

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 12 of 2024

Tuesday, this the 19<sup>th</sup> day of November, 2024“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”No. 3186642N Ex. Nk. Pawan Kumar, S/o Sri Rajpal Singh, R/o  
HIG-22/3C, Avas Vikas Ist DM Road, District Bulandhsahar (UP).

..... Applicant

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

Versus

1. Chief of Army Staff, Army HQs, New Delhi.
2. Officer-in-Charge, Records, The JAT Regiment, Bareilly.
3. PCDA (P), Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Anurag Mishra**, 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 :-

(i) *to quash AHQ, AG’s Branch letter No. B/40111/MA (P)AG/PS-5 dt 20 July 2006 (Annexures A-3 to this OA) and direct the respondents to grant disability*

*pension to the applicant, as per his entitlement, duly rounded off to 50%, along with its arrears with interest.*

- (ii) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.*
- (iii) Cost of the case may be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 29.10.1993 and discharged on 30.06.2011 in Low Medical Category before completion of terms of engagement (deemed to be invalided out of service) under Rule 13 (3) Item III (V) of the Army Rules, 1954 read in conjunction with Rule 13(2) of the Army Rules, 1954 after rendering 17 years, 08 months and 01 day of service. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at Military Hospital, Bareilly on 28.05.2011 assessed his disabilities (i) **'PRIMARY HYPERTENSOIN'** @30% for life, (ii) **'COMMINUTED FRACTURE DISTAL END OF FEMUR (RT) OPTD (OLD)'** and (iii) **'FRACTURE RADIAL AND ULNAR STYLOID (OLD)'**, combined second and third disabilities @20% for life, **composite disabilities @40% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 27.08.2011. The applicant preferred application dated 19.03.2023 under Right to Information Act, 2005 for seeking photocopy of his medical/other documents which was provided to him vide letter

dated 28.04.2023. It is in this perspective that the applicant has preferred the present Original Application.

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 at the time of enrolment in Army. The diseases/injuries of the applicant were contracted during the service, hence they are attributable to and aggravated by Military Service. He further submitted that that during the year 2003, when the applicant's unit was located at Dehradun, the applicant sought 60 days Annual Leave during September-October, 2003. He came his village Kisholi, near Bulandhsahar to spend his leave. On 24.10.2003, when the applicant's leave was about to expire, to re-join his duty, he went to railway station, Bulandshahar to get his return journey reservation done on his cycle. After getting reservation when the applicant was returning to his village a motor cyclist hit the applicant from the back side. In the result thereof the applicant sustained serious injuries and was taken to Military Hospital, Meerut, which after investigation found to be a case of second and third disabilities and applicant was placed in low medical category. During the year 2004, the applicant's unit, 5 JAT Regiment was placed at Machhal Sector Bandipura in Jammu & Kashmir. This area was Super High Altitude area, full of snow at all times, with minus degree temperature in CI Ops. While

being posted here the applicant had some health problem. The applicant's condition remained normal. In the year, 2008 the applicant started having pain in his chest. On reporting to MI Room he was referred to 187 Military Hospital, Bikaner where he was admitted and investigations were carried out and the applicant was found to be a case of Primary Hypertension. Since the applicant was invalided out from service before completion of terms of engagement he is entitled for the grant of disability pension. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, 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 composite disabilities of the applicant @40% for life have been regarded as NANA by the RMB, hence as per Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *"An individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more"* and Regulation 81 (a) of the Pension

Regulations for the Army, 2008 (Part-I) which provides that *“Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section”* the applicant is not entitled to disability element of disability pension. He pleaded for dismissal of the Original Application.

