

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 908 of 2023**Wednesday, this the 06<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. 2886308H Hav. Murti Singh Bisht (Retd), S/o Shri Balbeer Singh Bisht, R/o House No. 280D, Pushp Vihar, Garhi Cantt., Dehradun-0248003 (UK).

**..... Applicant**Counsel for the : **Lt. Col. Nidhkant Dhyani (Retd)**, Advocate  
Applicant **Ms. Upasna Mishra**, Advocate  
**Shri Raj Kumar Mishra**, Advocate

Versus

1. The Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. The Additional Directorate General Personnel Services/PS-4, AG’s Branch, IHQ of MoD (Army), Territorial Army, IHQ of MoD (Army), Defence Office Complex, 5<sup>th</sup> Floor, ‘A’ Block, K G Marg, New Delhi-110001.
4. The Records Office, Garhwal Rifles Regiment, Lansdowne-246155 (Uttarakhand).

**.....Respondents**Counsel for the : **Shri R.C. Shukla**, 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 :-

*“8.1 To issue order and directions to grant the benefits of disability element to the applicant from 01 June 2008 onwards for the disability “HEAD INJURY DUFFUSE AXONAL INJURY” conceded as attributable to military service while serving under Army Act.*

*8.2 To quash the impugned order bearing No B/38046A/144/2010/AG/PS-4 (2<sup>nd</sup> Appeal) dated 29 May 2014, vide which the disability pension claim of the applicant has been rejected.*

*8.3 Issue an order or direction to the release the arrears and consequential benefits arise out of award of disability element to the applicant with 12% simple interests with effect from 01 June 2008.*

*8.4 Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.*

*8.5 To award the cost of this petition to the applicant.”*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Garhwal Rifles Regiment of Indian Army on 19.12.1988 and was invalided out from service on 12.06.2008 in low medical category before completion of terms of engagement under Rule 13(3) Item III (iii) of Army Rules, 1954. The applicant was granted Service Pension vide PPO No. S/060914/2008 (Army) dated 21 Jan 2009. The applicant was granted 15 days Casual Leave from 01.04.2007 to 15.04.2007. During the aforesaid Casual Leave, on

06.04.2007 at about 0945 hours the applicant met with an accident and sustained injury while going from House to Market on a motorcycle, due to hit by a civil truck from behind, which after investigation was found to be a case of "**HEAD INJURY WITH DIFFUSE AXONAL INJURY**". Before being invalided out from service, Invaliding Medical Board (IMB) was held at Military Hospital, Bareilly on 26.05.2008 in which applicant was found suffering with 100% disability for life. Despite being invalided out 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 vide letter dated 05.11.2008. The applicant preferred First Appeal which too was rejected vide letter dated 06.05.2010. The Applicant also preferred Second Appeal which too was rejected vide letter dated 30.05.2014. The applicant sent Legal Notice dated 19.10.2013 but of no avail. The applicant's wife Smt. Urmila Bisht filed a Mercy Appeal dated 04.02.2023 against the rejection of disability pension but of no avail. The applicant sent another Legal Notice dated 10.04.2023 which too was rejected vide letter dated 26.04.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that the applicant was on Casual Leave, which is to be treated on duty, when he sustained injury, which ultimately resulted into 100% disability for life, because of "**HEAD INJURY WITH DIFFUSE AXONAL INJURY**". 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. He further submitted that the Court of Inquiry found that the applicant is not to be blamed for the injury sustained in the accident, and the injury is attributable to military service. The Injury Report, IAFY-2006 prepared by the Brigade Headquarters on 17.05.2008, declared the injury sustained as attributable to military service. The applicant being disabled permanently with 100% is entitled for grant of disability element of disability pension. 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.

4. Per contra, learned counsel for the respondents submitted that the applicant was granted 15 days Casual Leave from 01.04.2007 to 15.04.2007. The applicant during the aforesaid Casual Leave met with an accident and sustained injury while going from House to Market on motorcycle due to hit by a civil truck from behind. Although the findings and the opinion of the Court of Inquiry revealed that the injury sustained by the applicant was due to road accident and he was

not to be blamed for the injury sustained in the accident. The Court of Inquiry further declared that the injury sustained to the applicant is attributable to military service. In this connection, an attributability certificate was also issued by the Commander HQ 71 Mountain Brigade in terms of Rule 13 (a) of the Entitlement Rules to Casualty Pensionary Award to Armed Forces Personnel, 2008. The disability pension claim was processed for adjudication before the competent authority i.e. Officer-in-Charge, Records, The Garhwal Rifles on 29.10.2008 but the same was rejected as it was opined that the disability was neither attributable to nor aggravated by military service, which was communicated to the applicant vide letter dated 05.11.2008. As held in report dated 26.05.2008 of the Invaliding Medical Board Proceedings, applicant was on Leave. 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 while going from House 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, 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 Ld. Counsel for the parties and have also perused the record.

6. 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 19.12.1988 and invalided out from service on 12.06.2008, he sustained injury while on casual leave due to road accident while driving a motorcycle and placed in low medical category for the disability "**HEAD INJURY WITH DIFFUSE AXONAL INJURY**" vide Invaliding Medical Board report dated 26.05.2008, and his disability was assessed at 100% for life, the disability claim of the applicant was rejected.

7. The respondents have denied 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 disability and military service, and this

being lacking in the applicant's case, as there was no causal connection between the disability and military service, he is not entitled for the same.

8. 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?.

9. 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.

10. 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”.

11. 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.

12. 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.”

13. We have considered the applicant’s case in view of above guiding factors and we find that applicant was on Casual Leave and while going from House to Market on motorcycle he was hit by a civil truck from behind and sustained injury resulting into disability of to the extent of 100% for life, on account of **“HEAD INJURY WITH DIFFUSE AXONAL INJURY”**. We also find that in the Report on Accident and Self-Inflected Injuries Officers the applicant himself stated that **“eSa NqV~Vh ds nkSjku ?kj ls lqcg 9 cts eksVj lkbfdy ij cktkj tk jgk Fkk jkLrs esa ihNs ls V<sup>a</sup>d us VDdj ekjk ftlls eq>s pksV vk xÃ ”**. Further, in the Court of Inquiry as Witness No. 1 in para 2 the applicant himself has given his statement that **“I, No. 2886308H Hav Murti Singh of 18 GARH RIF was on 15 days CL wef 01 Apr 2007 to 15 Apr 2007. I hereby produce a photocopy of leave certificate issued by Adjutant 18 GARH RIF. (Photocopy of leave**

*certificate issued by Adjutant 18 GARH RIF att as exhibit 'A'). During my leave, I had gone to my native village Chholgaon, PO – Barkot, Dist – Hehri, Uttarakhand to attend a religious ceremony. On 06 Apr 2007, at around 0945 h, while I was returning to Dehradun along with my second son Master Kuldeep Singh on a motor cycle. I was hit by a civil truck from behind and I lost my consciousness. I do not remember anything after that”.*

14. In view of the above statements given by the applicant himself, we are of the considered opinion that 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.

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

16. No order as to cost.

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

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

Dated: 06 November, 2024

AKD/-