

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 74 of 2022

Thursday, this the 26th day of May, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 5046563N Ex Rfn Nirmal Kumar Thapa, 5/1 GR, C/o 56 APO,
Son of Shri Prem Bahadur Thapa, Resident of Village-
Bhagwanpur, Post Office- Rajawala , District- Dehradun
(Uttarakhand)- 248007.

..... Applicant

Ld. Counsel for the: **Shri Prakhar Kankan and**
Applicant **Shri KK Singh Bisht, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence,
New Delhi- 110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block,
New Delhi – 110011.
3. OIC Records, 14 Gorkha Rifles, PIN- 900295, C/o 56 APO.
4. PCDA (P), Draupadighat, Allahabad (U.P.) – 211014

..... Respondents

Ld. Counsel for the : **Shri Manu Kumar Srivastava,**
Respondents **Central Govt Counsel**

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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 to the respondents to quash/ set aside the arbitrary and illegal order passed by PCDA (P), respondent No 4 vide letter No G-3/75/95/12-2001 dated 24.05.2002 (Annexure No A-1 (i)) rejecting the disability pension claim of the applicant.

(b). Issue/ pass an order or direction to the respondents to quash/ set aside the arbitrary and illegal Order passed by Appellate Committee on First Appeals (ACFA) vide letter No B/40502/341/03/AG/PS-4(Imp-II) dated 12 Sep 2005 (Annexure No A-1 (ii)) rejecting the disability pension claim of the applicant.

(c). Issue/ pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal Order passed by Defence Minister’s Appellate Committee vide letter F. No. 1 (214)/2006/D(Pen A&AC) dated 26-03-2007 (Annexure No A-1 (iii)) rejecting the disability pension claim of the applicant.

(d) Issue/ pass an order or direction of appropriate nature to the respondent to grant 40% disability which after rounding of will be 50% disability pension to the applicant with effect from next date of his discharge i.e. 01.10.2001 along with arrears of disability pension with interest at the rate of 18% per annum.

(e) Issue/ pass any other order or direction of appropriate nature to the respondents to conduct Re-Survey Medical Board (RSMB) to assess the further disablement of the applicant and grant disability pension and rounding off benefits to the applicant.

(f) Issue/ pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(g) Allow this application with costs.

2. Facts giving rise to Original Application in brief are that applicant was enrolled in Indian Army on 04.11.1995 and after having rendered about 05 years, 10 months and 26 days in army, he was invalided out from service on 01.10.2001 in low medical category BEE (P). In the year 1998 while serving at J&K applicant was granted 20 days Casual Leave wef 31.10.1998 to 19.11.1998. On 17.11.1998, while on leave he sustained **“FRACTURE SHAFT FEMUR (RT) OPTD”** injury. Invaliding Medical Board assessed his disability @ 40% for two years and disability was found neither attributable to nor aggravated by army

service. Claim for grant of disability pension was denied to applicant vide letter dated 23.06.2002 on the reason that his disability was neither attributable to nor aggravated by military service. His First Appeal for grant of disability pension was also rejected by the respondents vide letter dated 12.09.2005, hence this O.A.

3. Learned counsel for the applicant submitted that applicant was granted 20 days Casual Leave from 31.10.1998 to 19.11.1998. He was given Railway Concession Warrant from Jammu Tavi Railway Station to his home town and back. His native Village- Bhagwanpur was about 20 kilometers from his house. On 17.11.1998 while on Casual Leave, he was going to Dehradun Railway Station by his Scooter for Rail Reservation from Dehradun to Jammu for return journey to his unit wef 18.11.1998. After doing rail reservation, the applicant went to residence of Rfn Manish Thapa of his unit which was en-route to his home to collect books from his parents. He proceeded further for his home on his scooter. The weather condition of Dehradun was bad. As he was about to reach his home, his scooter slipped and he got injured. A Court of Inquiry was held and his injury was considered as attributable to military service. There is a causal connection between injury sustained and his movement from his home to railway station Dehradun for rail reservation. Injury sustained by the applicant is purely accidental and is not self inflicted. Applicant was placed in Low

