

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.1 (E. Court)**

**O.A. No. 166 of 2020**

**Ex Sep Ravindra Singh**  
By Legal Practitioner for the Applicant

Applicant

Versus

**Union of India & Others**  
By Legal Practitioner for Respondents

Respondents

| <b>Notes of the Registry</b> | <b>Orders of the Tribunal</b>   |
|------------------------------|---|
|                              | <p><b><u>11.05.2022</u></b><br/><b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b><br/><b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>1. Heard Shri Parijat Belaura, learned counsel for the applicant and Ms Anju Singh, learned counsel for the respondents.</p> <p>2. Brief facts of the case are that the applicant was enrolled in the Army on 08.10.2002. During the course of his service, in the year 2013, while availing annual leave, he met with an accident on 09.05.2013 with civil truck at Kanpur in which he suffered the disabilities '(i) Fracture Acetabullum (RT) Conservative (S 32.4 &amp; Z 09.0) and (ii) Transtibial Amputation with Right Knee Stiffness with Chronic Osteomyelitis (Rt) Femur (Optd) (S 88.1 &amp; Z 09.0)'. As stated by both the parties a Court of Inquiry (C of I) was held on 30.06.2018 and subsequent days, copy of which has not been placed on record, which declared the injury as neither attributable to nor aggravated by military service (NANA). The records reveal that the applicant was provided Sheltered Appointment till his completion of terms of engage i.e. 31.10.2019 (AN). After accident he was treated in Base Hospital, Delhi Cantt and his medical category was downgraded. At the time of discharge his Release Medical Board (RMB) was conducted on 16.07.2019 at 7 Air Force Hospital which assessed his medical disability @ 80% for life neither attributable to nor aggravated by</p> |

military service (NANA). Claim for grant of disability pension was rejected vide order dated 31.10.2019. Thereafter, first appeal preferred on 18.02.2022 has not been decided. Applicant is in receipt of service pension vide PPO No 160201902844 (0100) dated 19.09.2019. Feeling aggrieved with denial of disability element of pension, applicant has filed the instant O.A.

3. Learned counsel for the applicant submitted that the applicant was on part of annual leave for the period 29.04.2013 to 24.05.2013. On 09.05.2013 when he was proceeding by his Omni Car from his village Ishwariganj to Air Force Hospital, Kanpur he met with an accident with Truck No. UP-78/BT-7977 in which he and his mother were seriously injured. On 10.05.2013 a FIR No. 197/2013 was lodged by his brother under section 279, 338 and 427 IPC. He further submitted that the RMB has assessed his disability @ 80% for life and NANA but as per numerous judgments rendered by AFTs, Hon'ble High Courts and the Hon'ble Supreme Court, casual leave/annual leave is counted as duty. As such his disability should be attributable to military service. He also submitted that various Benches of AFT, Hon'ble High Courts and the Hon'ble Apex Court, in the matter of disability, have held that if Armed Forces Personnel suffer with disability during the course of service, which was never reported earlier when he/she was enrolled/recruited, in the Armed Forces, the said disability would be treated to be attributable to or aggravated by military service and he/she should be entitled to the disability element of pension for the same. Thus, he submitted that applicant's case being fully covered with above, as he also suffered injury while on leave which is treated as duty and the same being not reported earlier at the time of his enrolment, he is entitled to disability element of

pension. In support, learned counsel for the applicant has placed reliance on the judgment of Hon'ble Apex Court in the case of **The Secretary, Union of India & Ors vs Dharambir Singh**, reported in (2013) 7 Supreme Court Cases 316 and order dated 05.12.2017 passed by AFT, Chandimandir in O.A. No. 957 of 2015, **Smt Savita vs Union of India & Ors** and submitted that applicant be held entitled to disability element of pension.

