

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 965 of 2022**

Monday, this the 20th day of March, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 14937496-K, Ex. Nk (MACP-I), Kaushlendra Mishra, R/o Village Kashipur Dubkey, PO – Derva, Tehsil – Kunda, Dist- Pratapgarh.

..... Applicant

Ld. Counsel for the : **Shri Parijaat Belaura, Advocate.**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Addl. Dte Gen Personnel Services, Adjutants General’s Branch Integrated Head Quarters, Ministry of Defence (Army) Room NO. 11, Plot No. 108 (West), Barassey Avenue, Church Road, New Delhi – 110001.
3. The Chief Record Officer, Records The Mechanized Infantry Regiment, Pin – 900476, C/o 56 APO, Ahmednagar, Maharashtra.
4. The Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (UP).

.....**Respondents**

Ld. Counsel for the : **Shri Devesh Kumar Mishra,**
Respondents. **Central Govt. Counsel**

ORDER (ORAL)

“Hon’ble Mr. Justice Ravindra Nath Kakkar, 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) *To set aside the opinion of Court of Inquiry Report dated 21.08.2018 (after calling for records), opinion of Release medical Board assessing applicants disability as neither Attributable to Nor Aggravated by Service (after calling for records) and further be pleased to set aside letter dated 08.07.2021 by which applicants Disability Pension has been rejected and grant 30% Disability Pension rounded to 50% wef next date of discharge i.e. 01.06.2021.*
- (ii) *To grant disability pension @ 30% and round of the same to 50% giving the benefit of Govt. of India, Min. Of Def. Letter dated 31.01.2001, wef next date of discharge of applicant i.e. 01.06.2021.*
- (iii) *to pay arrear of disability pension along with 12% interest from the date of his discharge i.e. 01.06.2021 till it is actually paid.*
- (iv) *Any other suitable relief this Hon’ble court deems fit and proper may also be granted.*

2. Briefly stated, applicant was enrolled in the Indian Army on 25.12.2004. He suffered fracture injury and he was placed in low medical category. He was discharged from service on 31.05.2021 under Rule 13 (3) Item III (ii)(a)(i) of the Army Rules, 1954 due to non

availability of sheltered appointment. At the time of discharge from service, the Release Medical Board (RMB) held on 19.04.2021 assessed his composite disabilities '**FRACTURE BOTH BONE (LT) FORE ARM (OPTD) (S52.92)**' @ 51% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. His claim for grant of disability element was rejected vide letter dated 08.07.2021. The applicant preferred First Appeal against rejection of his claim which was also rejected vide letter dated 13.04.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was granted 15 days casual leave from 08.04.2012 to 22.04.2012. On 10.04.2012 he went to railway station for taking return journey rail ticket. While he was going, two bikes skipped towards him and he fell down and sustained injury in his both hands. He was treated in Military Hospital and was diagnosed as "**Fracture Both Bones (Lt) Forearm**". A court of inquiry was held to investigate the circumstances under which the applicant sustained injuries. The Court of Inquiry opined that disability of the applicant was neither attributable to nor aggravated by military service.

4. Learned counsel for the applicant further submitted that the applicant was on casual leave but since he was going to purchase return journey train ticket and sustained injury, which ultimately resulted into 51% permanent disability due to fracture, hence there is causal connection with

military duty and applicant's injury is attributable to military service. He further 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 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 element for the same. Thus, he submitted that as applicant suffered injury while on duty and same being not reported earlier at the time of his enrolment, he is entitled to disability element.

5. Learned Counsel for the Applicant also submitted that it is settled principle of law that a soldier on leave, be it casual leave or annual leave, is subject to the Army Act and can be recalled at any time as the leave is at the discretion of the authorities concerned and in view of the same, impugned orders rejecting disability claim of the applicant are ultra vires, arbitrary, unjust and illegal as they violate Articles 14, 16 and 21 of the Constitution of India. He pleaded that a person on annual leave/casual leave is deemed to be on duty and there must be an apparent nexus between the normal day to day life of a person subject to military service while on leave and the injuries suffered by him. Thus, non-grant of disability element merely because the applicant was on casual leave is illegal, arbitrary and made with non-application of mind.

