Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 83 of 2024

Thursday, this the 20th day of March, 2025

"Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"

No. 16014340W Ex. Rfn. Harendra Singh, S/o Late Sri Champat Singh, R/o Village Taiybpur, PO Shikarpur, District Bulandshahar (UP).

….. **Applicant**

Counsel for the Applicant : **Shri K.K. Misra,** Advocate

Versus

1. Chief of Army Staff, Army HQs, New Delhi.
2. Officer-in-Charge, Records, Raj Rif, Delhi Cantt.
3. PCDA (P), Allahabad.

.....**Respondents**

Counsel for the Respondents. : **Shri Manu Kumar Srivastava,** 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) To direct the respondents to grant 20% disability pension to the applicant, as per his entitlement, duly rounded of to 50%, along with its arrears with interest.

(ii) Any other applicant relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.

(iii) Cost of the case may be awarded in favour of the applicant.

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Rajasthan Rifles Regiment of Indian Army on 11.11.2002 and discharged from service on 30.11.2017 in low medical category before completion of terms of engagement under Rule 13(3) Item III (iii) (a) (i) of Army Rules, 1954 after rendering 15 years and 20 days of service. The applicant is in receipt of Service Pension. The applicant was granted Annual Leave from 17.02.2008 to 01.04.2008. According to the applicant, during the aforesaid leave, on 24.02.2008, in order to rejoin his duty the applicant moved towards railway station Khurja to get his reservation done, when enroot, near Sai Dham Mandir he met with a road accident and sustained severe injuries, which after investigation was found to be a case of "**SUPRA**

CONDYLAR FRACTURE (LT) HUMERUS WITH INTRA CONDYLAR EXTENSION (OPTD) (S 72)". The Court of Inquiry was held on 29.06.2008 and subsequent days. Before being discharged from service, Release Medical Board (RMB) was held at 159 General Hospital, C/o 56 APO on 29.07.2017 in which applicant was found suffering with 20% disability for life. Despite being discharged from service in low medical category before completion of terms of engagement, disability pension was denied to applicant on the reason that his disability was neither attributable to nor aggravated by military service vide letter dated 16.02.2018. The applicant preferred Appeal dated 25.02.2018 but of no avail. The applicant also preferred application dated 26.03.2023 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 Annual Leave which is to be treated on duty when he sustained injury, which ultimately resulted into 20% disability for life, because of "**SUPRA CONDYLAR FRACTURE (LT) HUMERUS WITH INTRA CONDYLAR EXTENSION (OPTD) (S 72)**". Ld. Counsel for the applicant further submitted that on 24.02.2008, in order to rejoin his duty the applicant went to Railway station, Bulandshahar on a motor cycle to get his return journey reservation done. The railway inquiry officials advised the applicant to get his reservation in suitable train either from Railway station Khurja or New Delhi. Accordingly, the applicant moved towards railway station Khurja to get his reservation

done, when enroot, near Sai Dham Mandir the applicant met with a road accident and sustained serious injuries. 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 the applicant was granted 45 days Part of Annual Leave from 17.02.2008 to 01.04.2008. The applicant during aforesaid leave sustained injury in his left arm while he was returning from the market on 24.02.2008 met with an accident on his uncle's Motor Cycle. As held in report dated 29.07.2017 of the Release Medical Board Proceedings as well as Court of Inquiry Report, the applicant was on Annual Leave and he was not on bonafide military 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 on his left arm due an accident on his Uncle's Motor Cycle while returning from the market, 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 Ld. Counsel for the parties 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 11.11.2002 and discharged from service on 30.11.2017, he sustained injury in his left hand while

on annual leave due to accident on his Uncle's Motor Cycle while returning from Market and placed in low medical category for the disability "**SUPRA CONDYLAR FRACTURE (LT) HUMERUS WITH INTRA CONDYLAR EXTENSION (OPTD) (S 72)**" vide Release Medical Board report dated 29.07.2017 and his disability was assessed at 20% for life, 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, 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 on Annual Leave and due to accident on his Uncle's Motor Cycle while returning gfrom the market sustained injury resulting into disability of to the extent of 20% for life, on account of "**SUPRA CONDYLAR FRACTURE (LT) HUMERUS WITH INTRA CONDYLAR EXTENSION (OPTD) (S 72)**". Although, in the Original Application the applicant has stated that on 24.02.2008, the applicant moved towards railway station Khurja to get his reservation done, when enroot, near Sai Dham Mandir the applicant met with a road accident and sustained injury but he has failed to file any proof for reservation, contrarily during the Court of Inquiry, in para 2, the applicant as Witness No. 1 himself has stated that "*I, No. 16014340W Rfn Harendra Singh was gtd 45 days PAL wef 17 Feb 08 to 01 Apr 08. On 24 Feb 08 when I was returning from the market at about 1500 hrs on my uncle's Motor Cycle, Regd No UP13B 5779. While on the move the chain of bike got entangled and the two wheeler got jammed due to which I lost the balance and fell off and landed on my left arm."* In view of the applicant's aforesaid statements, fact and circumstances of the case, we are of the opinion that 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 No. 83 of 2024** is **dismissed**.

15. No order as to cost.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 20 March, 2025

AKD/-