

**AFR**  
**Court No. 1**

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

**ORIGINAL APPLICATION No. 608 of 2021**

Thursday , this the 19 day of May, 2022

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

No. 05867H Lt Cdr Vineet Walia (Retd), S/o Shri Vinod Kumar Walia,  
R/o Naveen Nagar, Near Shiv Mandir Saharnpur.

**..... Applicant**

Ld. Counsel for the: **Shri Sarvesh Kumar Verma, Advocate.**  
Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence,  
New Delhi.
2. The Chief of Naval Staff, Integrated Headquarters,  
Ministry of Defence (Navy), New Delhi.
3. The Commodore, Directorate of Pay & Allowances,  
Integrated headquarters, Ministry of Defence (Navy),  
Room No 108, Naval HQs Annex Talkatora  
Stadium, New Delhi – 110004.
4. The Principal Controller of Defence Account (Navy),  
Cooperage Marg, Mumbai- 400039.

**.....Respondents**

Ld. Counsel for the  
Respondents.

**: Shri Amit Jaiswal,  
Central Govt. Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 the impugned order Directorate of Pay & Allowances, IHQ MoD (N) letter PN/7990/DP/20 dated 09 Apr 21 are being annexed as Annexure No 1 to this Original Application.*
- (II) To set aside the approved RMB dated 26.09.2020 annexed as Annexure No 2 to this Original Application and grant the durability for disability (1) up to life.*
- (III) To grant the disability pension upto the extent of war injury pension @ 30% for life and round off to 50% giving the benefit of Govt of India, Ministry of defence letter dated 31.01.2001; wef date 10.07.2020, because date of discharge of applicant is 09.07.2020.*
- (IV) To pay the arrears of disability pension along with interest of 18% wef 10.07.2020 till it is actually paid.*
- (V) To award any other relief as considered by this Hon’ble Tribunal in favour of the applicant.”*

2. Briefly stated, applicant was commissioned in Indian Navy on 10.07.2006 as a Short Service Commission Officer (SSC) and retired from service on 09.07.2020 after completing 14 years of service in the rank of Lieutenant Commander in Low Medical Category S2A2 (Permanent). At the time of retirement, the Release Medical Board (RMB) held on 17.01.2020 assessed his disability '(i) **"FRACTURE CLAVICE (RT)"** and (ii) **"HYPOTHYROIDISM"** @ 30% for two years and opined the disability to be as attributable to and aggravated by Navy service. The claim of disability for grant of disability pension was rejected vide order dated 09.04.2021. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that officer was appointed in the capacity of Officer In Charge of "Sagar Prahari Bal (SPB) Minicoy. The responsibilities encompasses safe and secure operation of Fast Interceptor Craft (FIC) according to inputs and orders received from higher authorities, maintenance of highest security state all the time in addition to safety of men and material. The Minicoy Island is a hard station. The personnel appointed here are not permitted to bring family and they are required to maintain highest degree of readiness round

the clock. The situations around the Island are like as combat zone. In an incident Indian Navy apprehended 19 foreigners including 15 Pakistani nationals in the Lakshadweep Island. The increasing incidents of piracy in and around the Islands have added a whole new dimension to threat perceptions and this is indeed an alarming trend. Various operations and exercises were conducted regularly to check the marine piracy, drug trafficking, cross sea terrorism and secure the sea lines of communication. In this sequence, there was a schedule of operation "Sagar Kavach" from 24.04.2017 to 26.04.2017. On 25.04.2017 the officer while returning from briefing after taking round of Island and helipad, at about 1830 hrs, his bicycle collided with a scooter being driven by some girls and he fell down and sustained fracture at lateral end of right clavicle. The act of applicant is fully covered under the definition of duty provided in para 9 (a) and (b) of the Casualty Pensionary Award 2008. Applicant was brought to Govt Hospital. The case was recorded in Station House General Diary dated 25.04.2017. After primary treatment, applicant was sent to Hospital INHS Sanjivani at Kochi for better treatment. Applicant was diagnosed with 'FRACTURE CLAVICLE (RT) ICD and was placed in low medical category. In injury report, injury sustained by the officer

was found as attributable to service. Learned counsel for the applicant pleaded that pages 8 and 9 of initial RMB were changed without information to the applicant and illegally same pages were manipulated and authenticated by different board members. The question arises here how any board which was not duly authorised can do the correction from behind the curtains. At the time of commissioning in the Navy as Short Service Commissioned Officer, the applicant was found mentally and physically fit for service in the Indian Navy and there is no note in the service documents that he was suffering from any disease at the time of commissioning in Navy. The officer sustained injury while he was on duty for night briefing of Fast Interceptor Craft crews, hence injury is connected with Navy service. He pleaded that since applicant sustained injury while on bonafide duty, he may be granted war injury pension as well as arrears thereof.

