

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 20 of 2020

Wednesday, this the 09th day of December, 2020

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 773007-A Ex-Sgt Jyotish Singh, S/O Sri Rajballam Singh, R/O C/O Sri Manoj Kumar Singh, House No 45C/10, Pandeyganj (infront of Krishna Mandir) Punjabi Samaj, PO-Gorakhpur University, Gorakhpur-273002 (Uttar Pradesh).

..... Applicant

Learned Counsel for the Applicant : **Shri PK Shukla**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), South Block, New Delhi.
2. Chief of Air Staff, Air HQrs, Vayu Bhawan, New Delhi-110106.
3. Director, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. Jt CDA (AF), C/O AFCAO, Subroto Park, New Delhi-110010.
5. PCDA (P), (Air Force), Draupadighat, Allahabad-211014 (UP).

..... Respondents

Learned counsel for the : **Shri Shyam Singh**
Respondents Central Govt Counsel.

ORDER

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

- (i) *To quash or set aside the Respondents letter dated 08.09.2016 (Annexure A-1 of OA).*
- (ii) *To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 01.12.2016 (date of discharge :30.11.2016) with all consequential benefits including rounding off benefit from 20% to 50% in terms of Govt of India letter dated 31.01.2001 and judgment passed by Hon'ble Apex Court in case of Ram Avtar vs UOI & Others.*
- (iii) *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Air Force on 07.11.1996 and after having rendered more than 20 years service, he was discharged from service on 30.11.2016 in low medical category on fulfilling the conditions of his enrolment. While posted at New Delhi on 29.04.2009, he met with an accident while going to Nehru Place as pillion rider along with his friend. In the accident, applicant got injured with 'Fracture Distal End of Radius (Lt) Wrist'. He was hospitalized for treatment and served in the Air Force for another seven years till discharge from service. Before being discharged from service on 30.11.2016, Release Medical Board was held in which applicant was found suffering with 20% disability of permanent nature. Despite being discharged in low medical category 'A4GA', disability pension was denied to applicant on the reason that his disability

was neither attributable to nor aggravated by military service despite being on duty. Applicant's disability pension claim was rejected vide order dated 08.09.2016, and thereafter, first appeal was also rejected vide order dated 18.02.2020. Feeling aggrieved, applicant has filed the instant O.A. for the grant of disability pension.

3. Learned counsel for the applicant submitted that, admittedly, applicant was on duty when he sustained injury, which ultimately resulted into 20% permanent disability, because of "**Fracture Distal End of Radius (Lt) Wrist (Optd)**". 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 should 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 while on duty and same being not reported earlier at the time of his enrolment, he is entitled to disability pension. In support, learned counsel for the applicant has placed reliance on the judgment in the case of **Associated Cement Companies Ltd Vs PN Sharma**, AIR 1965 SC 1596: (1965) 2 SCR 366 : (1965) 1 LLJ 433=1964-65 (27) FLR 204, **Sukhwinder Singh vs. Union of India & Ors** reported in (2014) STPL (WEB) 468 SC and **Dharamvir Singh Vs. Union of India and Ors** reported in (2013) 7 SCC 316.

4. Per contra, learned counsel for the respondents submitted that it is not disputed that applicant sustained injury resulting in disability, as

held in report dated 05.02.2016 of the Medical Board Proceedings, applicant being on duty and visiting Nehru Place on Private Scooter could be treated on duty as he was not on any type of leave. However, for grant of 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. He further submitted that in the given facts, applicant being on duty met with an accident while going on a scooter to Nehru Place as pillion rider and met with an accident, there was no causal connection between the injury sustained and military service and, therefore, applicant is not entitled to 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 03rd July, 2019 in Special Appeal arisen on Diary Number 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 20th September 2019 in Civil Appeal No 4981 of 2012.

5. We have heard Shri PK Shukla, learned counsel for the applicant and Shri Shyam Singh, learned counsel for the respondents and have also perused the record.

6. After having heard the submissions of learned counsel of both sides, we find that there are certain facts admitted to both the parties, i.e., applicant was enrolled in the Indian Air Force on 07.11.1996 and discharged from service on 30.11.2016 (AN) on completion of terms of engagement, he met with an accident while proceeding to Nehru Place on a scooter and placed in low medical category 'A4GA' for the disability "**Fracture Distal End of Radius (Lt) Wrist (Optd)**" vide AFMSF-16 dated 05.02.2016 and his disability was assessed at 20% for life neither attributable to nor aggravated by military service, the disability claim of the applicant was rejected on 08.09.2016 with advise to prefer an appeal against the rejection order within six months from the date of rejection letter, if not satisfied, and applicant preferred appeal which was rejected vide order dated 18.02.2020. Learned counsel for the respondents has also conceded, during the course of hearing, that when applicant sustained injury resulting into disability, he was on duty.

7. The respondents have denied disability pension to 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 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 also. 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 vs. Union of India & Ors**, decided on 17.08.1999 was allowed holding that respondent was entitled to disability pension. Aggrieved by the same, a 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 held that while deciding the question of admissibility of disability pension, it has to be seen that there must be some causal connection between the injury or death and military service. 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 attributable 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. In the present case there seems to be no causal connection of accident with military duty.

11. Regarding question number 3, the Hon'ble Apex Court held that if any 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 as attributable to or aggravated by military service.

12. The Hon'ble Apex Court while summing up has also taken note of the guiding factors of the Armed Forces Tribunal, Regional Bench, Chandigarh in the case of **Jagtar Singh v. Union of India & Ors**, decided on November 02, 2010 in T.A. No. 60 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 is to be required to be dealt accordingly. Those guiding factors are reproduced below for the ready 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 is in no way connected to his being on duty as understood in the sense contemplated by **Rule 12 of the Entitlement Rules, 1982**, it would neither be the legislative intention nor to our mind would it be the 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 of 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 the 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 causal 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 unconnected 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 a 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 Rule 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 behaviour.

(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, though, applicant was on duty when he met with accident and sustained injury resulting disability of permanent nature to the extent of 20%, on account of **'Fracture Distal End of Radius (Lt) Wrist (Optd)'**, the activity in which injury was sustained being not connected with his military service in any manner, applicant is not entitled to the disability pension for the same. We also

find that rulings relied upon by the applicant being based on different facts and circumstances are of no help to applicant.

14. We also take note of rejection letter of first appeal dated 18.02.2020 whereby the competent authority while rejecting applicant's appeal has made following remarks:-

“Air Veteran sustained injury on 29 Apr 09 when he met an accident while going to Nehru Place as pillion rider along with his friend. At the time of sustaining injury air veteran was not in performance of Air Force duty. He was neither on the way/returning from place of residence to place of duty/leave station or vice versa. The injury has been held as not attributable to service as per injury report dated 21 May 09. He was treated adequately at service hospitals and there was no worsening of condition because of military service. Hence, the disability is conceded as neither attributable to nor aggravated by military service.”

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, O.A. is **dismissed**.

16. No order as to cost.

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

Dated : December, 2020
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