

Court No. 1 (E – Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 598 of 2021**

Tuesday, this the 1st day of February, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14436881 Y Ex. Gnr. Santosh Kumar, Son of Shri Nahak Singh, presently residing at C/o Smt. Shalini Singh, Lal Ganj Gayatri Nagar Kunraghat, District – Gorakhpur-273008.

..... **Applicant**

Counsel for the : **Shri Virat Anand Singh**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.
3. Senior Records Officer, Arty. Records (NE Pension-2), PIN 908802, C/o 56 APO.

.....**Respondents**

Counsel for the : **Shri Jai Narayan Mishra**, Advocate
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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) *To quash or set aside the Respondents medical board Opinion and finding of the Court of Inquiry and further direct the injury sustained as attributable to service.*
- (B) *To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 01 FEB 2018 (SOS – 31 JAN 2018) with all consequential benefits including rounding off benefit in terms of Govt of India letter dated 31 Jan 2001 – 20% to 50%.*
- (C) *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*
- (D) *Allow this Application with cost.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Regiment of Artillery of Indian Army on 18.01.2001 and was discharged from service on 31.01.2018 in Low Medical Category on completion of terms of engagement under Rule 13 (3) Item III (iv) of the Army Rules, 1954. On 12.08.2005, while returning from Home to Unit the applicant caught train from Patna and when the train moved somewhere through a stone which hit on the right hand of the applicant and he sustained injury. Accordingly, on periodical review the applicant was placed in low medical category on 02.05.2008 so long as his service were required. Being severe injury, Court of Inquiry was conducted, wherein the injury 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 158 Base Hospital on 17.10.2017 assessed his disability '**FRACTURE OLECRANON WITH INFECTED IMPLANT (RT)**' @20% 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 23.06.2018. The applicant preferred representation dated 27.08.2020 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant after availing 30 days leave from 14.07.2005 to 12.08.2005, on 12.08.2005 while returning from home to Unit sustained injury, which is on duty when he sustained injury, which ultimately resulted into 20% of disability for life, because of '**FRACTURE OLECRANON WITH INFECTED IMPLANT (RT)**'. In spite of that RMB has denied the attributability on the ground that injury sustained while on leave. 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 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 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 disability pension.

4. Per contra, learned counsel for the respondents conceded that applicant was granted 30 days leave from 14.07.2005 to 12.08.2005 and on 12.08.2005 while returning from home to Unit the applicant caught train from Patna and when the train moved

somewhere through a stone which hit on the right hand of the applicant and he sustained injury. The applicant was subsequently diagnosed as a case of '**FRACTURE OLECRANON WITH INFECTED IMPLANT (RT)**'. He further contended that disability of the applicant @20% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Shri Virat Anand Singh, learned counsel for the applicant and Shri Jai Narayan Mishra, learned 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 18.01.2001 and discharged from service on 31.01.2018 (AN). He sustained injury on 12.08.2005 while returning from home to Unit. The applicant had caught a train from Patna and when in the train a stone hit him the right hand because of which he sustained the injury '**FRACTURE OLECRANON WITH INFECTED IMPLANT (RT)**'. This disability was assessed at 20% for life by the RMB, but the disability claim of the applicant was rejected on 18.06.2018 which was communicated to the applicant vide letter dated 23.06.2018.

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’ on the ground that the applicant was on leave.

14. We have considered the applicant’s case in view of above guiding factors and we find that applicant while returning from Home to Unit caught train from Patna and when the train moved somewhere through a stone which hit the right hand of the applicant and he sustained injury resulting into disability to the

extent of 20% for life, on account of **'FRACTURE OLECRANON WITH INFECTED IMPLANT (RT)'** which establishes causal connection with military duty.

15. We also find that the RMB has denied attributability to the applicant only by endorsing that the disability **'FRACTURE OLECRANON WITH INFECTED IMPLANT (RT)'** 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 element of 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.

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 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.”

17. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv**

Dass vs. Union of India, reported in 2007 (3) SLR 445,

Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

18. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability element of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

19. In view of the above, the **Original Application No. 598 of 2021** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element 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 element of disability pension @20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application.

The respondents are directed to grant disability element of disability pension to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 01.10.2021. 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

20. No order as to cost.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 01 February, 2022

AKD/-