

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 656 of 2022**

Monday, this the 14<sup>th</sup> day of November, 2022

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

No. 7775563P, Hav Mahesh Kumar  
S/o Ram Swarup Sharma  
R/o House No. 491, Sector 6C, Vrindavan Yojana,  
Raebareli Road, Telibagh, Lucknow (UP) – 226025

..... **Applicant**

Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQs of MoD (Army), Post – DHQ, New Delhi – 110011.
3. Addl. Dte Gen of Personnel Services, Adjutant General’s Branch, AG/PS-4 (Imp-II) IHQ of MoD (Army), DHQ PO, New Deli – 110011.
4. Officer-in-Charge, Sena Police Corps Abhilekh Karyalaya, Corps of Military Police Records, PIN – 900493, C/o 56 APO.
5. Principal Controller of Defence Accounts (PCDA) (Pension), Draupadi Ghat, Allahabad (UP).

.....**Respondents**

Counsel for the Respondents : **Shri Ram Saran Awasthi**,  
Central Govt. Counsel

**ORDER (Oral)**

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

- (a) *An order or direction to the respondents for paying the disability pension wef 31.12.2018 (date of discharge from the service) with the suitable interest.*
- (b) *To allow the OA with the costs.*
- (c) *Any other or further order or direction which this Hon'ble Court may deem just, fit and proper in the circumstances of the case and in the interest of the justice.*

2. Counter affidavit filed by the respondents is taken on record.

3. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Army on 08.10.1987 and was discharged from service on 31.10.2011 in low medical category after rendering 24 years and 24 days of service under Rule 13(3) Item III (iii) (i) Army Rules, 1954. On 07.04.2010 applicant met with a road traffic accident while on part of annual leave when he was returning from Haridwar to his home town in a civil car and sustained injury, which after investigation was found to be a case of "**FRACTURE CV5 (OPTD)**". Before being discharged from service, Release Medical Board (RMB) was held at 167 Military Hospital in which applicant was found suffering with 30% disability for life. Despite being discharged from service in low medical category, disability pension was denied to applicant on the reason that

his disability was neither attributable to nor aggravated by military service and has no causal connection with military duty vide order dated 05.01.2012. Thereafter, applicant preferred first and second appeals which were also rejected by the respondents vide order dated 15.02.2013 and 20.05.2016 respectively. It is in this perspective that the applicant has preferred the present Original Application.

4. Learned counsel for the applicant submitted that applicant sustained injury during service and his discharge from service be deemed to be invalidated out of service. Before discharge of the applicant, Release Medical Board was held in 167 Military Hospital and his ID 'Fracture CV5 (Optd)' which applicant sustained on 07.04.2010 on duty was assessed @ 30% for life and medical authorities opined that ID is NANA. The disability pension claim of the applicant has been rejected by the respondents vide order 05.01.2012 unlawfully. Thereafter, applicant preferred first appeal dated 31.07.2012 which was rejected by the respondents vide order dated 15.02.2013 and second appeal preferred by the applicant was also rejected by the respondents vide order dated 20.05.2016.

5. Learned counsel for the applicant further submitted that applicant's case is fully covered with the judgment of the Hon'ble Apex court in **Dharamvir Singh vs. Union of India & Ors**, decided on

02.07.2013 vide citation 2014 STPL (Web) 468 SC, **Sukhwinder Singh vs. Union of India** (Civil Appeal No. 5605 of 2010, decided on 25.06.2014) and **Union of India vs. Ram Avtar**, decided on 10.12.2014. He pleaded that applicant be granted disability element of disability pension @ 30% for life duly rounded off to 50% for life from the date of discharge from service, i.e. 31.10.2011.

6. Per contra, learned counsel for the respondents submitted that the applicant while serving with 2 (I) Armoured Brigade Provost Unit was granted 27 days of part of Annual Leave w.e.f. 29.03.2010 to 24.04.2010. On 07.04.2010, applicant met with a road traffic accident while on Part of Annual Leave and sustained injury. He was downgraded to low medical category for the disability '**Fracture CV5 (Optd)**' w.e.f. 03.07.2010. The Court of Inquiry opined that applicant was on Part of Annual Leave at the time of accident and not on military duties, hence, the injury sustained by the applicant is not attributable to military service. The RMB of the applicant was held on 23.06.2011 and his disability '**Fracture CV5 (Optd)**' was assessed @ 30% for life which was considered as neither attributable to nor aggravated by military service (NANA), hence, under the provision of para 53 (a) of Pension Regulations for the Army 2008 and disability being not connected with

service having no causal connection with military duty, applicant is not entitled for disability element.

7. Learned counsel for the respondents further submitted that in the given facts, applicant being injured in a road traffic accident during leave, there was no causal connection between the injury sustained and military service and, therefore, applicant is not entitled to disability element of disability pension, as he is claiming. In support, learned counsel for the respondents has placed reliance on the judgments of the Hon'ble Apex Court in **Union of India vs. Jujhar Singh** in Civil appeal No. 4281 of 2006, decided on 15.07.2011 and submitted that applicant is not entitled to disability element as he sustained injury in a road traffic accident while on annual leave and his injury/disability has no causal connection with military duty.

8. We have heard learned counsel for the parties and perused the record.

9. 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 08.10.1987 and discharged from service on 31.10.2011, he sustained injury in a road traffic accident while on annual leave and placed in low medical category for the disability "**FRACTURE CV5 (OPTD)**" vide Release Medical Board report

dated 23.06.2011 and his disability was assessed at 30% for life as NANA, the disability pension claim of the applicant was rejected.

10. The respondents have denied disability element of disability pension to the 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 injury/disability and military service, and this being lacking in applicant's case, as there was no causal connection between the disability and military service, he is not entitled for the same.

11. 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?

12. 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.

13. 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”.

14. 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.

15. 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.”*

16. We have considered the applicant's case in view of above guiding factors and we find that applicant was on Part of Annual Leave and he sustained injury in a road traffic accident while returning from Haridwar to his home town in a civil car resulting into disability of to the extent of 30% for life, on account of **“FRACTURE CV5 (OPTD)”**. The activity in which he sustained injury being not connected with his

military duties in any manner, he is not entitled to the disability pension for the same.

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

18. No order as to costs.

19. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: November, 2022  
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