

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

ORIGINAL APPLICATION No. 658 of 2023

Tuesday, this the 12th day of March, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”**

15169197L Nk (Gunner) Vipin Chander Singh Rawat S/o Sh Alam Singh, R/p Village-Lolti, PO-Tungaswar, PS-Tharali Chamoli, Uttarakhand now residing at Dehradun.

..... Applicant

Ld. Counsel for the : None for the applicant.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, DHQ, PO-New Delhi-110011.
2. The Chief of the Army Staff, through Adjutant General Integrated HQ of Ministry of Defence (Army), DHQ, PO-New Delhi-110011.
3. The OIC records, Regiment of Artillery Training Centre, Nasik Road Camp, PIN-908802, Maharashtra.
4. The Commanding Officer, 306 Field Regiment, C/o 56 APO.
5. PCDA (Pensions), Draupadi Ghat, Prayagraj, Uttar Pradesh-211001.

.....Respondents

Ld. Counsel for the Respondents. **Shri Neeraj Upreti**, Advocate
Central Govt. Counsel

ORDER (Oral)

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 order of dismissal of the Second Appeal dated 16.10.2022; and,*
- (ii) *To allow the grant of disability pension in respect of the applicant from the date of retirement.*
- (iii) *To pass any further orders/directions in the matter in the interest of justice.*

2. Brief facts giving rise to the present application is that having enrolled in Army on 12.01.2004 and while serving with 306 Field Regiment, the applicant sustained severe injury on 15.08.2017 due to his leg slipped on the wet floor of bathroom of his barrack. He was admitted in 164 Military Hospital, Binnaguri where he was diagnosed with 'Fracture Lumber Vertebra (LV2) (S32.009A)'. Subsequent to his injury, a Court of Inquiry (C of I) was held at 306 Field Regiment on 11.03.2018 which held the injury as not attributable to military service. After discharge from hospital, he was downgraded to low medical category S1H1A1P3(T-24)E1 w.e.f. 28.10.2017. Thereafter, in periodical review medical boards, he was placed in medical category S1H1A1P2E1 (permanent) w.e.f. 13.04.2018. Accordingly, he was retained in the service in low medical category in the public interest. Thereafter, on the basis of his unwillingness certificate dated 25.02.2020, he was discharged from service w.e.f. 31.08.2020 (AN) being in low medical category under Rule 13 (3) III (iii) (A) (i) of Army Rules, 1954.

3. Prior to discharge from service, his Release Medical Board (RMB) was conducted which assessed his medical disability to be 20% neither attributable to nor aggravated by military service. Claim for grant of disability element of pension was rejected vide letter dated 30.04.2021 on the ground of NANA and thereafter, first appeal preferred by the applicant on 30.06.2021 was also rejected vide order dated 28.01.2022 on the ground that 'the individual sustained injury while he was walking out of the bathroom. He was not performing any bonafide military duty at the material time of sustaining the injury. The circumstances of the incident have no causal connection with military service. Hence, the disability is conceded as neither attributable to nor aggravated by military service in terms of Para 6 and 9 of Entitlement Rules for Casualty Pensionary Awards-2008'. After rejection of First Appeal, applicant preferred Second Appeal dated 16.05.2022 which too was rejected vide order dated 10.10.2022 and communicated to the applicant vide letter dated 22.10.2022. It is in this perspective that this O.A. has been filed for grant of disability element of pension.

4. It has been pleaded by the applicant that at the time of enrolment into the Army service, the applicant was fit in SHAPE-I and there is no note in his service record that he was suffering from any disability/disease at the time of enrolment. It was further pleaded that since the disability had occurred to the applicant while he was in the accommodation provided by the respondents, therefore, the disability ought to be attributable to military service.

5. Further pleading of the applicant is that the Commanding Officer in most mechanical manner has endorsed his recommendation to the effect that the disability is not attributable to military service. It was further submitted that since the disability of the applicant had taken place while he was in unit lines, it ought to be attributable to military service. He pleaded for grant of disability element of pension to the applicant.

6. Per contra, learned counsel for the respondents submitted that it is not disputed that applicant sustained injury resulting in disability, as held in report dated 23.08.2017 (IAFY-2006). It was further submitted that the opinion of C of I dated 24.02.2018 has also held the disability to be not attributable to military service. Advancing his submission, learned counsel for the respondents further submitted that the RMB dated 13.07.2020 has declared his disability being not attributable to military service and on the basis of RMB applicant's first and second appeals were also rejected vide orders dated 28.01.2022 and 10.10.2022 respectively as there is no causal connection between the disability and military service. He pleaded for dismissal of O.A.

7. We have heard learned counsel for the respondents and perused the RMB proceedings, injury report and C of I proceedings.

8. We find that there are certain facts admitted to both the parties, i.e., applicant was enrolled in the Army on 12.01.2004 and discharged from service on 31.08.2020 (AN) prior to completion of terms of engagement as he submitted unwillingness certificate to continue further in service. He met with an accident while slipping during walking

from bath room leading to 'Fracture Lumber Vertebra (LV2) (S 32.009A)' and he was downgraded to medical category for the said disability vide AFMSF-16 dated 13.07.2020 and his disability was assessed @ 20% for life neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected on 30.04.2021 with advice to prefer an appeal against the rejection order within six months from the date of rejection letter, if not satisfied. First and Second appeals preferred by the applicant were also rejected vide orders dated 28.01.2022 and 10.10.2022 respectively on the ground that disability has no causal connection with military service.

9. The respondents have denied disability element of pension to 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 disability and military service, he is not entitled for the same.

10. 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?

11. 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, he is to be treated on duty.

12. 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 household 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 accident with military duty.

13. 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 by the various Benches of the Armed Forces Tribunal and Hon'ble 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 as attributable to or aggravated by military service.

14. 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.”

15. We have considered the applicant's case in view of the above guiding factors and we find that, though, applicant was in unit lines when he met with accident and sustained injury resulting into disability of permanent nature to the extent of 20%, on account of 'Fracture Lumber Vertebra (LV2) (S 32.009A)', the activity in which injury was sustained being not connected with his military service in any manner, applicant is not entitled to the disability element of pension for the same. The RMB dated 13.07.2020 has also declared applicant's disability to be not attributable to military service.

16. We also take note of rejection of first and second appeals dated 30.04.2021 and 10.10.2020 and opinion of court of inquiry report dated 23.08.2017, wherein it is clearly mentioned that the injury sustained by applicant is not attributable to military service. Since the disability has no causal connection with military duty, applicant is not entitled to disability element of pension.

17. In the result, we hold that the claim of applicant's disability element of pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed** on merit.

18. No order as to costs.

19. Miscellaneous Application (s), pending if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 12.03.2024

rathore

(Justice Anil Kumar)
Member (J)