

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 740 of 2023**Thursday, this the 08<sup>th</sup> day of February, 2024**"Hon'ble Justice Anil Kumar, Member (J)  
Hon'ble Lt Gen Anil Puri, Member (A)"**15397791P Hav Mool Chand (Retd), S/o late Mohari Lal,  
Village-Rambuxpura, Post-Dhod, Tehsil-Dhod, Distt-Sikar,  
Rajasthan-332002.

..... Applicant

Ld. Counsel for the : **Shri Raj Kumar Mishra**, Advocate.  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence,  
South Block, DHQ, PO-New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters,  
Ministry of Defence (Army), South Block-III, DHQ, PO-  
New Delhi-110011.
3. Principal Controller of Defence Accounts (Pensions),  
Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.
4. The Officer-in-Charge Records, Signals, PIN-908770,  
C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Asheesh Agnihotri**, Advocate  
Respondents. Central Govt. Counsel

**ORDER (Oral)**

1. This O.A. has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has made following prayers:-

- (a) *To issue/pass an order or direction of appropriate nature to the respondents to set aside/quash the impugned order dated 10.05.2022, RMB dated 11.12.2021 and 12.01.2023.*
- (b) *To issue/pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date next to the date of discharge i.e., 01.05.2022 and interest thereon at the rate of 18% per annum.*
- (c) *Issue/pass an order or direction to the respondents to round off the disability pension from 20% for life to 50% for life in terms of benefit of broad-banding as held in Ram Avtar's case.*
- (d) *Issue/pass any other order or direction, which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*
- (e) *Allow this application with exemplary costs.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (Corps of Signals) on 28.04.1996. He was discharged from service w.e.f. 30.04.2022 in low medical category P2 (Permt) after completion of terms of engagement in terms of Rule 13 (3) III (i) of Army Rules, 1954 having put in more than 26 years service. For the services rendered in the Army he is in receipt of service pension vide PPO No 205202202447 dated 28.04.2022.

3. During the course of his service, while posted with 12 Wireless Experimental Unit (WEU), he was granted 54 days Part of Annual Leave (PAL) for the period 25.03.2019 to 17.05.2019 with permission to prefix 24.03.2019 and suffix

18.05.2019 and 19.05.2019. On 20.05.2019, while returning from leave and travelling in a civil hired vehicle he met with an accident which resulted into 'Fracture Left Transverse Process of LV3, LV4 and LV5 (Optd) (S-32.3)'. The Court of Inquiry (C of I) conducted at unit declared the injury sustained by the applicant as not attributable to military service. Prior to discharge from service, applicant being placed in low medical category was brought before the Release Medical Board (RMB) at Military Hospital, Meerut in February, 2022 which declared his disability to 20% for life neither attributable to nor aggravated (NANA) by military service. Claim for grant of disability element of pension was rejected vide letter dated 10.05.2022 and thereafter, first appeal preferred against rejection of disability element claim was also rejected vide order dated 12.01.2023. It is in this perspective that this Original Application has been filed for grant of disability element of pension.

4. Learned counsel for the applicant submitted that applicant after availing 54 days PAL applicant was travelling in a civil hired vehicle from Sikar (Rajasthan) on 20.05.2019 for joining his duty from home station to duty station. It was further submitted that since applicant was proceeding from his home town to join his duty therefore, injury sustained by him should be attributable to military service and applicant should be

granted disability element of pension. Further submission of learned counsel for the applicant is that the RMB has assessed 20% disability element for life for 'Fracture Left Transverse Process of LV3, LV4 and LV5 (Optd) (S-32.3)' but in the said RMB disability element has been denied on the ground that applicant was 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 element of pension for the same. Thus, he submitted that applicant's case being fully covered with above, as he also suffered injury while proceeding to report for duty and same being not reported earlier at the time of his enrolment, he is entitled to disability element of pension.

5. In support of his contention learned counsel for the applicant has relied upon the following case laws:-

- (i) The Hon'ble Apex Court judgment passed in the case of ***Dharamvir Singh vs Union of India & Ors***, (2013) AIR SC 2840.

(ii) The Hon'ble Apex Court judgment passed in the case of **Madan Singh Shekhawat vs Union of India & Ors**, (1996) 6 SCC 459.

