

**Court No. 1 (E-Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 798 of 2021**

Friday, this the 13<sup>th</sup> day of May, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Rajendra Prasad Tiwari (Ex. Hawaldar) R.M. 14913324 W, Rank-Hav (Hony), S/o Late Shambhu Nath Tiwari, R/o 85, Tiwaripur, Post–Mohammadabad, District-Gazipur, U.P. -233227.

..... Applicant

Ld. Counsel for the Applicant : **Shri Matri Datt Tripathi**, Advocate  
**Shri Shresth Agrawal**, Advocate  
and **Shri Lal Mani**, Advocate

Versus

1. Union of India, through Commanding Officer, The MECH IBF, Pin-900476 C/o 56 APO.
2. Chief the Office of the Principal, CDA (Pensions) Allahabad U.P.

.....Respondents

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**, Advocate  
Central Govt. Counsel

## ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (i) *Allow the Medical Pension to the Applicant from the date of his retirement i.e. on 30.09.2006 like other Army men.*
- (ii) *The Hon'ble Tribunal also may kindly be pleased to pass any other which is deemed fit, just and proper in favour of the applicant under the circumstances of the case.*
- (iii) *Allow the present application with cost in favour of the Applicant.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 10.09.1984 and was discharged from service on 30.09.2006 (AN) in low medical category S1H1A3(P)P1E1 on fulfilling the conditions of his enrolment under Rule 13 (3) III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held on 10.04.2006 assessed his disabilities (i) Lacerated Wound (L) Arm with Fracture III/V Metacarpals (old) and (b) Fracture body & Neck of Scapula (L)' @ 40% for life and opined these to be attributable to military service. The applicant's claim for grant of disability pension was rejected vide letter dated 16.05.2007 with an advice to prefer first appeal to the Appellate Authority within six months which he failed to do. On 23.10.2019 the applicant preferred an application with regard to non receipt of his correct dues which was replied

vide letter dated 05.11.2019. Being dissatisfied with the reply, the applicant has filed the present O.A. for grant of disability pension.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease/disability at the time of enrolment in Army. The disability of the applicant was contracted during the service i.e. he met with an accident while proceeding on casual leave to his home town, hence it is attributable to and aggravated by Military Service as opined by the RMB. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, and applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, learned counsel for the respondents has filed counter affidavit and in that he conceded in para 4 that during the year 2002, at Udasar Cantt the applicant was granted 06 days casual leave from 24.04.2002 to 29.04.2002 and while proceeding to his home station, he met with an accident and sustained injuries. He however, submitted that though RMB has opined the disabilities of the applicant as attributable to military service, yet PCDA (P), Allahabad has rejected his claim stating that injuries were sustained by the individual during casual leave which are not attributable to military service as the individual was not on duty at

the time of sustaining the injuries in terms of Rule 12 of Entitlement Rules for Casualty Pensionary Awards, 1982. The learned counsel further submitted that according to Rule 8 of the Entitlement Rules (supra) there must be a causal connection between disease/disability/injury with military service. His submission is that since there is no causal connection of his injury with military service, hence applicant is not entitled to disability element of pension. He pleaded for dismissal of the Original Application.

5. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also gone through the RMB proceedings as well as the records and we find that PCDA (P), Allahabad has rejected disability element pension claim on the ground that the applicant was on casual leave when he sustained injuries. We also observe that the respondents have stated in Para 4 of the counter affidavit that the applicant had sustained injuries while proceeding on casual leave to his home town.

6. The issue related to causal connection has been dealt with by various Benches of Armed Forces Tribunals, Hon'ble High Courts and the Hon'ble Supreme Court and it has been 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.

7. The Hon'ble Apex Court 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** cases, and held that they do not warrant any modification and the claim of disability is to be required to be dealt with 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.”*

8. Even otherwise the Entitlement Rules for Casualty Pensionary Awards, 1982 provide that an Armed Forces Person is considered on 'duty' even when proceeding on/returning from leave. The relevant Rule i.e. Para 9 (d) of Entitlement Rules for Casualty Pensionary Awards, 1982 reads as under:-

*“9 (d). For the purpose of these Rules, a person subject to the disciplinary code of the Armed Forces shall be treated on ‘duty’ when proceeding on leave/valid out pass from his duty station to his leave station or returning to duty from his leave station on leave/valid out pass.*

**Note: 1.** *An Armed Forces Personnel while travelling between his place of duty to leave station and vice-versa is to be treated on duty irrespective of whether he has availed railway warrant/concession voucher etc or not for the journey. This would also include journey performed from leave station to duty station in case the individual returns early.*

**Note: 2.** *The occurrence of injury should have taken place in reaching the leave station from duty station or vice versa using the commonly available/adopted route and mode of transport.”*

9. We have considered the applicant’s case in view of the above guiding factors and we find that the applicant was on duty when he met with an accident resulting in injuries of permanent nature. We also observe that the RMB has rightly opined the disabilities of the applicant as attributable to military service. The applicant seems to be entitled to grant of disability element of pension.

10. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of the 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 10<sup>th</sup> 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 the personnel who have been invalided 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.”*

11. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv**

***Dass vs. Union of India***, reported in 2007 (3) SLR 445, Hon'ble

Apex Court has observed:

*“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass (supra)***, we are of the considered view that benefit of rounding off of disability pension @ 40% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

13. In view of the above, the Original Application No. 798 of 2021 deserves to be allowed, hence **allowed**. The impugned order dated 16.05.2007, annexed as Annexure No. IV with counter affidavit, is set aside. The disability of the applicant is held as attributable to military service. The applicant is entitled to get disability element @ 40% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @ 40% for life which would stand rounded off to 50% for life w.e.f.

three years preceding the date of filing of Original Application. The date of filing of Original Application is 06.12.2021. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment

14. No order as to costs.

15. Miscellaneous application(s), pending if any, stand disposed of.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 13.05.2022

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