

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

ORIGINAL APPLICATION No. 766 of 2021

Thursday, this the 10th day of March, 2022

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

No. 15385538F Ex Sigmn Mahendra Kumar Mishra, S/o
Keshav Prasad Mishra, R/o Vill-Pure Madhukara, P.O.-Mayang,
Distt-Sultanpur, Pin-228121 (UP).

..... Applicant

Ld. Counsel for: **Shri Om Prakash Kushwaha**, Advocate.
the Applicant

Versus

1. Union of India, through its Secretary, Min of Defence,
New Delhi-110011.
2. The Chief of Army Staff, Integrated HQ of MoD (Army),
South Block, New Delhi-110001.
3. Officer-in-Charge, The Records Signals, Jabalpur, Pin-
908770, C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad, Pin-211014 (UP).

.....Respondents

Ld. Counsel for the
Respondents.

:**Shri RC Shukla**, Advocate
Central Govt Counsel

ORDER

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

- (i) *To issue/pass an order or directions to the respondents to grant him @ 90% disability pension from the date of medical invaliding out from service w.e.f. 07.02.2001, and benefits of rounding of/broad banding of disability pension @ 90% to @ 100% alongwith arrears and interest @ 18% p.a. from the date of invaliding medical board out from service w.e.f. 07.02.2001.*
- (ii) *To issue/pass an order or directions to the Records Signal to refer the Re-assessment of disability of the applicant before review medical board in terms of decision of Hon'ble the Apex Court, in the case of Veer Pal Singh (supra) for reassessing the medical condition of the applicant for further entitlement of disability pension.*
- (iii) *To issue/pass an order or directions to the respondents to decide his representations annexed as Annexure No A-1 to this O.A.*
- (iv) *To issue/pass any other order or direction as competent authority may deem just, fit and proper under the circumstances of the case in his favour.*
- (v) *To allow this original application with costs.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 29.10.1994 and invalided out of service on 06.02.2001 (A/N) in low medical category in terms of Rule 13 (3) III (iii) of Army Rules, 1954. Prior to discharge from service the applicant was brought before Invaliding Medical Board (IMB) held at Military Hospital, Jabalpur on 12.01.2001 which assessed the applicant to be suffering from 'Penetratine Injury Brain with Hemiprasis (RT) N-912 E-811' @ 90% for two years and opined it to be neither attributable to nor aggravated by military service

(NANA). Disability pension claim was rejected by PCDA (P), Allahabad vide letter dated 22.10.2001. After discharge from service the applicant has written several letters to the respondents but when nothing happened he submitted an appeal dated 06.06.2021 to Chief of the Army Staff which has not been decided as yet. Applicant has filed this O.A. for grant of disability pension.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by the applicant after joining the service should be considered as attributable to or aggravated by military service in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) and the applicant should be entitled to disability pension. Ld. Counsel for the applicant further submitted that on 17.05.2000 while posted with 4 Corps Engg Signal Regiment he was hit by cycle shop owner by a screw driver, as a result of which he became unconscious and was evacuated to Command Hospital, Central Command, Lucknow and later on recommendation of invaliding medical board he was invalided out of service in medical category 'E' with disability @ 90% for two years. He further submitted that since the applicant has been invalided out of service after putting in 06 years, 03 months and 08 days

service, he is entitled to disability pension in terms of the Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in 2013 7 SCC 13 and ***Sukhwinder Singh vs Union of India & Ors***, reported in 2014 STPL (Web) 468 SC. Placing reliance on order dated 12.02.2015 passed by the Hon'ble High Court of Punjab & Haryana in CWP No 13088, ***Ex Hav Devender Singh vs Union of India & Ors***, learned counsel for the applicant submitted that applicant be granted disability pension.

4. On the other hand, Ld. Counsel for the respondents pleaded that the applicant got injured at cycle shop while availing leave at Lucknow. He further submitted that Court of Inquiry dated 03.11.2000 (Annexure R-XIX) has declared applicant's injury as not attributable to military service and the same view has been followed by the IMB, therefore, he is not entitled to disability pension. His other submission is that the applicant was injured on 17.05.2000 while availing balance of annual leave from 08.05.2000 to 10.06.2000 at his home town and the injury which took place on 17.05.2000 has no causal connection with military service. He pleaded for dismissal of O.A.

5. Heard the Ld. Counsel for the parties and perused the material placed on record.

6. After having heard the submissions of learned counsel of both sides, we find that there are certain facts admitted to both the parties, i.e., the applicant was enrolled in the army on 29.10.1994 and he was invalided out of service on 07.02.2001 after rendering 06 years, 03 months and 08 days service in low medical category for disability 'Penetratine Injury Brain with Hemiprasis (RT) N-912 E-811'. The applicant sustained injury on 17.05.2000 at Lucknow while on leave for the period 08.05.2000 to 10.06.2000. The Court of Inquiry conducted in the matter has declared his injury as not attributable to military service and the claim was rejected by PCDA (P), Allahabad on the ground of disability being NANA.

7. The respondents have denied disability pension to the applicant on the reason 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 injury/disability and military service, he is not entitled for the same.

8. 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 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?

9. 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.

10. 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

injury with military duty as the applicant had gone to market for repair of his bicycle and in scuffle with the shop owner he was injured resulting in his invalidation from service.

11. 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 thatg 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.

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 while availing balance of annual leave at Lucknow the applicant went to market for repair of his bicycle and in the scuffle with shop keeper he was injured which resulted in his invaliding out of service. The activity in which injury was sustained being not connected with military service in any manner, the applicant is not entitled to disability pension for the same. We also find that rulings relied upon by the applicant being based on different facts and circumstances are of no help to the applicant.

14. We also take note of rejection of disability pension claim letter dated 20.10.2001 and opinion of court of inquiry report dated 03.11.2000 wherein it is clearly mentioned that the injury sustained by applicant is not attributable to military service. Since the injury/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. Miscellaneous application(s), pending if any, stand disposed off.

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

Dated: 10.03.2022
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