

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 957 of 2023

Tuesday, this the 14th day of May, 2024

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

Service No. 14625458-H, Ex. Nk. Ram Dayal Kushwaha, son of Shri Chandrabhan Kushwaha, resident of Nawapar, Deoria, Nawapar, Uttar Pradesh-274601.

..... **Applicant**

Counsel for the : **Maj. S.M. Mustafa (Retd.)**, Advocate
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. The Officer-in-Charge Records, EME Records, Pin 900453 C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

.....**Respondents**

Counsel for the : **Shri Ram Saran Awasthi**, Advocate
Respondents. 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 :-

- (a) *To set aside/quash the rejection order dated 17 February 2017 contained as Annexure A-1.*
- (b) *To pass an order/direction to Respondents to summoning of Release Medical Board proceedings as to ascertain the percentage of disability (b) NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPD) (S-72.4).*
- (c) *To issue order/direction to the respondents to grant disability element of disability pension for life from the next date of discharge i.e. 01 March 2020.*
- (d) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (e) *Cost of the Original Application be awarded to the applicant.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Army on 28.02.1995 and was discharged from service on 28.02.2017 in low medical category on completion of terms of engagement under Rule 13(3) Item III (i) of Army Rules, 1954. The applicant was granted Casual Leave from 24.10.2011 to 12.11.2011. During the aforesaid Casual Leave, on 30.10.2011, while going to market by motor cycle near Kotwa Village, the applicant met with an accident and sustained injury in his right leg,

which after investigation was found to be a case of “**NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPTD) (S72.4)**”. At the time of discharge from service, the Release Medical Board (RMB) held at 167 Military Hospital, C/o 56 APO on 21.10.2016 assessed his disabilities (i) ‘**RHEUMATOID ARTHRITIS (M06.9)**’ @15-19% for life as **aggravated by military service** and (ii) ‘**NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPTD) (S72.4)**’ @30% for life as neither attributable to nor aggravated (NANA) by service, **composite disabilities @40% for life**. The applicant’s claim for grant of disability pension was rejected vide letter dated 17.02.2017. It is in this perspective that the applicant has preferred the present Original Application. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that although the first disability of the applicant has been regarded as **aggravated by military service** by the RMB but it’s degree of disablement has been assessed @15-19% for life which is contradictory to the various Judgments and orders passed by the Hon’ble Apex Court as well as Hon’ble High Courts and Armed Forces Tribunal. In this regard he relied upon the order dated 18.01.2021 in Original Application No. 320 of 2019, *Sgt. Rohitash Kumar Sharma (Retd) Versus Union of India & Others*, wherein it has been held that “*there is no such barometer to test the disability to the extent of correctness upto 1%. In a case when disability is assessed between 15-19%, it can be plus minus 2%.*” He

further submitted that the applicant was on Casual Leave which is to be treated on duty when he sustained injury, which ultimately resulted into 30% second disability for life, because of '**NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPTD) (S72.4)**'. 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 (2nd disability) while on duty and same being not reported earlier at the time of his enrolment, he is entitled to disability element of disability pension.

4. Per contra, learned counsel for the respondents submitted that although the first disability of the applicant was regarded as **aggravated by military service** by the RMB but its degree of disablement was assessed @15-19% for life which is less than 20% as such the applicant is not entitled for the grant of disability element of disability pension for the first disability. He further submitted that the applicant was granted 20 days Casual Leave from 24.10.2011 to 12.11.2011. The applicant during the aforesaid Casual Leave met with an accident while going to market by motorcycle and sustained injury

in his Right leg. 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 right leg due to accident of motorcycle while going to market, there was no causal connection between the injury sustained and military service and, therefore, applicant is not entitled to disability element of disability pension for the second disability, 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 Major S.M. Mustafa (Retd.), Ld. Counsel for the applicant and Shri Ram Saran Awasthi, Ld. Counsel for the respondents and have also perused the record.

6. We have given our considerable thoughts to both sides and have carefully perused the records including Release Medical Board proceedings. The question which need to be answered are three folds:-

- (a) Whether the first disability is below 20% or will be assessed as 20% or above and whether applicant was invalidated out of service on account of the disability or was discharged on completion of terms of engagement,
- (c) Whether the applicant's second disability is attributable to or aggravated by military service
- (d) Whether the applicant is entitled for the grant of disability element of disability pension?

7. 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 28.02.1995 and discharged from service on 28.02.2017, his first disability was regarded as aggravated by military service but degree of disablement was assessed @15-19% for life which is less than 20%, he sustained injury in his right leg while on casual leave due to accident while going to market and placed in low medical category for the disability and his second disability was assessed at 30% for life, the disability claim of the applicant was rejected.

8. As per Regulation 53(a) of Pension Regulations for the Army, 2008 (Part - I), disability element of pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to

or aggravated by military service. Since, applicant's first disability element is 15-19% for life, applicant does not fulfil the requirement of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I).

9. Since applicant was discharged from service on completion of terms of engagement, his case does not fall within the category of invalidation in which circumstance he would have become eligible for grant of disability element of pension @ 20% in terms of reported judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) STPL (WEB) 468 where the operative part of the order reads:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

10. Further, contrary view to Release Medical Board dated 21.10.2016 to the extent of holding the applicant's first disability at 15-19% for life is not tenable in terms of Hon'ble Apex Court judgment in the case of **Bachchan Prasad vs Union of India &**

Ors, Civil Appeal No. 2259 of 2012, decided on 04th September, 2019 wherein their Lordships have held as under:-

“..... After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force Service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%.”

(underlined by us)

11. In light of the above judgment, inference may be drawn that Medical Board is a duly constituted body and findings of the board should be given due credence as such we do not find any reason to interfere with the assessment of RMB with regard to degree of disablement of first disability.

12. In addition to above, a bare reading of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I), makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or aggravated by the military service. The Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 ***Union of India & Ors vs Wing Commander SP Rathore***, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%.

Para 9 of the aforesaid judgment being relevant is quoted as under:-

“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”

13. Further, the respondents have denied disability element of disability pension to the applicant for the second disability on the reason that for getting disability element of 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 for the second disability, as there was no causal connection between the second disability and military service, he is not entitled for the same.

14. 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?.

15. 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.

16. 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”.

17. 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.

18. 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.”

19. We have considered the applicant's case in view of above guiding factors and we find that applicant was on Casual Leave and while he going to market near Kotwa Village he met with an accident and sustained injury resulting into second disability of to the extent of 30% for life, on account of '**NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPTD) (S72.4)**'. The activity in which he sustained injury being not connected with his military duties in any manner, he is not entitled to the disability element of disability pension for the second disability.

20. In the result, we hold that the claim of applicant's disability element of disability pension has rightly been rejected by the respondents which needs no interference. Resultantly, Original Application is **dismissed**.

21. No order as to cost.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 14 May, 2024

AKD/-