Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 496 of 2023

Tuesday, this the 31st day of October, 2023

"Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"

No. 766117-L Ex. Sgt. Mahendra Kumar Kesharwani, S/o Shri Dwarika Prasad Kewsharwani, R/o EWS-11-12, Devghat Jhalwa, Awas Vikas Yojana, Jhalwa Pipalgaon, Allahabad-211012.

….. **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 Air Staff, Air Headquarters (Vayu Bhawan), Rafi Marg, New Delhi-110110.

3. Principal Director, Directorate of Air Veterans, Subroto Park, New Delhi-110010.

4. The Dir-III (Appeal), Directorate of Air Veterans, Air HQ, Subroto Park, New Delhi-110010.

5. Joint Controller of Defence Accounts (Air Force), Subroto Park, New Delhi-110010.

.....**Respondents**

Counsel for the Respondents. : **Ms. Prerna Singh,** Advocate
Central Govt. Counsel

ORDER

"Per Hon'ble Mr. Justice Ravindra Nath Kakkar, 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 issue/pass an order or directions to set aside/quash the order/letter No. RO/2703/766117/ 11/P&W(DP/RMB) dated 21.12.2010 passed by respondents annexed as Annexure No. 1 to this original application.

(ii) To issue/pass an order or directions to the respondents to grant disability element of disability pension @30% from the date of discharge i.e. 31.07.2011 along with 12% interest on arrear in light of Hon'ble Apex Court judgment.

(iii) To issue/pass an order or directions to the respondents to grant subsequently benefit of rounding off/broad banding off disability pension @30% to @50% to the applicant from the date of discharge i.e. 31.07.2011 along with 12% interest on arrear in light of Hon'ble Apex Court judgment and Government letter dated 31.01.2001.

(iv) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(v) To allow this original application with costs.

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Air Force on 13.07.1991 and

discharged from service on 31.07.2011 in low medical category on fulfilling the conditions of enrolment after rendering 20 years and 19 days of service. On 21.08.2008 at 10 PM applicant sustained injuries while he was coming back to his home from Sector 48 Chandigarh, a cow hit his scooter, which after investigation was found to be a case of (i) "**FRACTURE PATELLA (RT)**" and (ii) '**FRACTURE DISTAL RADIUS (RT)'**. Before being discharged from service, Release Medical Board (RMB) was held at SMC, 3BRD, Air Force on 30.08.2010 in which applicant was found suffering with disabilities @15-19% each, composite disabilities @30% for life. Despite being discharged from service in low medical category, disability element of disability pension was denied to applicant on the reason that his disability was neither attributable to nor aggravated by military service vide letter dated 29.12.2010. The applicant preferred First Appeal dated 17.10.2022 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was the applicant was not on duty, after completion of his tour duty, the applicant went to market which is the nearest place to available with station, to purchase daily used items and on returning to home a cow hit his scooter and he sustained injuries, which ultimately resulted into composite disabilities @30% for life, because of "**FRACTURE PATELLA (RT)**" and '**FRACTURE DISTAL RADIUS (RT)'**, which has causal connection with the Air Force Duty. Ld. Counsel for the

applicant relied upon the law laid down by the Hon'ble High Court of Punjab and Haryana at Chandigarh in the case of ***Rakesh Kumar Sharma Versus Union of India***, CWP No. 4757 of 2013, decided on 12.11.2013. He also 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 Air Force, 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 injuries which have causal connection with Air Force duty and same being not reported earlier at the time of his enrolment, he is entitled to disability element of disability pension and its rounding off to @50%.

4. Per contra, learned counsel for the respondents submitted that as per the statement of the applicant he met with an accident at 10 PM on 21.08.2008 when he was coming back to his home from Sector 48 Chandigarh, a cow hit his scooter and he sustained injury and he also stated that he was not on duty at that time. The Release Medical Board Proceedings held on 30.08.2010 opined that the disabilities are neither attributable to nor aggravated by Air Force Service. 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 disability was not reported/detected while being enrolled or commissioned. She further submitted that in the given facts, applicant being injured while coming back to home from Sector 47 after purchasing daily used items from market, there was no causal connection between the injuries sustained and Air Force service and, therefore, applicant is not entitled to disability element of disability pension, as he is claiming, in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *"Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over"*. 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 Shri Manoj Kumar Awasthi, Ld. Counsel for the applicant and Ms. Prerna Singh, Ld. Counsel for the respondents 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 Air Force on 13.07.1991 and discharge from service on 31.07.2011, the applicant went to market which is the nearest place to available with station, to purchase daily used items and on returning to home a cow hit his scooter and he sustained injuries, which ultimately resulted into composite disabilities @30% for life, because of "**FRACTURE PATELLA (RT)**" and '**FRACTURE DISTAL RADIUS (RT)'**, vide Relase Medical Board report dated 30.08.2010, the disability claim of the applicant was rejected.

7. The respondents have denied disability element of disability pension to the applicant on the reason that for getting disability pension, in respect of injuries sustained during the course of employment, there must be some causal connection between the injuries and Air Force service, and this being lacking in applicant's case, as there was no causal connection between the disabilities/injuries and Air Force 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 duly?.

(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'.*
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> *(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.*
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> *(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.*
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> *(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 the applicant went to market to purchase daily used items and on returning to home a cow hit his scooter and he sustained injuries, which ultimately resulted into composite disabilities @30% for life, because of "**FRACTURE PATELLA (RT)**" and '**FRACTURE DISTAL RADIUS (RT)'**. The activity in which he sustained injuries being not connected with his Air Force duties in any manner, he is not entitled to the disability element of disability pension for the same.

14. The law laid down by the Hon'ble Punjab and Haryana High Court at Chandigarh in the case of ***Rakesh Kumar Sharma Versus Union of India (Supra)*** is not applicable in the instant case as in that case the applicant was going to get his uniform in order to attend an official ceremony when he met with an accident, hence, there was a causal connection between the military service and in the instant case there is no causal connection between the Air Force service and the activity in which he sustained injuries.

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.

17. Ld. Counsel for the applicant orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 30 October, 2023

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