

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 313 of 2020

Friday, this the 26th day of March, 2021

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

Ram Kumar Chhetri, S/o Durga Bahadur Chhetri, Army No. 5849622F
Ex. Rfn, Resident of 14/THA Defence Colony, Village & PO –
Phulwara, Varanasi (UP).

..... Applicant

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

Versus

1. The Chief of the Army Staff, New Delhi – 110011.
2. Second Appellate Committee on Pensions (SACP), Additional Director General Of Personal Services, Adjutant Generals Branch/PS-4 (Imp-II), Integrated Headquarter of MoD (Army) Room No. 11, Plot No. 108 (West) Brassey Avenue, Church Road, New Delhi-110011.
3. Commandant cum Chief Records Officer, 39 Gorkha Training Centre Varanasi.
4. Union of India through Secretary, Ministry of Defence New Delhi.

..... Respondents

Ld. Counsel for the Respondents : **Mrs Anju Singh,**
Central Govt Counsel.

ORDER

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

“(a) To direct the respondents to pay disability pension to the applicant @ 6-10% as declared by the release medical Board.

(b) To direct the respondents to pay the benefits of rounding off to the applicant as catered for in paragraph 7.2 of Army Headquarter policy letter No. Government of India, Ministry of Defence Policy letter No. 1(2)/97/D/Pen)-C dated 31. Jan 2001.

(c) Quash the rejection order of the First Appellate Committee bearing No. B/40502/536/2018/AG/PS-4 (Imp-II) dated 01.10.2018 with all the consequential benefits to the applicant.

(d) To direct to the respondents to dispose of statutory final appeal of the applicant dated 25 Oct 2018 by a reasoned order (speaking of itself) with a time frame to be fixed by this Hon’ble Tribunal preferably one month as over one year has already elapsed.

(e) To issue any other order or direction considered expedient and in the interest of justice and equity.

(f) Award cost of the petition.”

2. The facts of the case, in brief, are that applicant was enrolled in the Army on 31.03.1997 and was invalided out from service on 19.03.2007 in low medical category S5H1A3(P)P1E1 under Rule 13 (3) III (iii), of Army Rules 1954, having rendered 09 years,11 months and 18 days of service. The Invaliding Medical Board (IMB) was held

on 19.02.2007 and assessed his disabilities (i) **“ALCOHOL DEPENDENCE SYNDROME (F-10-2)”** @ Nil for life and (ii) **“FRACTURE BASE OF 1ST METACARPAL (RT)”** @ 6-10% for life and opined that disabilities of applicant were neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 12.07.2007. Thereafter, applicant preferred first appeal after a gap of approx 10 years which was rejected on 09.10.2018. Thereafter, applicant preferred second appeal dated 27.11.2018 and during pending of this appeal, O.A. No. 207 of 2018 was filed by applicant which was decided on 16.04.2018 directing the respondents to decide applicant’s appeal. Respondents vide order dated 08.07.2019 rejected second appeal with speaking and reasoned order. Now applicant has filed this O.A. for grant of disability pension.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disabilities 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 disabilities arose while in service, these should be either attributable to or aggravated by military service.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that first disability of applicant i.e. Alcohol Dependence Syndrome is due to excessive intake of alcohol with loss of voluntarily

control and is not related to military service. Hence this disability is conceded as neither attributable to nor aggravated by military service. Second disability of applicant i.e. '**FRACTURE FIRST METACARPAL RT HAND**' was sustained by the individual while he was on leave. The circumstances of the incident clearly indicate that applicant while on leave slipped down from stairs and sustained injury, therefore, this has no casual connection with military service. The applicant was Invalided out of service being medically unfit for further service after recommendation of Medical Adviser. Therefore, the competent authority has rightly denied the benefit of disability pension to applicant. He pleaded for dismissal of O.A.