6. In support, learned counsel for the applicant placed reliance on the judgments of Punjab & Haryana High Court in the case of ***Barkat Masih vs Union of India & Others***, 2014 SCC on line P&H 10564, decided on 23 May 2014, Hon'ble Delhi High Court in the case of ***Vardip Singh & Anr v. Union of India & Ors***, 2004 (3) SLR 506, decided on 13 Jan 2004, the Hon'ble Apex Court in the cases of ***Lance Dafedar Joginder Singh v. Union of India & Ors***, 1995 Supp (3) SCC 232, decided on 16 Aug 1993 and in Appeal (Civil) 1646 of 1999, ***Controller of Defence Accounts (Pension) & Ors v. S Balachandran Nair***, decided on 21 Oct 2005, Hon'ble Apex Court in Civil Appeal No 4949 of 2013 arising out of SLP (C) No 6940 of 2010, ***Dharamvir Singh vs. Union of India*** decided on 02.07.2013 and Hon'ble Apex Court judgment rendered in Civil Appeal No. 5591 of 2006, ***KJS Buttar vs Union of India and Ors*** decided on 31.03.2011 and Civil Appeal No 418 of 2012, ***Union of India & Others vs Ram Avtar*** decided on 10.12.2014.

7. Per contra, learned counsel for the respondents submitted that after being placed in low medical category on account of the injury sustained, the applicant was granted sheltered employment from time-to-time to complete his pensionable service. However, later on due to not availability of sheltered employment, his further retention was not recommended by the Officer Commanding unit and the applicant was discharged from service on 31.05.2021. Release Medical Board dated has viewed applicant's disability as 51% for life, but disability qualifying element for grant of disability pension was assessed as NIL being

neither attributable to nor aggravated by military service. He further submitted that to grant 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 submitted that since in the given facts, despite applicant being on leave when he met with accident, there was no causal connection between the injury sustained and military service, therefore, applicant is was not held entitled to disability element, as he claimed. He further submitted that in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for grant of disability pension has been rightly rejected and needs no interference.

8. We have heard learned counsel of both the parties and perused the documents available on record.

9. After having heard the submissions of learned counsel of both sides the factual position that has been emerged is that applicant was enrolled in the army on 25.12.2004 and discharged from service on 31.05.2021. He met with an accident on 10.04.2012 while on casual leave and was placed in low medical category and his disability was assessed as 51% for life. The disability claim of the applicant was rejected vide order dated 08.07.2021 being NANA and his appeal was also rejected vide letter dated 13.04.2022. Learned counsel for the respondents has conceded during the course of hearing that when applicant sustained injury resulting in this disability, he was on duty as casual leave as well as annual leave are treated as duty.

The respondents have denied disability element to the applicant on the reason that his disability was not attributable to military service and there was no causal connection between the disability and military service.

10. In order to examine the correctness of the aforesaid submission we feel appropriate to refer Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982 wherein it is enumerated that a person of the Armed Forces is treated on duty while performing anyone of the functions mentioned in paragraph (a), (b) and (c) of the Pension Regulations:-

“Rule 12: Duty:- The Entitlement Rules 1982 A person subject to the disciplinary code of the Armed Forces is on duty:-

(a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him;

(b) When moving from one place of duty to another place of duty irrespective of the mode of movement;

(c) During the period of participation in recreation and other unit activities organized or permitted by service authorities and during the period of travelling in a body or singly by a prescribed or organized route.

Note 1: x x x x x x x x

Note 2: (d) Personnel while travelling between place of duty to leave station and vice versa to be treated on duty irrespective of whether they are in physical possession of railway warrant/concession vouchers/cash TA etc or not. An individual on authorized leave would be deemed to be entitled to travel at public expense.

(e) The time of occurrence of injury should fall within the time an individual would normally take in reaching the leave station from duty station or vice versa using the commonly authorized mode(s) of transport. However, injury beyond this time period during the leave would not be covered.

(f) An accident which occurs when a man is not strictly ‘on duty’ as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India.”

11. It would appear that in terms of Rule 12 of The Entitlement Rules 1982, the disability sustained during the course of an accident, which

occurs when the personnel of the Armed Forces are not strictly on duty may also be attributable to service on fulfilling certain conditions enumerated therein, but there has to be a reasonable causal connection between the injuries resulting in disability and the military service.

