

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

Original Application No. 546 of 2021

Monday, this the 21st day of March, 2022

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

Smt Savita, W/o Late Itlesh Kumar Singh (No. 6486637K Ex Naik),
R/o Village & Post – Dhirpur, District- Farrukhabad, PIN- 209743.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence,
South Block, New Delhi- 110011.
2. The Officer Incharge Sena Seva Corps Abhilikh (Pashu
Parivahan), ASC Records (AT), PIN- 900493, C/o 56 APO.
3. PCDA (Pension), Draupadighat, Allahabad (U.P.) – 211014

..... Respondents

Ld. Counsel for the : **Shri Ashok Kumar Mishra,**
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.

(i). This Hon’ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant wef 01.09.2016 towards his disability ‘OPEN MULUNITED FRACTURE (LT) TIBIA (OPTE) 30% for life.

(ii). This Hon’ble Court may further be pleased to pass such other and /or further order as deem fit, proper and necessary in the circumstances of the case.

(iii). Award costs to the applicant.

2. Facts giving rise to Original Application in brief are that husband of the applicant was enrolled in Indian Army on 26.08.1994 and after having rendered about 22 years of pensionable service, he was discharged from service on 01.09.2016 with disability ‘**OPEN MALUNITED FRACTURE LEFT TIBIA (OPTE)**’ under Rule 13 (III) (i) of Army Rule 1954. Disability of husband of the applicant was assessed 30% for life and declared as neither attributable to not aggravated by

military service. Claim of the husband of the applicant for grant of disability pension was rejected vide order dated 06.09.2016. Appeal of the husband of the applicant dated 12.07.2020 for grant of disability pension was not replied by the respondents, hence this O.A.

3. Learned counsel for the applicant submitted that husband of the applicant was granted pension vide PPO NO S/34998/2016 for his services rendered in the army. On 05.07.2008, husband of the applicant was going to unit parade ground from family quarters. He fell down in drainage due to heavy rain. He was admitted in Military Hospital Shillong. He was placed in low medical category and his disability was assessed @ 30% for life but his disability was considered as neither attributable to nor aggravated by military service. In the year 2011, while husband of the applicant was on casual leave for 13 days, he again met with an accident. He was admitted in Military Hospital Fatehgarh and was placed in low medical category. His disability was declared as attributable to military service in term of Rule 12 of Entitlement Rule to Casualty Pensionary Awards to Armed Forces Personnel 1982. Husband of the applicant died on 23.10.2021. Learned counsel for the applicant submitted that husband of the applicant being on casual leave was on duty when he sustained injury, which ultimately resulted into 30% disability for life. 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 an armed forces personnel suffers with 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 case of husband of the applicant being fully covered with above, as husband of the applicant also suffered injury while on duty and same being not reported earlier at the time of his enrolment, husband of the applicant 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 husband of the applicant after retirement was granted service pension which was revised from time to time. At the time of discharge, Release Medical Board of the husband of the applicant was held and his disability

was assessed @ 30% for life but disability was considered to be neither attributable to nor aggravated by military service in lieu of injury report (IAFY 2006) dated 30.06.2010 wherein, in the injury report, the injury sustained by the husband of the applicant was considered not attributable to military service. Claim of husband of the applicant for grant of disability pension was rejected vide letter dated 06.09.2016. Husband of the applicant asked for a copy of medical board proceeding dated 21.04.2016 and CTC of Court of Inquiry proceedings which was provided to him vide letter dated 06.07.2021. Husband of the applicant preferred an appeal dated 30.07.2021 for grant of disability pension which was rejected vide order dated 24.08.2021 stating that husband of the applicant was not entitled for disability pension as his disability was considered as neither attributable to nor aggravated by military service and he was discharged from service on completion of his terms of engagement. Husband of the applicant was replaced in low medical category A3(permanent) for disability '**OPEN MALUNITED FRACTURE LEFT TIBIA (OPTE)**' vide release medical board dated 21.04.2016. It is not disputed that when husband of the 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 injury and military duty. Release Medical Board 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 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 husband of the applicant even being on leave, there was no causal connection between the injury sustained and military service. Court of Inquiry also opined the injury as not attributable to military service, therefore, husband of the applicant is not entitled to disability pension. 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.

5. We have heard learned counsel for the parties and perused the documents available on record.

6. 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., husband of the applicant was enrolled in Indian army on 26.08.1994 and discharged from service on 01.09.2016 on completion of terms of engagement. He was placed in low medical category A3(P) and his disability was assessed at 30% for life and considered as neither attributable to nor aggravated by military service, the disability pension claim of husband of the applicant was rejected vide letter dated 06.09.2016. Learned counsel for the respondents has also conceded, during the course of hearing, that when husband of the applicant sustained injury resulting into disability, he was on duty as per settled legal position, annual leave as well as casual leave are treated as duty.

7. The respondents have denied disability pension to husband of the applicant on the reason that disability of husband of the applicant was considered as neither attributable to nor aggravated by military service by release medical board as well as by Court of Inquiry. For getting disability pension, in respect of injury sustained, there must be some causal connection between the disability and military service as going to temple is not a military duty, and this being lacking in applicant's case, applicant 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. 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 on completion of terms of engagement. In pursuance to report of the Release Medical Board, which held his disability to be 30%, the claim for disability pension was rejected 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?.

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 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”.

11. 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.

12. 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.”

13. On perusal of medical board proceeding of the husband of the applicant from the year 2005 to 2016, it appears that husband of the applicant was a heavy drinker. He sustained injury on number of occasions due to heavy drinking. We have considered the applicant's case in view of above guiding factors and we find that, though, husband of the applicant was on duty when met with accident and sustained injury resulting into disability @ 30% for life on account of injury '**OPEN MALUNITED FRACTURE LEFT TIBIA (OPTE)**' 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.

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

15. No order as to cost.

16. Pending applications, if any, are disposed of accordingly.

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

Dated : 21 March, 2022

Ukt/-