

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 613 of 2020****Monday, this the 19<sup>th</sup> day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 776033-L, Ex Sgt Pramendra Kumar Singh, son of Sri Baijnath Singh, R/O : Vill – Karwa Hankar, PO – Bajitpur, Dist – Alwal – 804426 (Bihar).

**.... Applicant**

Ld. Counsel for the: **Shri Ashish Kumar Singh**, Advocate  
Applicant **Shri Virat Anand Singh**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, (Air Force) South Block, New Delhi.
2. Chief of Air Staff, Air HQrs, Vayu Bhawan, New Delhi-110106.
3. Director, Directorate of Air Veteran, Air Headquarter, Subroto Park, New Delhi-110010.
4. Jt CDA, AF, C/O AFCAO, Subroto Park, New Delhi PIN-110010.
5. PCDA (P) (Air Force), Draupadighat, Allahabd (UP) 211014.

**... Respondents**

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate  
Respondents. Central Govt. Standing Counsel.

**ORDER (Oral)**

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

*(a) To quash or set aside the Respondent No. 3 letter dated 30.08.2016 (Annexure A-1 of OA).*

*(b) To issue order or directions to the respondents to grant disability pension to the applicant for all the disability he had, with effect from 01.08.2016 (Date of discharge: 31.07.2016) with all consequential benefits including rounding of benefit from 20% to 50% in terms of Govt of India letter dated 31.01.2001 and Judgment passed by Hon'ble Apex Court in case of Ram Avatar Vs Uol & Others.*

*(c) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force on 16.07.1996 and was discharged from service on 31.07.2016 in low medical category '**A4G4 (P)**'. Prior to discharge from service, he underwent Release Medical Board (RMB) on 06.01.2016 in which he was found to be suffering from "**PARTIAL ACL TEAR LT KNEE OPTD (OLD)**" @ 20% for life neither attributable to nor aggravated (NANA) by Air Force services. Disability pension claim of the applicant was rejected vide order dated 30.08.2016 on the ground of NANA. After rejection of disability pension claim applicant filed first appeal to Appellate Authority on 29.10.2018 which has not been decided as yet. It is in this perspective that this O.A. has been filed for grant disability pension.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the Air Force and any disability not

recorded at the time of enrolment should be presumed to have been caused subsequently while in service. He further submitted that action of the respondents in not granting disability pension to applicant is illegal and arbitrary. His further submission is that since applicant's disability arose while in service, it should either be attributable to or aggravated by military service.

4. Rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that since applicant's disability has occurred on account of injury caused in a road traffic accident while he was on leave at home, therefore, the disability "**PARTIAL ACL TEAR LT KNEE OPTD (OLD)**" is not attributable to military service. He further submitted that the circumstances under which applicant sustained injury clearly indicates that injury has no relation with military service. Thus, keeping in view that injury has no causal connection with military service, the pension sanctioning authority has rightly rejected his disability element claim on the ground of NANA. He pleaded for dismissal of O.A.

5. Learned counsel for the respondents further submitted that Rule 173 of Pension Regulations for the Army 1961 (Part-1) stipulates that "***Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 percent or over***". In the instant case, since RMB has viewed disability "**PARTIAL ACL TEAR LT KNEE OPTD (OLD)**" @ 20% for life as neither attributable to nor aggravated by military service (NANA), hence applicant is not entitled for disability pension.

6. Heard learned counsel for the parties and perused the records.

7. We find that disability i.e. “**PARTIAL ACL TEAR LT KNEE OPTD (OLD)**”@ 20% is a result of accident by two wheeler on 31.12.2009 while on leave. The question of attributability/aggravation of injury sustained during leave to military service 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 also. In a more or less similar matter, **Secretary Govt of India & Others vs Dharamveer Singh**, decided on 20<sup>th</sup> 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 inquiry 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. The fact was that 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, Personal 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 vs Union of India & Ors***, decided on 17.08.1999 was allowed holding that respondent was entitled to disability pension. Aggrieved by the same, a Civil Appeal was filed in which the Hon'ble Apex Court framed following three 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?

8. 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.

9. While deciding the second question the Hon'ble Apex Court held that while deciding the question of admissibility of disability pension, it has to be seen that there must be some causal connection between the injury or death and military service. 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 attributable

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. In the present case there seems to be no causal connection of accident with military duty.

10. Regarding question number 3, the Hon'ble Apex Court held that if any 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 Tribunals and Hon'ble 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.

11. In a similar background, Hon'ble High Court of Kerala at Ernakulam, their Lordships have observed in **UOI vs Sreekumar P**, WA No. 1071 of 1997 (OP No. 18002 of 1993) as under:-

*(a) "the disability has been assessed by a competent expert body like the medical board whose conclusions are to be accepted as correct unless contradicted by any other medical board by cogent evidence".*

*(b) "Once the expert body like the medical Board expresses an opinion it is entitled to great weight. Unless the medical findings are utterly perverse this Court exercising jurisdiction under Article 226 of the Constitution cannot go behind the said opinion and substitute its own opinion for that of the expert body".*

*(c) "This court while exercising jurisdiction under Article 226 of the Constitution is not sitting as an Appellate Court. The findings of the expert body cannot be interfered with unless it is palpably wrong".*

12. The Hon'ble Apex Court while summing up has also taken note of the guiding factors of the Armed Forces Tribunal, in the case of **Jagtar Singh vs Union of India & Ors**, decided on November 02, 2010 in T.A. No. 60 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 is to be required to be dealt accordingly. Those guiding factors are reproduced below for the ready 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 is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the 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 of 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 the 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 causal 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 unconnected 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 a 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 Rule 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 behaviour.*

*(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. We have considered the applicant's case in view of the above guiding factors and we find that, though, applicant was on balance of annual leave when he met with accident and sustained injury resulting disability of permanent nature to the extent of 20%, on account of **“PARTIAL ACL TEAR LT KNEE OPTD (OLD)”**, the activity in which injury was sustained being not connected with his military service in any manner, applicant is not entitled to the disability pension for the same, as held by the RMB dated 06.01.2016.

14. We also take note of rejection of disability pension claim letter dated 30.08.2016 and opinion of President Release Medical Board dated 06.01.2016, wherein it is clearly mentioned that the injury sustained by applicant is not attributable to military service. Since the disability has no

causal connection with military duty, applicant is not entitled to disability pension.

15. In the result, we hold that the claim of applicant's disability pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

16. No order as to costs.

17. Pending applications, if any, are disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 19<sup>th</sup> July 2021  
rspal/\*