Medical Category BEE (Permanent). Applicant gave his willingness to continue in service but due to non availability of sheltered appointment his discharge order was issued. Learned counsel for the applicant submitted that applicant being on casual leave was on duty when he sustained injury, which ultimately resulted into 40% disability for two years because of injury “**FRACTURE SHAFT FEMUR (RT) OPTD**”. He submitted that various Benches of AFT, Hon’ble High Courts and the Hon’ble Apex Court, in the matter of disability, have held that if armed forces personnel suffer 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 by above, as he also suffered injury while returning from Dehradun Railway Station where he had gone for return journey reservation and injury being not present earlier at the time of his enrolment, he is entitled to disability pension. In support, learned counsel for the applicant placed reliance on the judgment of Punjab & Haryana High Court in the case of **Barkat Masih vs Union of India & Others**, 2014 SCC on line P&H 10564, Hon’ble Delhi High Court in the case of **Vardip Singh & Anr v. Union of India & Ors**, 2004 (3) SLR 506, the Hon’ble Apex Court in the cases of **Lance Dafedar Joginder Singh v. Union of India & Ors**, 1995 Supp (3) SCC 232, and

Controller of Defence Accounts (Pension) & Ors v. S Balachandran Nair, 2005 (13) SCC 128 and Hon'ble Jammu & Kashmir High Court in the case of ***Union of India v. Keshar Singh*** (2007) 12 SCC 675.

4. Per contra, learned counsel for the respondents submitted that after discharge from service, applicant preferred an application dated 17.10.2010 for reinstatement in service in terms of Integrated Headquarters of Min of Def (Army) letter dated 12.04.2007. In the instant case, applicant was discharged from service on 01.10.2001 much before issuance of Integrated Headquarters of Min of Def (Army) letter dated 12.04.2007, hence the provision of Integrated Headquarters of Min of Def (Army) ibid letter is not applicable to the applicant.

5. Learned counsel for the respondents further submitted that the applicant filed O.A. No 121 of 2011 before this Tribunal, challenging his discharge from service which was dismissed vide order dated 18.05.2012 observing the limitation of jurisdiction as well as explanation of delay in submission of the O.A.

6. Learned counsel for the respondents further submitted that it is not disputed that when applicant sustained injury was on Casual Leave but being on Casual Leave could not be treated as on duty unless

there is some causal connection between the actually resulting in injury and military duty. In Court of Inquiry, applicant has given his statement that he was returning from his friend's house while he sustained injury. Invaliding Medical Board dated 20.08.2001, opined the injury as neither attributable to nor aggravated by military service. Even 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 actually resulting in 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 that applicant sustained injury while returning from his friend's house, applicant being on leave there was no causal connection between the injury sustained and military service. Invaliding Medical Board also opined the injury as not attributable to military service as he was not on bonafide military duty and, therefore, applicant is not entitled to disability pension, as he is claiming. The instant O.A. has no substance and is liable to be dismissed. In support, learned counsel for the respondents has placed reliance on the following case laws of the Hon'ble Apex Court:-

- (a) ***Renu Devi v Union of India and others***, Decided on July 03, 2019 in Special Appeal arising out of Diary No. C-37356 of 2017.
- (b) ***Vijay Kumar v. Union of India***, 2016 SCC 460.
- (c) The ***Secretary Govt of India & Others v. Dharamvir Singh*** Decided on 20, September 2019 in Civil Appeal No 4981 of 2012.

7. We have heard learned counsel for the parties and perused the documents available on 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 Indian army on 04.11.1995 and discharged from service on 01.10.2001. He met with an accident while on Casual Leave and placed in low medical category BEE(P) for the injury vide Invaliding Medical Board dated 20.08.2001 and his disability was assessed at 40% for two years, the disability claim of the applicant was rejected vide order dated 23.06.2002. Learned counsel for the respondents has also conceded, during the course of hearing, that when applicant sustained injury resulting into disability, he was on duty as per settled legal position as annual leave as well as casual leave are treated as duty.

9. The respondents have denied disability pension to the applicant on the reason that disability of the applicant was considered as neither attributable to nor aggravated by military service by Invaliding Medical Board and not connected with military service. For getting disability pension, in respect of injury sustained, there must be some causal connection between the actually resulting in the disability and military service as going to friend's house is not a military duty, and this being lacking in applicant's case, applicant 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, **The 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, though, applicant was on Casual Leave which is considered duty when met with accident and sustained injury, resulting into disability @ 40% for two years on account of injury **“FRACTURE SHAFT FEMUR (RT) OPTD”** but the activity in which he sustained injury being not connected with his army duty in any manner, he is not entitled to the disability pension for the same. We also find

that rulings relied upon by the applicant being either based on different facts or overruled are of no help to him.

16. 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**.

17. No order as to cost.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) **Member (J)**

Dated : 26 May, 2022

Ukt/-