

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 108 of 2021**Friday, this the 17th day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 41981834-H, Ex. Sep. (ACP-II), Bharat Chand, S/o Narayan Chand, R/o Village – Patiya, PO – Chakapur, Tehsil – Khatima, Udham Singh Ngar (UK), Presently Residing at C/o Keshari Chand, Vidhya Nagar (Katehri Bagh), Milmatha, Lucknow Cantt., UP-226002.

..... Applicant

Ld. Counsel for the Applicant : **Shri Parijaat Belaura**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, new Delhi.
2. Addl. Dte Gen Personnel Services, Adjutants General’s Branch, Integrated Head Quarters, Ministry of Defence (Army), Room No. 11, Plot No. 108 (West), Barassey Avenue, Church Road, New Delhi-110001.
3. The Officer-in-Charge, Records the Kumaon Regiment, PIN-900473, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Gyan Singh**, Advocate
Central Govt. Counsel

ORDER

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (I) *To set aside the opinion of competent authority dated 03.02.2017 holding Injury of applicant as Neither Attributable Nor Aggravated by service only observing that it has been caused in peace which is without application of mind, not only perverse but also illegal, also Opinion of Release Medical Board, based on finding of Injury report, as it relates to Attributability or Aggravation of Disability and also rejection orders 19.03.2019, 1st order dated 22.04.2020.*
- (II) *To grant disability Pension @30% and round of the same to 50% giving the benefit of Govt of India, Min. of Def. Letter dated 31.01.2001, w.e.f. date of discharge of applicant i.e. 28.02.2019.*
- (III) *To pay arrear of Disability Pension along with 12% interest from the date of his discharge i.e. 28.02.2019 till it is actually paid.*
- (IV) *Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.*

2. Briefly stated, applicant was enrolled in the Indian Army on 01.03.2002 and was discharged from on 28.02.2019 on completion of his terms of engagement in Low Medical Category A3 (P) under Rule 13 (3) Item III (iv) of the Army Rules, 1954. At the time of

discharge from service, the Release Medical Board (RMB) held at Base Hospital, Lucknow on 24.11.2018 assessed his disability '**FRACTURE SHAFT FEMUR (LT) (OPTD) (S-72)**' @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 19.03.2019. The applicant preferred First Appeal which too was rejected vide letter dated 22.04.2020. The applicant preferred Second Appeal dated 05.07.2020 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease/injury at the time of enrolment in Army. The applicant was YUSHU player and he was playing for State of Jharkhand with due permission from Headquarters, therefore, he was attached to 7017 EME Ranchi and he used to go to Khel Gaon Stadium at Ranchi for practice. On 20.08.2016 at about 2000 hours while applicant was coming back from Khel Gaon Stadium after practice to his unit, he was hit by a Car as such he fell down and became unconscious. He was admitted to Military Hospital, Kolkatta and then Base Hospital, Lucknow and diagnosed as '**FRACTURE SHAFT FEMUR (LT) (OPTD)**'. The applicant got injured during the duty hours, hence the

disability is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension as well as arrears thereof. As such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for life has been regarded as NANA by the RMB as per Injury Report dated 21.08.2016 and Court of Inquiry dated 04.01.2017 and subsequent days, hence applicant is not entitled to disability element of disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the injury (disability) of the applicant has any causal connection with the military service and attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. 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 respondents in 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?.

7. 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.

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

“20. 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”.

9. 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.
10. The Hon'ble Apex Court in para 36 of the judgment held as under:-

*“36. We find that summing up of the following factors by the Tribunal in the case of **Jagtar Singh v. Union of India & Ors** (T.A. No. 61 of 2010 decided on November 2, 2010 by the Tribunal) approved in the case of **Sukhwant Singh** and in **Vijay Kumar**, do not warrant any change or modification and the claim of disability pension is required to be dealt with accordingly:-*

“(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.”

11. We have considered the applicant's case and we find that the RMB has denied attributability to the applicant only by endorsing that

the disability '**FRACTURE SHAFT FEMUR (LT) (OPTD) (S-72)**' is neither attributable to nor aggravated (NANA) by service as per injury report dated 21.08.2016 and Court of Inquiry dated 04.01.2017 and subsequent days, therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board as well as Court of Inquiry for denying disability element of disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. The Opinion of the Court of Inquiry are as under :-

- “1. No. 4198183H Sep Bharat Chand of 9 KUMAON met with an accident on 20 Aug 2016 at around 2000 hrs and sustained injury “Fracture Shaft Of Femur (LT) and (LT) Knee” when he was coming back from Khelgaon stadium Ranchi to his living after practicing Wushu.*
- 2. There was no foul play suspected in the occurrence of the incident.*
- 3. The injury is not attributable to military service.”*

12. In the present case the applicant met with an accident at 2000 hours on 20.08.2016 while he was coming back from Khelgaon stadium Ranchi to his living after practicing Wushu and sustained this injury. We are of the opinion that the injury suffered by the applicant has relevant and reasonable causal connection (howsoever remote) with military service, as the same occurred in the performance of a legitimate activity. 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 by military service.

13. 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 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."

14. 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 pension @30% for life to be rounded off to 50% for life may be extended to the applicant from the date of his discharge.

15. In view of the above, the **Original Application No. 108 of 2021** deserves to be allowed, hence **allowed**. The impugned order dated 19.03.2019 and 22.04.2020, annexed at page 24 and 25 of Original Application, are set aside. The disability of the applicant is held as attributable to Army Service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% from the next date of his discharge. The respondents are directed to grant disability element 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

16. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 17 September, 2021

AKD/-