(iii) The Hon'ble Apex Court judgment passed in the case of **Union of India & Ors vs Ram Avtar & Ors**, Civil Appeal No 418 of 2012 decided on 10.12.2014.

(iv) AFT, Lucknow order dated 01.04.2022 passed in O.A. No. 536 of 2021, **Sgt Vidhya Sagar Dwivedi (Retd) vs Union of India & Ors**.

6. Per contra, learned counsel for the respondents conceded that applicant was granted 54 days leave from 25.03.2019 to 17.05.2019 with permission to prefix 24.03.2019 and suffix 18.05.2019 and 19.05.2019. On 20.05.2019, while returning from leave and travelling in a civil hired vehicle applicant met with an accident which resulted into 'Fracture Left Transverse Process of LV3, LV4 and LV5 (Optd) (S-32.3)'. It was further submitted that the Court of Inquiry (C of I) conducted at unit declared the injury sustained by the applicant as not attributable to military service. The applicant was subsequently diagnosed as a case of 'Fracture Left Transverse Process of LV3, LV4 and LV5 (Optd) (S-32.3)'. 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.

7. We have heard Shri Raj Kumar Mishra, learned counsel for the applicant and Shri Asheesh Agnihotri, learned counsel for the respondents and have also 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 Indian Army on 28.04.1996 and discharged from service on 30.04.2022 (AN). He sustained injury on 20.05.2019 while returning from home to Unit. On 20.05.2019, the applicant had caught a civil hired vehicle from Sikar (Rajasthan) for joining his duty. The vehicle met with an accident enroute because of which he sustained the injury 'Fracture Left Transverse Process of LV3, LV4 and LV5 (Optd) (S-32.3)'. This disability was assessed at 20% for life by the RMB, but the disability claim of the applicant was rejected on 10.05.2022. Thereafter, first appeal preferred by the applicant was also rejected by the appellate authority vide letter dated 12.01.2023 stating that the applicant was not performing any bonafide military duty at the material time of sustaining the injury and there is no causal connection with injury and military service.

9. The respondents have denied disability element of pension to the applicant on the reason that for getting

disability element of 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.

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 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 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 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?.

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, it will be treated as 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 as 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 02.11.2020 in T.A. 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 generalize 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. The respondents' contention on one hand is 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 but on the other hand on careful scrutiny of the counter affidavit filed on behalf of the respondents we find that in Para 4 of the counter affidavit the respondents have conceded that the applicant met with an accident while he was returning by a civil hired vehicle from

leave station to join his duty. For convenience sake, extract of Para 4 of the counter affidavit is reproduced as under:-

*"On 20 May 2019 at around 0200 hrs indl met with an accident on NH-11 near Phalodi (Raj) when he was coming for rejoining unit from Sikar, Rajasthan (Home Station) in a civil hired vehicle."*

16. We have considered the applicant's case in view of above guiding factors and we find that applicant while returning from home to unit was travelling by civil hired vehicle which met with an accident on 20.05.2019. In the said accident applicant sustained injury 'Fracture Left Transverse Process of LV3, LV4 and LV5 (Optd) (S-32.3)' and the said injury being assessed @ 20% for life bears a causal connection with military duty.

17. We also find that the RMB has denied attributability to the applicant only by endorsing that the disability 'Fracture Left Transverse Process of LV3, LV4 and LV5 (Optd) (S-32.3)' is neither attributable to nor aggravated (NANA) by service stating that injury was 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 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 and the disability of the applicant should be considered as attributable to military service.

18. The law on the point of rounding off of disability element of 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 10<sup>th</sup> 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 invalidated 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."*

19. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass vs Union of India***, 2007 (9) SCC 274, 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.

20. In view of the above, the **Original Application No. 740 of 2023** 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 @ 20% for life which would be rounded off to 50% for life w.e.f. date of discharge i.e. 01.05.2022. 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. 01.05.2022. 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. Miscellaneous application (s), pending if any, stand disposed off.

23. Departmental Representative for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

**(Lt Gen Anil Puri)**  
**Member (A)**

Dated :08.02.2024  
*rathore*

**(Justice Anil Kumar)**  
**Member (J)**