Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 115 of 2024

Monday, this the 24th day of March, 2025

"Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj. Gen. Sanjay Singh, Member (A)"

No. JC-282404W Sub. Ravindra Kumar (Retd.), Son of Shri Jagdish Kumar, Resident of 37A/33/3, Madhu Nagar, Near P.D. Hospital, Agra Cantt., U.P.-282001.

….. **Applicant**

Counsel for the Applicant : **Shri Veer Raghav Chaubey,** Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.

2. Artillery Records, Nasik Road Camp (MR), Pin-422102.

3. Office of the PCDA (P), Draupadi Ghat, Allahabad.

.....**Respondents**

Counsel for the Respondents. : **Shri Arvind Kumar Pandey,** Advocate Central Govt. Standing Counsel

ORDER

"Per Hon'ble Mr. Justice Anil Kumar, 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 Tribunal may kindly be pleased to direct the respondents to grant the disability pension of 30% to 50% to the applicant w.e.f. date of retirement i.e. 31.08.2022.*
>
> *(ii) This Hon'ble Tribunal pleased to direct the respondents to decide the representation dated 06.11.2023 as well as 10.12.2023 (Annexure No. 4 & 5 to this OA).*
>
> *(iii) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Regiment of Artillery of Indian Army on 30.08.1994 and was discharged from service on 31.08.2022 in low medical category on fulfilling the conditions of enrolment. The applicant is in receipt of Service Pension. According to the applicant the applicant was performing the duties of Survey JCO in Unit 274 Campt since 2015. On 28.02.2016 at 07.00 PM after roll call, the applicant went to Lal Bazaar, while on his way back from the market at around 07.30 PM near MCEME Gurudwara, he was hit by Motor Cycle from behind on his leg due to the impact, he fell down on the ground on his face and sustained injury, which after investigation was found to be a case of "**FRACTURE FEMORAL CONDYLE HOFFA'S**

FRACTURE LEFT (OPTD) (S72.4)". Before being discharged from service, Release Medical Board (RMB) was held at 180 Military Hospital, PIN-901224 C/o 99 APO on 25.06.2022 in which applicant was found suffering with 30% disability for life. Despite being discharged from service in low medical category, disability pension was denied to applicant on the reason that his disability was neither attributable to nor aggravated by military service vide letter dated 17.09.2022. The applicant preferred First Appeal dated 06.09.2023, Representation dated 06.11.2023 and Second Appeal dated 10.12.2023 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 duty when he sustained injury, which ultimately resulted into 30% disability for life, because of "**FRACTURE FEMORAL CONDYLE HOFFA'S FRACTURE LEFT (OPTD) (S72.4)**". 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 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 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 pension.

4. Per contra, learned counsel for the respondents submitted that while serving with Unit 274, the applicant was proceeded out of Camp area on 01.03.2015 without pass/proper permission from OC Camp and the applicant sustained injury. A Court of Injury was held at Unit 274 Camp to investigate the circumstances under which the applicant sustained injury which opined that at the time of injury the applicant was not performing bonafide military duty and on the basis of Court of Inquiry the competent authority has conceded the disability of the applicant as Neither Attributable to nor Aggravated by military service vide IAFY-2000 (Injury Report). Further, Section 39(f) of the Army Act, 1950 - "*absence without leave*" provides that "*when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer"*. In the instant case the applicant was proceeded out of Camp area without pass/proper permission from OC Camp which is to be treated absence without leave. As opined in the Injury Report dated 01.03.2016 and Court of Inquiry dated 26.04.2016 and the RMB, applicant was not on bonafide duty. 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 in the given facts, applicant being injured outside wof Camp area without pass/proper permission from OC Capt and not on bonafide duty, there was no causal connection between the injury sustained and military service and, therefore, applicant is not entitled to disability pension, 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 Veer Raghav Chaubey, Ld. Counsel for the applicant and Shri Arvind Kumar Pandey, Ld. 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 army on 30.08.1994 and discharged from service on 31.08.2022. The applicant was discharged in low

medical category. The applicant's claim for the grant of disability pension was rejected by the respondents.

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 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. 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 proceeded out of Camp area without pass/proper permission from OC Camp, met with an accident and sustained injury resulting into disability of to the extent of 30% for life, on account of "**FRACTURE FEMORAL CONDYLE HOFFA'S FRACTURE LEFT (OPTD) (S72.4)**". Although

in the Original Application the applicant has stated that he was performing the duties of Survey JCO in Unit 274 Camp since 2015 and on 28.02.2016 after roll call he went to Lal Bazaar and while on his way back from the market he was hit by Motor Cycle from behind on his leg and he sustained injury but neither there is any supportive material on record nor the applicant has filed any cogent evidence in support of his averment that he was on banafide military duty. Contrarily, the respondents have stated that the applicant was proceeded out of Camp area without pass/proper permission from OC Camp and met with an accident which has no causal connection with military duties. The activity in which he sustained injury being not connected with his military duties in any manner, he is not entitled to the disability pension for the same.

14. 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, Original Application is **dismissed**.

15. No order as to cost.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 24 March, 2025

AKD/-