcycle, fell down and was unconscious. The applicant was treated in the Military Hospital and was downgraded to low medical category. The applicant sustained injury resulting into disability to the extent of 10% for life, on account of '**CVA-(L) MCA ISCHEMIC STROKE (I-63.5)**' which establishes causal connection with military duty.

16. We also find that the RMB has denied attributability to the applicant only by endorsing that the disability '**CVA-(L) MCA ISCHEMIC STROKE (I-63.5)**' is neither attributable to nor aggravated (NANA) by service stating that injury sustained while on leave. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is 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.

17. The Hon'ble Apex Court in its judgment in the case of ***Sukhwinder Singh vs Union of India & Ors***, reported in (2014) STPL (WEB) 468 SC has held that if petitioner's services were cut short and he was discharged from service prior to completion of terms of engagement, discharge from service should be a deemed invalidation and petitioner deserves to be granted disability pension. The respondents have also conceded in para 3 of the counter affidavit that 'the petitioner was deemed to be invalided out of service on 30.04.2023 (AN). The law on this point is very clear as reported in Para 9 of the judgment which being relevant is reproduced as under:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations,

a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

18. 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 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 invalided 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.”

19. As such, we are of the considered view that applicant is entitled to 20% disability pension (which includes service element as well as disability element) in place of 10% for life as assessed by the RMB, as held by the Hon'ble Apex Court in the case of ***Sukhwinder Singh*** (*supra*) and benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of discharge from service in view of the decision of Hon'ble Supreme Court in the case of ***Sukhwinder Singh*** (*supra*) and ***Ram Avtar*** (*supra*).

20. In view of the above, the **Original Application No. 84 of 2024** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. The disability of the applicant is held as attributable to military Service. The applicant is entitled to get disability pension @20% for life which would be rounded off to 50% for life from the next date of discharge from service. The respondents are directed to grant disability pension to the applicant @20% for life which would stand rounded off to 50% for life from the next date of discharge from 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.

21. No order as to costs.

22. Misc. Application(s), pending if any, shall stand disposed of.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: January, 2025
SB

(Justice Anil Kumar)
Member (J)