

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 716 of 2020**

Thursday, this the 18th day of March, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ajit Singh Army Service No. 15417441M S/o Dinesh Prasad Singh, Resident of Village – Nargada, Post – Balua High School, Tehsil – Ara, District – Bhojpur, State – Bihar, C/o Umesh Kumar Singh, Present Address – 58/2 Amrapali, Bihar near Awwasiya Public Inter College, Telibagh, Lucknow.

..... **Applicant**

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

Versus

1. Chief of the Army Staff, Integrated Head Quarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
2. Integrated H.Q. of MoD (Army), Adjutant General’s Branch, Addl. General MP/8 (I of R), West Block, R.K. Puram, New Delhi.
3. Director PS 4 AG Branch, Integrated HQ of MOD Army Delhi HQ, Ne4w Delhi-110011.
4. Senior Record Officer for OIC Records, Army Medical Corps Record Office, PIN-900450, C/o 56 APO.
5. P.C.D.A. (Pension), Draupadi Ghat, Prayagraj, U.P.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Arun Kumar Sahu**,
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.

- (i) *The Hon’ble Court may kindly pleased to quash/set-aside order dated 31.07.2020 issued by S.R.O. of Army Medical Corps, Record Office denied for disability pension for severe head injury which is neither attributable to nor aggravated by military service as detail contained in Annexure no. 1 with O.A.*
- (ii) *The Hon’ble Court may kindly pleaded to issue order or direction to the opposite parties to provide disability pension in favour of the applicant for the disability which has been arises due to head injury and after operation by neurological doctor more than 70% left side body has been paralyzed doctor concerned provided medical category S1H1A1P3 (P) E1 and P3 (T-24) as well as (S-09.9) and discharge has been given by the authorities concerned on dated 30.04.2020 without disability.*
- (iii) *To issue order or direction to respondents to provide disability pension in favour of the applicant with panel interest in accordance with law as Hon’ble Apex Court and Hon’ble Tribunal considered disability pension in favour of the several army personals on the basis of judgments.*

(iv) Any such other order or direction which this Hon'ble Court may deem fit and just may also be passed in favour of the applicant on the basis of circumstances of the case.

2. Briefly stated, applicant was enrolled in Army Medical Corps of Indian Army on 15.04.2003 and was discharged with effect from 01.05.2020 (FN) in Permanent Low Medical Category under Rule 13 (3) Item III(i) of the Army Rules, 1954 after rendering 17 years and 16 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Kirkee on 19.03.2020 assessed his disability '**SEVERE HEAD INJURY (S09.0)**' @50% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 31.07.2020. The applicant preferred First Appeal dated 28.09.2020 and Second Appeal dated 19.11.2020 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease/injury at the time of enrolment in Army. During posting at Chandigarh at Officers' Mess as Assistant Mess Havildar on 11.11.2015 in duty hours at about 10.30 P.M. after mess duty applicant went to his family quarters

and collected sweets, for distribution in the unit, to known persons on occasion of Diwali and at the time of returning by road, due to head light of army heavy vehicle applicant lost control over his bike and fell down and his head struck a stone and thereby he lost consciousness. At about 11.30 hours some army persons evacuated him to the Military Hospital. He was in a serious condition (coma) for about more than one month due to severe head injury. The applicant got injured during the duty hours, hence the disability is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension as well as arrears thereof. As such the applicant is entitled to disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @50% for life has been regarded as NANA by the RMB as per Injury Report dated 30.03.2017 and Court of Inquiry dated 24.03.2017, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we

find that the questions which need to be answered are of two folds:-

- (a) Whether the injury (disability) of the applicant has any causal connection with the military service and attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. 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 respondents in 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?.

7. 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.

8. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

“20. 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”.

9. 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.

10. The Hon'ble Apex Court in para 36 of the judgment held as under:-

*“36. We find that summing up of the following factors by the Tribunal in the case of **Jagtar Singh v. Union of India & Ors** (T.A. No. 61 of 2010 decided on November 2, 2010 by the Tribunal) approved in the case of **Sukhwant Singh** and in **Vijay Kumar**, do not warrant any change or modification and the claim of disability pension is required to be dealt with accordingly:-*

“(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.”

11. We have considered the applicant's case and we find that the RMB has denied attributability to the applicant only by endorsing that the disability '**SEVERE HEAD INJURY (S09.0)**' is neither attributable to nor aggravated (NANA) by service as per injury report dated 30.03.2017 and Court of Inquiry dated 24.03.2017, therefore, applicant is not entitled to disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board as well as Court of Inquiry for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. The Opinion of the Court of Inquiry are as under :-

“1. No. 15417441M Sep Ajit Singh met with a Road Traffic Accident on 11 Nov 2015 while driving bike without holding valid driving licence.

2. No. 15417441M Sep Ajit Singh is to be blamed for the Road Traffic Accident and his injury is not attributable to Military service.”

12. We are of the considered opinion that not holding a valid driving licence by the applicant is certainly an offence under Motor

Vehicle Act, but on basis of non availability of a valid driving licence it cannot be held that there is no causal connection between the injury and military service and that the injury is not attributable to military service. In the present case the applicant met with an accident at night when he was returning on his motorcycle to his family quarter after delivery of sweets in the Unit to known persons on occasion of Diwali when he lost control of his motorcycle due to the glare of the head lights of an approaching army heavy vehicle and sustained this head injury. We are of the opinion that the injury suffered by the applicant has relevant and reasonable causal connection (howsoever remote) with military service, as the same occurred in the performance of a legitimate activity. 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 by military service.

13. The law on the point of rounding off of disability 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 10th 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 invalided 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.”

14. As such, in view of the decision of Hon’ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)***, we are of the considered view that benefit of rounding off of

disability pension @50% for life to be rounded off to 75% for life may be extended to the applicant from the date of his discharge.

15. In view of the above, the Original Application No. 716 of 2020 deserves to be allowed, hence **allowed**. The impugned order dated 31.07.2020, annexed as Annexure No. 1 of Original Application, is set aside. The disability of the applicant is held as attributable to Army Service. The applicant is entitled to get disability element @50% for life which would be rounded off to 75% from the date of his discharge. The respondents are directed to grant disability element to the applicant @50% for life which would stand rounded off to 75% for life from the date of discharge. 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

16. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 18 March, 2021

AKD/-