4. Per contra, learned counsel for the respondents submitted that it is not disputed that applicant sustained injury resulting in his disability as held in report dated 18.07.2019 of the Medical Board Proceedings. He further submitted that the applicant being on annual leave doing his personal work cannot be treated on military duty therefore, he is not entitled to disability element of pension. However, for grant of disability pension it is not only required that Armed Forces Personnel should be on duty, but there must be some nexus also between the activity resulting in injury and military service. He further submitted that unless activity resulting in injury sustained has causal connection with military service, Armed Forces Personnel cannot be allowed disability element of pension merely on the reason of being on casual/annual leave. He further submitted that in the given facts, applicant being on leave met with an accident while travelling in his own Omni Car at Kanpur. There was no causal connection between the injury sustained and military service and, therefore, applicant is not entitled to disability element of pension, as he is claiming. His other version is as per Regulation 81 of Pension Regulations for the Army, 2008, the primary condition for grant of disability pension is - 'service personnel who are invalided out from service on account of a disability which is attributable to or aggravated by

such service, may be granted a disability pension consisting of service element and disability element'. Since the disabilities of the applicant have been held as neither attributable to nor aggravated by military service by the duly constituted RMB, he is not entitled to disability element of pension. He pleaded for dismissal of O.A.

5. We have perused the records i.e. RMB and injury report.

6. After having heard the submissions of learned counsel of both sides, we find that there are certain facts admitted to both the parties, i.e., applicant was enrolled in the Army on 08.10.2002 and discharged from service on 31.10.2019 after completion of terms of engagement. During the leave period in May 2013 he met with an accident while proceeding to Kanpur by his Omni Car. His car was hit by civil truck No UP-78/BT-7977 which resulted in his being placed in low medical category. The applicant has stated that the Court of Inquiry conducted in this regard has held the disability as NANA. In injury report though there is a mention by the applicant that he was going to Kanpur Air Force Hospital for treatment of his wife and mother when the accident took place on 09.05.2013 but the Court of Inquiry has held the injury as NANA as admitted by both the parties. Both the parties have also conceded during the course of hearing that, when applicant sustained injury resulting in the disability, he was on annual leave.

7. Applicant has stated that he was taking his wife and mother in his Omni Car for treatment in 7 Air Force Hospital on 09.05.2013 but surprisingly there is no whisper in the FIR dated 10.05.2013 that he was proceeding to 7 Air Force Hospital when he met with an accident. The applicant during the Court of Inquiry should have made such statement that he was taking his family to the Air Force Hospital for treatment.

Unfortunately, none of the parties have placed on record copy of Court of Inquiry proceedings. In absence of any material that could have been of help to the applicant, there is no reason to accept that the aforesaid disability resulted from any activity having causal connection with military service.

8. The respondents have denied disability 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 activity resulting in the disability and military service, and this being lacking in applicant's case, as there was no causal connection between activity resulting in the the disability and military service, he is not entitled for the same.

9. This question has been considered time and again not only by the various Benches of AFT, but by 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 20<sup>th</sup> 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 29.11.1999 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, 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?

10. 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.

11. 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 related to military service i.e. attributable to military service. 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. In the present case there seems to be no causal connection of accident with military duty.

12. 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 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. In the instant case the applicant's disability has no causal connection with military service.

13. 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."*

14. We have considered the applicant's case in view of the above guiding factors and we find that, though, applicant was on annual leave when he met with accident and sustained injury resulting into disability of permanent nature to the extent of 80%, the activity in which injury was sustained being not connected with military service in any manner,

applicant is not entitled to the disability element of pension for the same, as held by the RMB.

15. During the course of hearing learned counsel for the applicant has heavily relied upon judgment rendered by AFT (RB), Chandimandir in the case of **Smt Savita** (supra). We have perused the judgment and find that the aforesaid judgment is of no help to applicant as in that case the Court of Inquiry had declared the injury/disability attributable to military service, whereas in the instant case, it was admitted by both the parties that the injury was not attributable to military service, though copy of Court of Inquiry proceedings has not been placed on record.

16. We also find that the disability pension claim was rejected vide letter dated 31.10.2019 on the ground of NANA and C of I has also opined the disability being not attributable to military service, a conclusion may be drawn that the accident has no causal connection with military duty. 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**.

18. No order as to costs.

19. Pending applications, if any, are disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)