

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 618 of 2023****Tuesday, this the 30th day of January, 2024****“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 15704757Y Ex Signalman (TTC) Suraj Kumar Budhamagar
R/o House No. 08, Shiv Vihar Colony, Sector-5,
Vikas Nagar, Lucknow – 226022 (UP)

..... Applicant

Ld. Counsel for the Applicant : **Shri Vinay Pandey** , Advocate
Shri Babu Ram Sharma, Advocate

Versus

1. Union of India, through Secretary Ministry of Defence (Army), DHQ PO, New Delhi – 11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Officer-in-Charge, Signals Records, PIN 908770, C/o 56 APO.
4. Principal Controller of Defence Accounts, Draupadi Ghat, Prayagraj (up).

.....Respondents

Ld. Counsel for the Respondents : **Ms. Deepti Prasad Bajpai**,
Central Govt. Standing Counsel

ORDER (Oral)

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

- (a) Issue/pass an order or direction of appropriate nature to quash the decision taken by Army Authorities as mentioned in letter of Signals Records letter bearing No. P/15704757Y/

Rejection/DP-1/NER dated 27 August 2021, First Appeal Rejection vide IHQ of MOD (Army) ADG PS AG's Branch letter bearing No. B/40502/1388/2022/AG/PS04 (1st Appeal) dated 24 Feb 2023, Annexure No. A-1 (i), annexure No. A-1 (ii) respectively, rejecting the disability pension claim.

- (b) Issue/pass an order or direction of appropriate nature directing the respondents to concede the attributability and aggravation of ID due to active military service/duty and grant disability pension with the benefit of rounding off.
- (c) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.
- (d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (e) Allow this application with costs.

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Army on 03.05.2006 and was discharged from service on 31.08.2021 (AN) in low medical category under Rule 13(3) Item III (iii) (a) (i) of Army Rules, 1954 after rendering more than 15 years of service being unwilling to serve further. The applicant is in receipt of service pension vide PPO dated 19.10.2021. On 24.12.2009, while the applicant was on leave, he went to railway station for taking return journey ticket and sustained injury in

his right leg due to skidding of his motor cycle. Applicant was admitted to Command Hospital, Lucknow and after treatment, he was granted four weeks sick leave. Thereafter, applicant was placed in low medical category due to leg injury. A Court of Inquiry was also held in the unit on 29.01.2010 which opined that applicant not to be blamed for injury and injury sustained is not attributable to military service. The applicant submitted his unwilling to serve further due to his injury/disability and thus, applicant was discharged from service at his own request. Before being discharged from service, Release Medical Board was held at Command Hospital, Kolkata on 07.06.2021 in which applicant was found suffering with disability, 'FRACTURE SHAFT FIBULA (RT) WITH SKIN LOSS' which was assessed @ 15% for life and it was considered as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide Signals Records letter dated 27.08.2021 and first appeal dated 26.10.2022 preferred by the applicant was also rejected by the respondents vide ADG PS, IHQ of MoD (Army) order dated 24.02.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 03.05.2006 and was discharged from service on 31.08.2021 (AN) in low medical category after rendering more than 15 years of service. On 24.12.2009, while the applicant was on leave, he went to Badshah Nagar Railway Station for taking return journey ticket and sustained injury in his right leg due to skidding of his

motor cycle. Applicant was admitted to Command Hospital Lucknow and after treatment, he was granted four weeks sick leave. Thereafter, applicant was placed in low medical category due to leg injury. A Court of Inquiry was also held in the unit on 29.01.2010 which opined that applicant not to be blamed for injury and injury sustained is not attributable to military service. The applicant was discharged from service before completion of his terms of engagement being placed in permanent low medical category. Release Medical Board assessed his disability less than 20%, i.e. 15%. Being a Sepoy, terms of engagement is 20 years but applicant was discharged from service before completion of his terms of engagement and this being a case of invalidation, Release Medical Board was held instead of Invaliding Medical Board which is against the rules. The applicant went to railway station for taking return journey ticket which should be treated as duty as per Rule 12 of the Entitlement Rules, 1982. The disability of the applicant, 'FRACTURE SHAFT FIBULA (RT) WITH SKIN LOSS' was assessed @ 15% for life and this being a case of invalidation, applicant is entitled to disability pension but disability pension claim of the applicant was rejected vide Signals Records letter dated 27.08.2021 and first appeal dated 26.10.2022 preferred by the applicant was also rejected by the respondents vide ADG PS, IHQ of MoD (Army) order dated 24.02.2023 in an illegal and arbitrary manner.