12. The Learned Counsel for the Applicant has also referred Rule 10 of the Leave Rules for the Services which reads as under:

“Casual leave counts as duty except as provided for in Rule 11 (a).”

13. As per this rule, when army personnel are on casual leave, same is counted as duty unless he comes under any one of the exceptions under Rule 11 (a) of the rules.

14. It is not the case of the Respondents that the applicant comes under any such exceptions.

15. Our attention has been drawn to decision of Hon’ble The Apex Court in ***Madan Singh Shekhawat vs Union of India & Ors*** reported in (1999) AIR (SCW) 3342. The Apex Court in this judgment has referred Rule 48 of the Defence Service Regulations which being relevant is quoted below: -

“Disability Pension when admissible-

“(c) a person is also deemed to be on duty during the period of participation, organized or permitted by Service Authorities and of travelling in a body or singly under organized arrangements. A person is also considered to be on duty when proceeding to his leave station or returning to duty from his leave station at public expenses.”

16. While dealing with Rule 48 referred to above, in para 7 of the judgment the Hon’ble The Apex Court has observed that “this rule is a deeming provision which provides for situations under which a person on duty, if he

suffers disability, is entitled to the grant of disability pension. The last part of this sub-rule provides that “a person incurring disability when proceeding to his leave station or returning to duty from his leave station at public expense is also entitled to the grant of disability pension”. Dwelling on expression “public expenses”, Hon’ble the Apex Court in para 12 of the said decision has observed that “applying the above rule, we are of the opinion that the rule makers did not intend to deprive army personnel of the benefit of the disability pension solely on the ground that the cost of journey was not borne by the public exchequer. If the journey was authorized, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself”.

17. Keeping in view the controversy involved, the question which need to be answered is of three folds :-

- (a) Whether, when Armed Forces personnel proceed on annual leave or leave of any kind, he is to be treated on duty?
- (b) Whether the injury or death caused, if any, to the armed forces personnel 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 convened after such an injury suffered by armed forces person?

18. In number of cases, the Hon'ble Apex Court and Armed Forces Tribunals have held that when armed forces personnel are availing casual leave or annual leave, she or he is to be treated on duty.

19. As far as causal connection between disability and military duty is concerned, it has been held that for granting disability pension, there must be some causal connection with military duty. In the instant case, a court of inquiry was held and on perusal of court of inquiry it transpires that when incident took place, applicant was going to purchase rail ticket for return journey. Hence, in view of this it can be said that there is causal connection between the incident and military duty.

20. As regards question (c), if a causal connection has been found established between the disabilities and military service, the injury shall be treated as attributable to military service and applicant would be entitled to the disability pension. In the instant case, since the applicant sustained injury while returning home after getting reservation ticket to perform journey for joining duty, this act has causal connection with military duty. Hon'ble Apex Court as well as the various Benches of the Armed Forces Tribunal have held that if injury suffered by the individual has causal connection between military duty, resulting in disability, the injury would be considered attributable to or aggravated by military service and individual shall be entitled for disability pension.

21. 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 those personnel who have been invalidated 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.”

22. We have considered the applicant's case in view of above guiding factors and we find that, applicant was on bona fide military

duty when he sustained injury resulting in disability of a permanent nature. Release Medical Board assessed his disability (a) (Lt) Radius @ 30% and (b) (Lt) Ulna assessed @ 30% for life and composite assessment of all disabilities is 51% for life. The activity in which he sustained injury being connected with his military duty, he is entitled to the disability pension. 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. 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'. Perusal of Court of Inquiry reveals that applicant was a disciplined soldier. Unfortunately, he met with accident while going to purchase return journey rail ticket. The circumstances of the incident have causal connection with military service and his disability is considered attributable to military duty and his injuries are considered as connected with military duty. We therefore find that reasons given by the respondents that the disability is not attributable to military service are no reasons in the eye of law.

23. In view of the above, Original Application No. 965 of 2022 deserves to be allowed, hence **allowed**. The impugned orders passed by the respondents rejecting claim for grant of disability element are set aside. The disability of the applicant is treated to be aggravated by military service. The applicant is already in receipt of service element

hence respondents are directed to grant disability element of the pension @ 51%, which shall stand rounded off to 75% from the date of discharge. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment.

24. No order as to costs.

25. Pending applications, if any, are disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 20th March, 2023

UKT/-