

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 204 of 2024**

Thursday, this the 24th day of October, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt Gen Anil Puri, Member (A)”**

Sgt Prabhat Gaur (Retd) (Ser No. 744570), R/o H. No. 38, Lane No 4, Bhakti Nagar Colony, Pandeypur, Varanasi, Uttar Pradesh-221002, Presently in Lucknow.

..... Applicant

Counsel for the Applicant : Shri Dhiraj Kumar, Advocate
Shri Rahul Pal, Advocate
Shri Tatsat Shukla, Advocate

Versus

1. Union of India, Through Secretary, Ministry of Defence, Room No. 101A, South Block, DHQ, PO-New Delhi, PIN-110011.
2. Dte of Air Veterans (DAV), PD (AV), Subroto Park, New Delhi-110010.
3. JCDA, Subroto Park, New Delhi-110010.

.....Respondents

Counsel for the Respondents. : Shri Ashish Kumar Singh, Advocate
Central Govt. Counsel

ORDER (Oral)

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 and set aside the impugned letter (Annexure A-1 of O.A.) wherein applicant's initial claim for grant of disability element of disability pension was rejected as ineligible.

(ii) To issue/pass an order or direction of appropriate nature to the respondents to grant disability element of disability pension to the applicant @ 20% (rounded off to 50%) for life from the date of his discharge from service (01.01.2023) and pay the arrears along with suitable rate of interest as deemed fit by this Hon'ble Tribunal.

(iii) To grant the benefit of rounding off the disability element of disability pension from 20% to 50% from the date following the date of his discharge from service (01.07.2022) in terms of Govt of India letter dated 31.01.2001 and to pay the arrears along with suitable rate of interest as deemed fit by this Hon'ble Tribunal.

(iv) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

2. Facts giving rise to this Original Application in brief are that the applicant was enrolled in the Indian Air Force (IAF) on 16.12.2002 and was discharged from service on 31.12.2022 (AN) in Low Medical Category. On 04.10.2011, while playing Badminton in Badminton Court at Air Force Station Physical Training Ground he sustained injury 'ACL Tear Left Knee-II (ICD S-83.0)' and he was placed in low medical category A4G4. Being placed in low medical category, prior to discharge from service, his Release Medical Board (RMB) was conducted on 02.05.2022 at Air Force Station, New Delhi which assessed his disability @ 20% for life neither attributable to nor aggravated (NANA) by military service. The applicant is in receipt of service pension w.e.f. 01.01.2023. Applicant's disability element pension claim was rejected vide letter dated 09.05.2023 and First Appeal submitted on 12.06.2023 has not been decided. It is in this perspective that the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that on 04.10.2011, while posted on the strength of AFTC, Bangalore the applicant while playing Badminton on Badminton Court got sudden jerk and sustained injury in his left knee. It was further submitted that the injury was caused while practice match of Badminton at unit level competition which was scheduled in the forthcoming month in which the applicant, being a sport person, was to represent his unit.

4. Learned counsel for the applicant further submitted that due to disability 'ACL Tear left Knee-II (ICD S-83.0)' the applicant was placed in low medical category A4G4 (P). He further submitted that the RMB conducted on 02.05.2022 has assessed his disability @ 20% for life neither attributable to nor aggravated by military service. In spite of the fact that injury was caused to the applicant while on duty, the RMB has denied the attributability in a most mechanical manner without assigning any reason and without determining any causal connection of the injury with service on the ground that the applicant had refused to undergo surgery and to this effect he submitted unwillingness certificate in this regard.

5. Learned counsel for the applicant further submitted that the applicant sustained injury while on duty performing official sports activities inside the camp area, therefore this activity falls under participation of organized unit sports activities as per Rule 12 (c) of Entitlement Rules, 1982 and therefore, there being causal connection of injury with military duty, applicant is entitled to disability element of pension. He 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 Air Force, the said disability would be treated to be attributable to or aggravated by military service and he/she shall be entitled to the disability element of pension for the same. Thus, he submitted that applicant's case being fully covered with above, 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 element of pension. In support of his contention, the learned counsel for the applicant has relied upon order dated 19.02.2021 passed by this Tribunal in O.A. No. 443 of 2019, **Ex Nk (ACP Hav) Pandu Kumar Reddy vs Union of India & Ors**, order dated 06.10.2023 passed by AFT (PB), New Delhi in O.A. No. 1104 of 2017, **Sgt Raj Kishore (Retd) vs Union of India & Ors**, the Hon'ble Apex Court judgment passed in the case of **Union of India & Ors vs Manjit Singh**, AIR 2015 SC 2114, the Hon'ble Apex Court judgment dated 24.02.2015 passed in Civil Appeal No 11208, **Angad Singh Titaria**, AIR 2015 SC 1898 and the Hon'ble Apex Court order dated 02.07.2013 passed in Civil Appeal No 4949 of 2013 in the case of **Dharamvir Singh vs Union of India & Ors**.

6. Per contra, learned counsel for the respondents submitted that the applicant was initially detected to have IDK (Lt) knee and was placed in low medical category A4G4 vide AFMSF-15 dated 22.03.2012. It was further submitted that being placed in low medical category, applicant's Release Medical Board (RMB) was conducted on 02.05.2022 which assessed his disability to be 20% for life neither attributable to nor aggravated by military service.