4. Learned counsel for the applicant further 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. He placed reliance on the judgment of the Hon'ble Apex Court in Civil Appeal Nos. 377-378 of 2013, **Nand Kishore Mishra vs. union of India and Others**, decided on 08.01.2013, **Dharamvir Singh vs. Union of India and Others**, Civil Appeal No. 4949 of 2013, decided on 02.07.2013 and **Sukhvinder Singh vs. Union of India and Others**, decided on 25.06.2014. 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 pension @ 50% giving the benefit of rounding off as per Govt. of India letter dated 31.01.2001.

5. Per contra, learned counsel for the respondents submitted that the applicant was discharged from service in low medical category being unwilling to serve further due to disability 'FRACTURE SHAFT FIBULA (RT) WITH SKIN LOSS'. The applicant during leave sustained injury in his Right leg on 24.12.2009 due to falling down from his motor cycle. A Court of Inquiry was also held and it was opined that injury of the applicant is not attributable to military service being injury sustained during leave. The disability of the applicant was assessed @ 15% for life and it was considered as NANA by the RMB. Therefore, his claim for grant of disability element of pension was rejected by the

competent authority in terms of Para 81 (a) of the Pension Regulations for the Army, 2008 (Part-1).

6. Learned counsel for the respondents further submitted that for grant of the disability pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injury and military service. He further submitted that unless injury sustained has causal connection with military service, armed forces personnel cannot be allowed disability pension merely on the reason of being on duty or disability was not reported/detected while being enrolled or commissioned. He further submitted that in the given facts, applicant being injured on his right leg due to falling down from his motor cycle while on leave, there was no causal connection between the injury sustained and military duties and, therefore, applicant is not entitled to disability pension, as he is claiming. In support, learned counsel for the respondents placed reliance on the judgments of the Hon'ble Apex Court in the case of ***Renu Devi v Union of India and others***, decided on 03.07.2019 in Special Appeal arising out of Diary No. C-37356 of 2017 and ***The Secretary Govt. of India & Others v. Dharamvir Singh***, decided on 20.09.2019 in Civil Appeal No 4981 of 2012.

7. We have heard Shri Vinay Pandey, learned counsel for the applicant and Ms. Deepti Prasad Bajpai, 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 Army on 03.05.2006 and discharged from service on 31.08.2021, he sustained injury in his right leg while on leave due to falling down from his motor cycle and placed in low medical category for the disability 'FRACTURE SHAFT FIBULA (RT) WITH SKIN LOSS' vide Release Medical Board report dated 07.06.2021 and his disability was assessed at 15% for life as NANA, the disability claim of the applicant was rejected.

9. The respondents have denied disability pension to the applicant on the ground 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.

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 and 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 leave and due to falling down from his motor cycle, sustained injury resulting into disability, 'FRACTURE SHAFT FIBULA (RT) WITH SKIN LOSS' to the extent of 15% for life. The applicant has not been able to prove that he was on duty while returning back from railway station after purchasing train ticket for return journey to his unit and no ticket is filed/produced by the applicant in his support. The Court of Inquiry

has also opined that injury sustained by the applicant during leave is not attributable to military service. There is nothing on record to infer that there is causal relation between the injury sustained by the applicant while on leave and military duties. Thus, the activity in which the applicant sustained injury being not connected with his military duties in any manner, he is not entitled to the disability element of pension for the same.

16. It is pertinent to mention that judgments relied upon by the applicant in Para 4 referred to above are not relevant in the present case being based on different facts and circumstances and therefore, applicant cannot be given the benefit of aforesaid judgments.

17. In the result, we hold that the claim of applicant's disability element of pension has rightly been rejected by the respondents which need no interference. Resultantly, Original Application is **dismissed**.

18. No order as to costs.

19. Misc. Application(s), pending if any, shall stand disposed off.

20. Ld. Counsel 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 the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: 30th January, 2024

SB

(Justice Anil Kumar)
Member (J)