

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 802 of 2022**

Wednesday, this the 29<sup>th</sup> day of March, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

781738 Sgt. Dhupesh Gupta (Retd.), S/o Chhanga Singh Gupta, H. No. 128, VPO – Parikshitgarh, PS – Parikshitgarh, District – Meerut, Uttar Pradesh-250406.

..... **Applicant**

Counsel for the : **Shri Raj Kumar Mishra, Advocate**  
Applicant **Shri Bipin Kumar Sharma, Advocate**  
**Shri Kapil Sharma, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, Rafi Marg, New Delhi-110106.
3. The Principal Director, Directorate of Air Veterans, Air Headquarters (SP), Subroto Park, New Delhi-110010.
4. The Joint Controller of Defence Accounts (Air Force), 2<sup>nd</sup> Floor, AFCAO Building, Subroto Park, New Delhi-10.

.....**Respondents**

Counsel for the : **Shri Ram Saran Awasthi, Advocate**  
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) *Summon the RMB proceedings dated 07.12.2020 and order dated 03.12.2021 of Competent Authority denying benefit of disability pension.*
- (b) *Issue/pass an order or direction of appropriate nature setting aside/quashing all the orders/findings as stated in sub-para(a) above.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the next date of discharge i.e. 01.07.2021 and interest thereon at the rate of 18% per annum.*
- (d) *Issue/pass an order or direction to the respondents to correct the composite assessment from 40% to 50-57% for life and then round off the disability pension to 75% for life in terms of benefit of broad-banding as held in Ram Avtar’s case.*
- (e) *Issue/pass any other orders(s) or direction(s) which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Air Force on 20.06.2001 and was discharged from service on 30.06.2021 in low medical category on fulfilling the conditions of enrolment after rendering 20 years and 11

days of service. On 18.06.2014 applicant sustained injury while on leave, which after investigation was found to be a case of **“FRACTURE BASE OF 3<sup>RD</sup> METACARPAL (RT HAND) (OLD) S38.9, Z-09.0”** and **“FRACTURE BASE OF 4<sup>TH</sup> & 5<sup>TH</sup> FINGERS PROXIMAL PHALANX (RT HAND) (OLD) S38.9, Z09.0”**. Further, on 01.03.2019 the sustained injury, which after investigation was found to be a case of **“ACROMIOCLAVICULAR JOINT DISLOCATION (RT) (OLD)”**. Before being discharged from service, Release Medical Board (RMB) was held at 49 Wing, Air force Naliya on 07.12.2020 assessed the applicant's disabilities (i) **“FRACTURE BASE OF 3<sup>RD</sup> METACARPAL (RT HAND) (OLD) S38.9, Z-09.0” @15% for life as neither attributable to nor aggravated by service (NANA)**, (ii) **“FRACTURE BASE OF 4<sup>TH</sup> & 5<sup>TH</sup> FINGERS PROXIMAL PHALANX (RT HAND) (OLD) S38.9, Z09.0” @15% for life as NANA** and (iii) **“ACROMIOCLAVICULAR JOINT DISLOCATION (RT) (OLD)” @15% for life as attributable to service, composite disabilities @40% for life**. The applicant's claim for the grant of disability element of disability pension was rejected vide letter dated 03.12.2021. The applicant preferred First Appeal dated 14.02.2022 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was on Leave which is to be treated on duty when he sustained first and second injuries/disability, which ultimately resulted into 15% each disabilities for life as such they are attributable to or aggravated by Air

Force Service. He further submitted that applicant's third disability has already been opined by the RMB as attributable to service but it has been wrongly assessed @15% for life instead of @19% for life. He submitted that various Benches of AFT, Hon'ble High Courts and the Hon'ble Apex Court, in the matter of disability, has 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 Air Force, the first and second disabilities would also 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 with above, as he also suffered injury while on duty and same being not reported earlier at the time of his enrolment, he is entitled to disability element of disability pension.

4. Per contra, learned counsel for the respondents submitted that the applicant was granted Annual Leave from 26.05.2014 to 20.06.2014 and staying in SMQ-367. During the said leave, on 18.06.2014 the while returning to SMQ from his borther's residence (New Ashok Nagar, Delhi) his bike got skid on road near Gazipur area in Delhi and sustained multiple injuries. As held in report dated 07.12.2020 of the Release Medical Board Proceedings, applicant was on Leave. 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 injuries sustained has causal connection with Air Force 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, applicant being injured while on leave while returning to SMQ from his brother's resident (New Ashok Nagar, Delhi) his bike got skid on road near Gazipur area in Delhi, there was no causal connection between the first and second injuries sustained and Air Force service and, therefore, applicant is not entitled to disability element of disability pension for the first and second disabilities and the third disability being less than 20% (15% for life) he is not entitled to disability element for this disability, as he is claiming. 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 Shri Raj Kumar Mishra, learned counsel for the applicant and Shri Ram Saran Awasthi, learned counsel for the respondents and have also perused the 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., applicant was enrolled in the Indian Air Force on 20.06.2001 and discharged from service on 30.06.2021, he sustained multiple injuries while on leave, while returning to SMQ from his brother's resident (New Ashok Nagar, Delhi) his bike got skid on road near Gazipur area in Delhi and placed in low medical category for the first and second disabilities vide Release Medical Board report dated 07.12.2020 and his first and second disabilities were assessed at 15% each for life and third disability was assessed @15% for life which is less than 20% as attributable to service, the disability claim of the applicant was rejected.

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 for the first and second disabilities, as there was no causal connection between the first and second disabilities and Air Force service and the third disability is less than 20% (@15%), 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. 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 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?.

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. We have considered the applicant's case in view of above guiding factors and we find that applicant was on Leave while returning to SMQ from his brother's resident (New Ashok Nagar, Delhi) his bike got skid on road near Gazipur area in Delhi sustained multiple injuries resulting into first and second disabilities of to the extent of 15% each for life. We also find that although the third disability has been opined by the Release Medical Board as attributable to Air Force Service but it is less than 20% (@15%) for life and the applicant was discharged from on fulfilling the conditions of enrolment. The activity in which he sustained first and second injuries being not connected with his Air Force duties in any manner and the third injury being less than 20% (@15% for life), he is not entitled to the disability element of disability pension for the same.

14. Further, with regard to third injury/disability, in addition to above, a bare reading of Regulation 153 of Pension Regulations for the Indian Air Force, 1961 (Part-I), makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or

aggravated by the military service. The Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 **Union of India & Ors vs Wing Commander SP Rathore**, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

*"9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off."*

15. In the result, we hold that the claim of applicant's disability element of disability pension has rightly been rejected by the respondents which needs no interference. Resultantly, Original Application is **dismissed**.

16. No order as to cost.

(Vice Admiral Atul Kumar Jain)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 29 March, 2023

AKD/-