

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 776 of 2021**Wednesday, this the 11<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)**No. 14647655L Ex Nk Suresh Kumar  
S/o Ram Pal  
R/o Vill – Khajuria Shri Ram, PO – Khajuria Shri Ram,  
District – Bareilly – 262406 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri K.P. Datta**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), South Block, Sena Bhawan, New Delhi-110011.
3. Officer-in-Charge, Records, EME Secunderabad, Pin – 900453, C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad, Pin – 211014 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava**,  
Central Govt Counsel**ORDER**

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

- “A. To issue/pass an order or directions to set aside/quash the IHQ of MoD (Army) rejection letter No. B/38046A/165/2021/AG/PS-4(2<sup>nd</sup> Appeal) dated

08.09.2021 received vide Records EME letter No. 14647655L/DP-4/Pen dated 17.09.2021.

- B. To grant him disability element of disability pension @ 20% and benefits of rounding of/broad banding of disability pension @ 20% to @ 50% alongwith arrears and interest @ 18% p.a. from the date of discharge wef 30.11.2019.
- C. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 12.01.2002 and was discharged from service on 30.11.2019 (AN) in Low Medical Category after rendering more than 17 years of service. The applicant sustained injury during military duty enroute while proceeding on 10 days casual leave and his disability “**FRACTURE PATELLA LEFT (OPTD)**” was assessed @ 20% for life and considered as attributable to Military Service by RMB. The disability pension claim of the applicant was rejected by the respondents vide EME Records letter dated 31.12.2019 stating that disability of the applicant has no causal connection with military duty and therefore, it is NANA. The applicant preferred first appeal dated 21.01.2020 which was rejected by the respondents vide order dated 04.12.2020. The second appeal of the applicant dated 17.12.2020 was also rejected by the respondents vide order dated 08.09.2021. It is in this perspective that the applicant has preferred the present O.A.

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 Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The applicant sustained injury during the course of journey while proceeding on 10 days casual leave, hence, there is a causal connection between his disability and military duty. The Court of Inquiry held that injury sustained by the applicant was purely incidental and he is not to be blamed for the same and his injury/disability was recommended as attributable to military service. The disability of the applicant “**FRACTURE PATELLA LEFT (OPTD)**” was assessed @ 20% for life and it was considered as attributable to Military Service by RMB. He submitted that the act of overruling the recommendations of RMB by higher competent authority was wrong and should be set aside. He placed reliance on the judgment of the Hon’ble Apex Court in the case of *Dharamvir Singh vs. UOI & Ors*, (2013) 7 SCC, 316 and *Sukhvinder Singh vs. Union of India & Others* 2014 STPL (Web) 468 SC and pleaded that applicant be granted disability element as per recommendations of RMB duly rounded off to 50% in view of *Union of India and Others vs. Ram Avtar* (Civil Appeal No. 418 of 2012 dated 10.12.2014).

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. “**FRACTURE PATELLA LEFT (OPTD)**” has been regarded as 20% for life by RMB as attributable to military service. However, the competent authority has rejected the claim of the applicant stating that though the disability of the applicant has been considered as attributable to military service but the injury sustained by the applicant during casual leave has no causal

connection with military duty. Therefore, in terms of Rule 179 of Pension Regulations for the Army 1961 (Part-1) and para 81 of Pension Regulations for the Army, 2008 (Part-1), applicant does not fulfil the conditions, hence, applicant is not entitled for disability element of disability pension. She pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings. The only question which needs to be answered is whether the PCDA (P) Allahabad or higher authorities have power to overrule the opinion of the RMB for the disability?

6. This is a case where RMB had conceded the disability of applicant "**FRACTURE PATELLA LEFT (OPTD)**" @ 20% for life as attributable to military service. However, PCDA (P) Allahabad or higher authorities of the Army have rejected the claim of applicant on the ground that disability of applicant has been viewed as attributable to military service but the injury sustained by the applicant during casual leave has no causal connection with military duty, hence, it is NANA as per Entitlement Rules, 2008. However, it is clear that the higher competent authorities of Army or PCDA (Pension) has not physically examined the applicant. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command without physical medical examination of the patient by a higher Medical Board. In this context the operative portion of the judgment of Hon'ble Apex Court in the case of **Ex.**

**Sapper Mohinder Singh vs. Union of India** in Civil Appeal No 104 of 1993 decided on 14.01.1993 is quoted below:-

*“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”*

7. Since the applicant sustained injury during the course of journey between duty station to home station while proceeding on 10 days casual leave, hence, there is a causal connection between his disability and military duty and injury sustained during the period of journey will be treated as duty as per Para 9 of Entitlement Rules for Casualty Pensionary Awards, 2008. The Court of Inquiry also held that injury sustained by the applicant was purely incidental and he is not to be blamed for the same and his injury/disability was recommended as attributable to military service. Para 9 of Entitlement Rules for Casualty Pensionary Awards, 2008 is reproduced below :-

**“9. Duty:**

For the purpose of these Rules, a person subject to the disciplinary code of the Armed Forces shall be treated on ‘duty’:

(a) to (c) x x x x x x x x

(d) 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 vouchers/cast TA 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.”

8. Thus, in sum and substance we set aside the decision of competent authority overruling the opinion of RMB and Court of Inquiry and restore the original opinion and findings of RMB for grant of disability element and are of the considered opinion that the applicant was on duty when he sustained injury during journey period and he is entitled to disability element for his disability “**FRACTURE PATELLA LEFT (OPTD)**” @ 20% for life from the date of discharge with benefit of rounding off @ 50% for life as per Govt of India, Ministry of Defence letter dated 31.01.2001.

9. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned order passed by the respondents is set aside and the original opinion of RMB is restored. The applicant’s disability “**FRACTURE PATELLA LEFT (OPTD)**” is to be considered as attributable to military service @ 20% for life in line with RMB recommendations. The applicant is entitled to disability element @ 20% for life duly rounded off to 50% for life from the date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the date of discharge from service. The respondents are directed to give effect to this order within a period of

four months from the date of receipt of certified copy of the order.

Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed of.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: May, 2022  
SB