

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No 994 of 2022**

Tuesday, this the 16<sup>th</sup> day of May, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 187604-Z, Ex-Hon SLt MCAA (W) II Mohammad Saleem, S/O Late Akhtar Hussain, R/O: H. No. 214, Lane C-3, 01-Turner Road, PO: Clement Town, District: Dehradun, Uttrakhand – 248002.

-----Applicant

Ld. Counsel for the Applicant: **Shri Parijaat Belaura, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Naval Staff (for Principal Director of Pay & Allowances) Integrated Head Quarters, Ministry of Defence (N), D-II Wing Sena Bhawan, New Delhi - 110011.
3. Officer in Charge, Naval Pension Office, C/O INS Tanaji, Sion – Trombay Road, Mankhurd, Mumbai - 400088.
4. The Principal Controller of Defence Account (Navy) Mumbai.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**  
**Central Govt. Counsel.**

**ORDER(ORAL)**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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:-

*“(I) To set aside the assessment of Competent Authority having assessed applicant’s Injury as NOT ATTRIBUTABLE TO SERVICE and recommendation of Release Medical Board which is based on assessment of Competent Authority and letter dated 26.10.2021 by means of which applicant’s Disability Pension has been rejected.*

*(II) To grant disability Pension @ 30% and round of the same to 50% giving the benefit of Govt. of India, Min. of Def. Letter dated 31.01.2001, w.e.f next date of discharge of applicant i.e 01.04.2021.*

*(III) To pay arrear of disability pension along with 12% interest from the next date of his discharge i.e. 01.04.2021 till it is actually paid.*

*(IV) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.”*

2. Briefly stated, applicant was enrolled in the Indian Navy on 09.03.1988 and discharged on 31.03.2021 in Low Medical Category. When doing PT in INS Hansa Goa applicant slipped and got injured with **Fractured Distal End of Radius Lt**”. At the time of

discharge from service, the Release Medical Board (RMB) held at INS Hansa, Goa on 06.01.2021 assessed his disability '**FRACTURE DISTAL END OF RADIUS LT (OPTD) ICD NO.-S52.5, W01**' @ 30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 26.10.2021. Thereafter, applicant preferred an appeal dated 24.02.2022 which has not yet been replied by the respondents. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that while the applicant was doing morning PT on 13.04.2015, he slipped on the road and got injured, applicant was on duty when he sustained injury, which ultimately resulted into 30% of disability for life, because of '**FRACTURE DISTAL END OF RADIUS LT (OPTD) ICD NO.-S52.5, W01**'. In spite of that RMB has denied the attributability on the ground that injury sustained during morning walk and it was not an official or organized task. 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 Naval, 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 element of disability pension. As such the applicant be granted disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 30% for life has been regarded as NANA by the RMB as the onset of disability occurred while posting at INS Hansa Goa (Peace). Injury occurred during morning walk and it was not an official or organized task. RMB comprising of Specialists is competent medical authority to determine attributability/ aggravation of any disability after examining individual's clinical condition, physical examination, alongwith all previous medical records in conjunction with facts pertaining to said disease and his service conditions. In the instant case the applicant was placed in low medical category for his disability '**FRACTURE DISTAL END OF RADIUS LT (OPTD)**'. His disability was considered neither attributable to nor aggravated by service as it was not an official or organized task. Injury occurred during morning walk. This makes the applicant ineligible for disability element of disability pension in terms of Regulation 105 B of Navy (Pension) Regulations, 1964 applicant is not entitled to disability element of disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

(a) Whether, the injury suffered by the applicant while doing PET at ship is to be treated on duty?

(b) Whether the injury caused to the sailor while doing PT in ship has causal connection with Navy service so as to hold that such injury is either attributable to or aggravated by Navy service?

6. As regards question (a) is concerned, the term duty has been defined in Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982 wherein it is enumerated that a person of the Armed Forces is treated on duty while performing anyone of the functions mentioned in paragraph (a), (b) and (c) of the Pension Regulations:-

*“Rule 12: Duty:- The Entitlement Rules 1982 A person subject to the disciplinary code of the Armed Forces is on duty:-*

*(a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him;*

*(b) When moving from one place of duty to another place of duty irrespective of the mode of movement;*

*(c) During the period of participation in recreation and other unit activities organized or permitted by service authorities and during the period of travelling in a body or singly by a prescribed or organized route.*

*Note 1: x x x x x x x x*

*Note 2: (d) Personnel while travelling between place of duty to leave station and vice versa to be treated on duty irrespective of whether they are in physical possession of railway warrant/concession vouchers/cash TA etc or not. An*

*individual on authorized leave would be deemed to be entitled to travel at public expense.*

*(e) The time of occurrence of injury should fall within the time an individual would normally take in reaching the leave station from duty station or vice versa using the commonly authorized mode(s) of transport. However, injury beyond this time period during the leave would not be covered.*

*(f) An accident which occurs when a man is not strictly 'on duty' as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India."*

7. As regards question (b) is concerned, the law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in(2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

*"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

*29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his*

*health is to be presumed due to service [Rule 5 read with Rule 14(b)].*

*29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

*29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*

*29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

*29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

8. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disability '**FRACTURE DISTAL END OF RADIUS LT (OPTD)**' is neither attributable to nor aggravated (NANA) by service on the ground that onset of disability was considered NANA by Injury Report dated 23.09.2015 therefore, the disability has no

casual connection to Navy service and applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. We are therefore of the considered opinion that in view of judgment passed by the Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors*** (supra) the disability of the applicant should be considered as aggravated by Naval service.