5. Learned counsel for the respondents further submitted that as per Para 21, 22 & 23 of AO 9/2007/DGMS which deals with Management of JCOs/OR in LMC for alcohol dependence/drug abuse and para 9 (a) of DGAFMS medical Memorandum No. 171/2002, medical authorities did not notice any substantial improvement in applicant to abstain from consuming alcohol, rather applicant had increased intake of alcohol. Accordingly, he was recommended to be invalided out of service as per provisions contained in AO 9/2007 and DGAFMS Memorandum No. 171/2002 for Alcohol Dependence Syndrome. The applicant did not abstain from consuming alcohol despite providing frequent counselling, rather he had increased intake of alcohol which has led the applicant's invalidment from service for which the applicant is himself responsible. The applicant came under psychiatric care for invaliding disease in September 2006 at the behest of unit authorities when he was noticed to be consuming

excessive amount of alcohol and was found in an inebriated condition during working hours with alcohol related misbehaviour and socio occupational decline. Longitudinal history revealed a chronic pattern of excessive alcohol consumption since 2004 with gradual tolerance, craving, binge drinking and withdrawal symptoms on abstaining. He was evaluated in detail by the Psychiatrist at Guwahati and was placed in low medical category. He was managed with detoxification, psychotherapy, anticraving drugs and was given prolonged de-addiction therapy. However, the applicant continued alcohol abuse and relapsed. AFMSF-10 dated 04.01.2007 and 30.01.2007 were highly uncomplimentary and did not recommend his retention in service.

6. Learned counsel for the respondents further submitted that :-

(a) Rule 132 of pension Regulation for the Army 1961 (Part-1) stipulates that ***“Unless otherwise provided for, the minimum qualifying colour service for earning a service pension is 15 years”*** whereas in the instant case, the applicant had rendered about 09 years of service, hence he is not entitled to service pension.

(b) 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, IMB had viewed disabilities **“ALCOHOL DEPENDENCE SYNDROME”** @ Nil and **“FRACTURE BASE OF 1ST METACARPAL (RT)”**, @ 6-10% for life (Net assessment qualifying for disability pension – Nil % for life) as

neither attributable to nor aggravated by military service (NANA), hence applicant is not entitled for disability pension.

7. Learned counsel for the respondents further relied upon judgment on similar grounds passed by the Hon'ble Supreme Court in SLP (C) No. 23727/2008 in case of **UOI vs. Damodaran AV** in which it is viewed that "***the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence***". In another judgment on similar grounds passed by the Hon'ble High Court of Kerala at Ernakulam in WA No. 1071 of 1997 (OP No. 18002 of 1993) in case of **UOI vs. Sreekumar P**, the Hon'ble Court has viewed that :-

(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*".

8. AFT (RB) Jaipur in its order dated 17.05.2012 in O.A. No. 104/2011, Ex Sep Umrao Singh vs. Union of India and others has viewed that "***in the instant case, the Release Medical Board has concurrently held that the disability suffered by the applicant is neither attributable to nor aggravated by military service and there is nothing on record, which establishes that the disability suffered by the applicant is either attributable to or aggravated***

by military service. In view of the matter, this application lacks merit and deserves to be dismissed'.

9. We have given our considerable thoughts to both sides and have carefully perused the records. Both the disabilities need to be assessed on their individual merit to decide the claim of the applicant for disability pension.

10. Firstly, with regard to ADS the IMB has assessed the disability as nil for life. We are of the view that the applicant was a habitual alcoholic and from the averments of the respondents it appears that he was found to be in an inebriated condition during working hours and despite prolonged detoxification psychotherapy and anticraving drugs, he continued alcohol abuse and relapsed. Under these circumstances we see no reason for conceding this disability i.e. ADS as attributable/aggravated by military service.

11. Secondly, with regard to disability i.e. **FRACTURE BASE OF 1ST METACARPAL (RT) @ 6-10%** which was a result of accidental fall on 07.05.2006 when the applicant slipped on the stairs of the married accommodation allotted to him while he was on balance of Annual leave from 22.03.2006 to 07.05.2006. 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 20th 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. 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, 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 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?

12. 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.

13. 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.

14. 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 Tribunal 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.

15. 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.”

16. 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 6-10%, on account of **'FRACTURE BASE OF 1ST METACARPAL (RT HAND)'**, 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 IMB dated 19.02.2007. We also find that rulings relied upon by the applicant being based on different facts and circumstances are of no help to the applicant.

17. We also take note of rejection of disability pension claim letter dated 12.07.2007 and opinion of President Invaliding Medical Board dated 28.02.2007 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.

18. 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**.

19. No order as to costs.

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

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

Dated: 26th March, 2021

rspal