7. Learned counsel for the respondents further submitted that as per Rule 153 of Pension Regulations for IAF, 1961 (Part-I), the primary condition for the grant of disability pension is 'unless otherwise specifically provided, disability pension may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over. He submitted that since applicant's disability has been declared by the

medical board to be neither attributable to nor aggravated by military service, he is not entitled for grant of disability element of pension. It was further submitted that since the applicant is not entitled to disability element of pension, therefore, question of its rounding off does not arise.

8. In support of his contention, learned counsel for the respondents has relied upon the following case laws:-

(i) Hon'ble Supreme Court order passed in the case of ***Union of India & Ors vs Ex Sep Manusamy***, (Civil Appeal No 6536 of 2012).

(ii) Hon'ble Supreme Court order passed in the case of ***Union of India & Ors vs Ex Cfn Nar Singh Yadav***, (Civil Appeal No 7672 of 2019).

(iii) AFT (RB), Chennai order dated 11.09.2023 passed in O.A. No. 121 of 2021 in the case of ***Ex Sub M Vijayakannan vs Union of India & Ors***.

(iv) Hon'ble Supreme Court order dated 23.05.2012 passed in Civil Appeal No 1837 of 2009 in the case of ***Union of India & Ors vs Ravinder Kumar***.

He pleaded for dismissal of the Original Application on the ground that the disability of the applicant has been declared by the RMB to be neither attributable to nor aggravated by military service.

9. Heard learned counsel for the parties and perused the material placed on record.

10. After having heard the submissions of learned counsel of both the sides, we find that there are certain facts admitted to both the parties, i.e., the applicant was enrolled in the Indian Air Force on 16.12.2002 and discharged from service on 31.12.2022 (AN). He sustained injury 'ACL

Tear Left Knee-II (ICD S-83.0)' on 04.10.2011 while playing Badminton in Badminton Court at Air Force Station, Bangalore physical training ground at around 1715 hrs. The disability of the applicant was assessed at 20% for life by the RMB, but disability claim was rejected on 09.05.23 stating that the disability of the applicant as per RMB is neither attributable to nor aggravated by military service. Applicant's first appeal dated 12.06.2023 against rejection of disability element of pension claim seems to be pending as nothing has been brought on record to show that this appeal has been disposed off.

11. On perusal of attributability certificate dated 30.03.2012, it comes out that the Commandant, AFTC, Bangalore has endorsed that the disability in question is not attributable to military service, but at the bottom of the certificate it has been mentioned that the applicant sustained injury in his left knee due to sudden jerk while playing Badminton at AFTC, Badminton Court. This shows that the applicant while on duty was playing Badminton in Badminton Court and sustained injury due to sudden jerk. Additionally, on careful scrutiny of Appendix 'G' to AFMSF-16 (Ver 2019) we find that the applicant was advised for ACL reconstruction surgery but he was unwilling for the same and submitted his unwillingness certificate to undergo surgery. Therefore, an inference may be drawn that applicant's disability would have been declared as NANA on his unwilling to undergo surgery.

12. The question before us is whether disability caused to the applicant is attributable to military service or not? 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 Air Force 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 Air Force 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 three 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 Air Force service so as to hold that such injury or death is either attributable to or aggravated by Air Force service?
- (c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?

13. 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.

14. 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”.

15. 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 which is connected to military duty, the injury would be considered as attributable to or aggravated by military service.

16. 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.”

17. The respondents' submission on non attributability of the disability in respect of the applicant is that his disability has been regarded as NANA as per attributability certificate dated 30.03.2012 issued by the Commandant, AFTC, Bangalore as well as remarks endorsed by the RMB in Part VI, but the fact remains that the applicant had sustained injury while playing Badminton in Badminton Court in the unit area as endorsed at the bottom of the certificate dated 30.03.2012.

18. We have considered the applicant's case in view of above guiding factors and we find that the applicant while playing Badminton in Badminton Court in unit area sustained injury resulting into disability to

the extent of 20% for life, on account of '**ACL Tear left knee-II (ICD S-83.0)**' which establishes causal connection with Air Force duty.

19. We also find that the RMB has denied attributability to the applicant only by endorsing that the disability '**ACL Tear left knee-II (ICD S-83.0)**' is neither attributable to nor aggravated (NANA) by service but no meaningful reason has been assigned to this effect. However, considering the facts and circumstances of the case, we are of the view that this reasoning of Release Medical Board for denying disability element of pension to the 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 and the disability of the applicant should be considered as attributable to Air Force service.

20. 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 appellants (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."

21. In view of the above, the **Original Application No. 204 of 2024** deserves to be allowed, hence **allowed**. The impugned order dated 09.05.2023, rejecting the applicant's claim for grant of disability element of pension, is set aside. The disability of the applicant is held as attributable to Air Force Service. The applicant is entitled to get disability element of pension @ 20% for life which would be rounded off to 50% for life w.e.f. 01.01.2023. The respondents are directed to grant disability element of pension to

the applicant @ 20% for life which would stand rounded off to 50% for life w.e.f. 01.01.2023. 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.

22. No order as to cost.

23. Miscellaneous application(s), pending if any, stand disposed off.

(Lt Gen Anil Puri)
Member (A)

Dated: 24.10.2024
rathore

(Justice Anil Kumar)
Member (J)