9. A bunch of Original Applications **(with Bhagwan Singh versus Union of India and Others, Original Application No. 49 of 2011 in the lead)** came up for hearing before AFT Chandigarh. In all these cases the applicants had received injuries in accidents while they were on authorised leave, without their fault or unlawful activities. Release Medical Boards had found the disability earned by them 20% or above. After considering a plethora of judgments for and against the proposition involved in the cases, this Tribunal, vide order dated 08 November 2011, allowed the original applications and directed the respondents to compute the disability pension and release the same in favour of the applicants. Union of India and its co-respondents challenged order dated 08 November 2011 before the Hon'ble Supreme Court by way of Civil Appeal D. No. 6612 of

2014 which was dismissed “both as barred by limitation and on merit” vide order dated 07 April 2014.

10. It would appear that in terms of Rule 12 of The Entitlement Rules 1982, the disability sustained during the course of an accident, which occurs when the personnel of the Armed Forces are not strictly on duty may also be attributable to service on fulfilling certain conditions enumerated therein, but there has to be a reasonable causal connection between the injuries resulting in disability and the military service.

11. As far as causal connection between disability and Navy duty is concerned, it has been held that for granting disability pension, there must be some causal connection with Navy duty. In the instant case, a court of inquiry was held and on perusal of court of inquiry it transpires that applicant sustained injury while doing PT in ship. In INS Hansa, PT was conducted once in a week, hence applicant went to do PT at his own to clear the PET Test which is essential for promotion. In view of this it can be said that there is causal connection between the incident and Navy duty. If a causal connection has been found established between the disabilities and Navy service, the injury shall be treated as attributable to service and applicant would be entitled to the disability pension. In the instant case, since the applicant sustained injury while doing PT in

ship for physical fitness, this act has causal connection with military duty. Hon'ble Apex Court as well as the various Benches of the Armed Forces Tribunal have held that if injury suffered by the individual has causal connection between duty, resulting in disability, the injury would be considered attributable to or aggravated by military service and individual shall be entitled for disability pension.

12. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of 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 those personnel who have been invalidated 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."*

13. After having heard the submissions of learned counsel of both sides the factual position that has been emerged is that applicant was enrolled in the Indian Navy on 09.03.1988 and discharged from service on 31.03.2021 in low medical category. He sustained injury **"Fracture Distal End of Radius Lt (OPTD)"** on 13.04.2015 while he was doing morning PT at 07.10 hrs to keep himself fit to meet the PET Criteria while posted in INS Hansa Goa. His disability was assessed as 30% for life and considered as Neither Attributable to nor aggravated by Military Service. The disability claim of the applicant was rejected vide order dated 26.10.2021 being NANA and his appeal was also rejected vide order dated 07.12.2022. While applicant was posted at Hansa, PT used to be conducted once in a week at Football ground of Hansa. Due to flying commitment, it was not possible in Hansa to conduct the PT daily. It was instructed by Commanding Officer/ Head of Department to sailors of ship to do

own PT to keep fit and to pass six monthly PET test. PET passed/failure reports are further forwarded to higher authorities. On 13.04.2015 when applicant was during morning PT to keep him fit to meet the PET criteria of service (2.5 km walk/run, 100 mtr swimming with 03 min floating and push up and sit up), he fell down in INS Hansa and sustained injury **“Fracture Distal End of Radius (OPTD)’**.

14. We have considered the applicant's case in view of above guiding factors and we find that, applicant was on bona fide duty when he sustained injury resulting in disability of a permanent nature to the extent of 30%. The activity in which he sustained injury being connected with his duty, the applicant is entitled to the disability element. 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. This conditionality applies even when a person is posted and present in his unit. Perusal of Court of Inquiry reveals that applicant was a disciplined sailor. Unfortunately, he met with accident while doing PT is ship. The circumstances of the incident have causal connection with Navy service and his disability is considered attributable to military duty and his injury is considered as connected with Navy duty. We therefore find that reasons given by the respondents that the disability is not attributable to military service are no reasons in the

eye of law. The applicant was on duty while he sustained injury, hence his disability is considered as attributable to Navy duty and applicant is entitled for grant of disability element.

15. In view of the above, Original Application No. 994 of 2022 deserves to be allowed, hence **allowed**. The impugned orders passed by the respondents rejecting claim for grant of disability element are set aside. The disability of the applicant is treated to be attributable to and aggravated by Navy service. The applicant is already in receipt of service element hence respondents are directed to grant disability element of the pension @ 30%, which shall stand rounded off to 50% from the next date of discharge. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment.

16. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated: 16<sup>th</sup> May, 2023

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