

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 747 of 2022

Friday, this the 16th day of December, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Lt Gen Rakesh Kumar Anand, Member (A)”**

No. 3185459Y Ex Hav Kedar Singh
S/o Shri Natthi Singh
R/o Village Nangla Heera, PO – Kagarol, Tehsil – Kirawali,
District – Agra (UP) – 283119

..... Applicant

Counsel for the Applicant : **Shri Ashok Singh** and
Shri Vikas Singh Chauhan, Advocate

Versus

1. Union of India through its Secretary, Govt. of India, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. OIC Records, The JAT Regiment, PIN – 900496, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the Respondents : **Shri Devesh Kumar Mishra**,
Central Govt. Counsel

ORDER

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

- “8.1 To quash/set aside the impugned order dated 21 Jun 2022 passed by the OIC, Records the JAT Regiment on behalf of the Second Appellate Authority by way of rejecting the disability pension of the applicant in a illegal and arbitrary manner as contained Annexure No A-1 to this Original Application.
- 8.2 Issue an order or direction directing the respondent authorities to grant the disability pension at the rate 20% for life rounding off 50% along with arrears with all consequential disability service benefits w.e.f. 01.09.2013 to onwards and also provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment.
- 8.3 To pass any other order or direction which this Hon’ble court may deem fit and proper be passed in favour of the applicant.
- 8.4 Issue an order or direction awarding the cost of the application together with all legal expenses Rs. 50,000/- (Rupees fifty thousand only) incurred by the applicant and allow the same.”

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Army on 28.12.1991 and was discharged from service on 31.08.2013 in low medical category due to withdrawal of sheltered appointment. The applicant sustained injury during casual leave while returning from his District Headquarters to his home town on

a motor cycle and was hit by a jeep on 21.11.2011. Thereafter, he was treated in military hospital and was downgraded to low medical category due to injury "FRACTURE TIBIA FIBULA (RT)". The Commanding Officer, 3 JAT withdrew the shelter appointment and release order dated 11.03.2013 was passed and applicant was finally discharged from service w.e.f. 31.08.2013. The disability of the applicant was assessed @ 30% for life. Disability pension claim of the applicant was rejected vide order dated 23.10.2013. First Appeal of the applicant was rejected on 05.05.2015 and second appeal preferred by the applicant was also rejected vide order dated 21.06.2022 having no causal connection. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant sustained injury during casual leave while returning from his District Headquarters to his home town on a motor cycle and was hit by a jeep on 21.11.2011. Thereafter, he was treated in military hospital and was downgraded to low medical category due to injury "FRACTURE TIBIA FIBULA (RT)". The Court of Inquiry held in the unit and opined that applicant not to be blamed vide report dated 27.12.2011. The applicant was finally placed in low medical category A2 (Permanent) by the medical board and therefore, Commanding Officer, 3 JAT withdrew

shelter appointment and release order dated 11.03.2013 was passed and applicant was finally discharged from service w.e.f. 31.08.2013. The disability of the applicant was assessed @ 20% for life. Disability pension claim of the applicant was rejected vide order dated 23.10.2013. First Appeal of the applicant was rejected on 05.05.2015 stating that ID is resulted due to an injury sustained by the individual on 21.11.2011, while he was on 27 days casual leave from 14.11.2011 to 10.12.2011. Since, the circumstances of the incident have no causal connection with military service, hence, ID is conceded as neither attributable to nor aggravated by military service. Second appeal preferred by the applicant was also rejected vide order dated 21.06.2022 in a very illegal and arbitrary manner.

4. Learned counsel for the applicant further submitted that Regulation 53(a) of pension Regulations for the Army, 2008 (Part-1) is not applicable in the present case and injury fully comes under course of duty. Applicant's case is fully covered with the judgment of the Hon'ble Apex court in **Dharamvir Singh vs. Union of India & Ors**, 2014 STPL (Web) 468 SC and **Union of India vs. Ram Avtar**, decided on 10.12.2014. He pleaded that applicant be granted disability element of disability pension @ 20% for life duly rounded off to 50% for life from the date of discharge from service.

5. Per contra, learned counsel for the respondents submitted that the applicant while posted with 3 JAT was granted 27 days casual leave from 14.11.2011 to 10.12.2011. The applicant while returning from Bharatpur to his village Gunsara on motorcycle met with an accident where he was dashed by a Jeep coming from opposite side. Consequently, he sustained injury **“FRACTURE TIBIA FIBULA RT”**. The applicant was treated in military Hospital, Agra and was downgraded to low medical category for his injury/disability. The Court of Inquiry opined that applicant was on leave at the time of accident and not on military duties, hence, the injury sustained by the applicant is not attributable to military service. The RMB assessed his disability **“FRACTURE TIBIA FIBULA RT” @ 30%** for life which was considered as neither attributable to nor aggravated by military service (NANA). The applicant was discharged from service 31.08.2013. Hence, under the provision of para 173 of Pension Regulations for the Army, 1961 (Part-1) and Para 81 of Pension Regulations for the Army 2008 and disability being not connected with service having no causal connection with military duty, applicant is not entitled for disability element.

6. Learned counsel for the respondents further submitted that in the given facts, applicant being injured in a road traffic accident during leave, there was no causal connection between the injury sustained and

military service and, therefore, applicant is not entitled to disability element of disability pension, as he is claiming. In support, learned counsel for the respondents has placed reliance on the various judgments of the Hon'ble Apex Court on the subject and submitted that applicant is not entitled to disability element as he sustained injury in a road traffic accident while on casual leave and his injury/disability has no causal connection with military duty.

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

8. 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 Army 28.12.1991 and was discharged from service on 31.08.2013, he sustained injury in a road traffic accident on 21.11.2011 while on casual leave and placed in low medical category for the disability "**FRACTURE TIBIA FIBULA RT**". The RMB assessed his disability @ 30% for life as NANA and disability pension claim of the applicant was rejected being NANA and having no causal connection with military duties being on leave.

9. 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 injury/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.

10. 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?

11. 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.

12. 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”.

13. 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.

14. 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.”

15. We have considered the applicant's case in view of above guiding factors and we find that applicant was on casual leave. The applicant while returning from Bharatpur to his village Gunsara on motorcycle met with an accident where he was hit by a Jeep coming from opposite side and sustained injury resulting into disability to the extent of 30% for life. The activity in which he sustained injury being not connected with his military duties in any manner, he is not entitled to the disability element for the same having no causal connection.

16. In the result, we hold that the claim of applicant's disability element of disability pension has rightly been rejected by the

respondents which need no interference. Resultantly, Original Application is **dismissed**.

17. No order as to costs.

18. Pending Misc. Application(s), if any, shall stand disposed off.

(Lt Gen Rakesh Kumar Anand)
Member (A)

Dated: December, 2022
SB

(Justice Umesh Chandra Srivastava)
Member (J)