5. With regard to second and disabilities, Ld. Counsel for the respondents submitted that the applicant was granted 60 days Annual Leave from 02.09.2003 to 31.10.2003. During the aforesaid leave on 24.10.2003 the applicant met with an accident near his home town and sustained injuries, as per Injury Report dated 06.06.2004. However, the injuries of applicant were considered as NANA by service as per Injury Report (IAFY-2006) dated 06.06.2004 by a Court of Inquiry which was held at 5<sup>th</sup> Battalion The JAT Regiment on 30.03.2004. Thereafter, the applicant was downgraded to low medical category A3 (T-240 with effect from 11.02.2004 for the second and third disabilities. As held in report dated 28.05.2011 of the RMB Proceedings, applicant was on Leave when he sustained injuries which resulted in second and third disabilities. On subsequent reviews, the applicant was finally placed in A-2 (Permanent) with effect from 28.07.2004 vide AFMSF-15 dated 09.08.2004. 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 injuries and military service. He further submitted that unless injuries sustained have causal connection with military service, armed forces personnel cannot be allowed disability pension merely on the reason of being on duty or disabilities/injuries were not reported/detected while being enrolled or commissioned. He further submitted that in the given facts, applicant being injured while going on his cycle from his village to another place for personal work, there was no causal connection between the injuries sustained and military service and, therefore, applicant is not entitled to disability element of disability pension for the second and third disabilities, 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.

6. 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 two folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

7. 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 first disability '**PRIMARY HYPERTENSION**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of first disability on 03.04.2008 while posted in Peace location (Bikaner, 5 JAT), therefore, 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 element



of disability pension to applicant for the first disability is cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 29.10.1993 and the first disability has started after more than 14 years of Army service i.e. on 03.04.2008. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the first disability of the applicant should be considered as aggravated by military service.

9. With regard to second and third disabilities we find that the applicant sustained injuries in on 24.10.2003 during Annual Leave granted to him from 02.09.2003 to 31.10.2003 while he was going on his cycle from his village to another place for personal work. The respondents have denied disability element of disability pension to the applicant for the second and third disabilities on the reason that for getting disability element of disability pension, in respect of injuries sustained during the course of employment, there must be some causal connection between the disabilities and military service, and this being lacking in applicant's case, as there was no causal connection between the second and third disabilities and military service, he is not entitled for the same.

10. 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?.

11. 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.

12. 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”.

13. 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.

14. 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.”

15. We have considered the applicant’s case in view of above guiding factors and we find that applicant was on Annual Leave and while going on his cycle from his village to another place for persona work sustained injuries resulting into second and third disabilities. Although in the Original Application the applicant has stated that on 24.10.2003, when the applicant’s leave was about to expire, to re-join his duty, he went to railway station, Bulandshahar to get his return journey reservation done on his cycle and after getting reservation when the applicant was returning to his village a motor cyclist hit the applicant from the back side but he has failed to produce any document in support of his averments. We find that in the Report on Accidental and Self-Inflicted Injuries – Officers, JCOs/OR/NCs(E) (including foreign national service personnel of India) the applicant himself has stated that **“eSa cktkj lkbfdy ls tk jgk Fkk fiNs ls eksVjlkbfdy okys us VDdj ekj nh vkSj eq>s PkksV yx xbZ ”**. As such the activity in which he sustained injuries being not connected with his military duties in any manner, he is not entitled to the disability element of disability pension for the second and third disabilities.

16. 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 the 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."*

17. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

18. 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.”*

19. As such, in view of the decision of Hon'ble Supreme Court in the cases of ***Union of India and Ors vs Ram Avtar & ors (supra)*** and ***Shiv Dass (supra)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant for the first disability from three preceding years from the date of filing of the Original Application.

20. In view of the above, the **Original Application No. 12 of 2024** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the first disability, are set aside. The first disability of the applicant is held as aggravated by Army Service. The second and third disabilities are held as NANA have been opined by the RMB as they have no causal connection with the military service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life for the first disability w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @30% for life which would stand

rounded off to 50% for life for the first disability w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 01.01.2024. 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.

21. No order as to costs.

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

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 19 November, 2024

AKD/-