4. On the other hand, Ld. Counsel for the respondents contended that RMB held at the time of retirement assessed the disability percentage as 15% for life for disability (i) "**FRACTURE CLAVICE (RT)**". On scrutiny of the RMB documents by approving authorities (the next higher medical authority)

observation was raised that an assessment of 15% is conceded for maximum of 2 to 5 years based on the clinical condition and recommendations as per specialist opinion. Hence in accordance with observation, rectification was made in the opinion of RMB at para 3 of Part VII in Page No 8 and a fresh sheet incorporating necessary amendments was made and signed by the medical board on 02 May 2020 and approved by the next higher medical authority dated 28.09.2020. It is clarified that pages 8 and 9 of RMB held earlier on 17.01.2020 were cancelled before signature of Approving and Confirming Authority. The disabilities of the applicant were considered as attributable to and aggravated by Navy Service and composite disability was regarded as 30% for two years. He pleaded that in consonance to Para 6 & 11 of Appendix to MoD letter dated 18.01.2009 and Para 56 of GMO 2008, the casual connection between disability occurred and Navy service could not be established. Therefore, his claim for grant of disability pension was rejected vide letter dated 09.04.2021. Now by means of instant O.A., the officer has prayed for grant of War Injury Pension in terms of Category 'E' of Min of Defence letter dated 31.01.2001. Learned counsel for the respondents pleaded that classification of disability falling under category E as 'Battle

Casualty would make armed forces personnel eligible for War Injury Pension only if the injury is classified as 'Battle Casualty'. Disability of the officer was not classified as 'Battle Casualty' and injury sustained by the officer does not fall under the category E of MoD letter dated 31.01.2001 as claimed by the officer. Therefore the officer is not eligible for war injury pension. He pleaded for dismissal of the O.A.

5. 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 and we find that the questions which need to be answered are of two folds :-

- (a) Whether the applicant is entitled for war injury pension as prayed in O.A. or not?
- (b) In case applicant is not entitled for War Injury Pension, whether he is entitled for disability pension and its rounding off?
- (c) Whether there was any irregularity in the assessment of disability?

6. In the instant case, officer sustained injury while he was returning after carrying out security rounds of Naval

establishment helipad. RMB, assessed the disability of the applicant @ 30% for two years and opined as attributable to and aggravated by Navy service.

7. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations for grant of war injury pension, which are reproduced as under :-

(a) **Army Order 1/2003/MP**

**Physical/Battle Casualties**

Para 1 to 3. x x x x x x x x x x

4. **Battle Casualties:** *Battle Casualties are those casualties sustained in action against enemy forces or whilst repelling enemy air attacks. Casualties of this type consist of the following categories:-*

- (a) *Killed in action*
- (b) *Died of wounds or injuries (other than self-inflicted)*
- (c) *Wounded or injured (other than self-inflicted)*
- (d) *Missing*

5. *Circumstances for classification of Physical/ Battle Casualties are listed in Appendix 'A'*

**Appendix A to AO 1/2003/MP**

**Battle Casualties**

1. *The circumstances for classifying personnel as battle casualties are as under:-*

- (a) *Casualties due to encounter with troops or armed personnel or border police of a foreign country or during operations while in service with peace keeping missions abroad under government orders.*
- (b) *Air raid casualties sustained as a direct or indirect result of enemy air action*



(c) *Casualties during action against armed hostiles and in aid to civil authorities to maintain internal security and maintenance of essential services.*

(d) *Accidental injuries and deaths which occur in action in an operational area.*

(e) *Accidental injuries which are not sustained in action and not in proximity to the enemy but have been caused by fixed apparatus (e.g. land mines, booby traps, barbed wire or any other obstacle) laid as defence against the enemy, as distinct from those employed for training purposes, and if the personnel killed, wounded or injured were on duty and are not to blame, will be classified as battle casualties, notwithstanding the place of occurrence or agency laying those, viz. own troops or enemy, provided the casualties occur within the period laid down by the government.*

(f) *Casualties during peace time as result of fighting in war like operations, or border skirmishes with a neighbouring country.*

(g) *Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.*

(h) *Casualties occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake.*

(i) *Casualties occurring while carrying out battle inoculations/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/ explosives/mines or by drowning/electrocution.*

(j) *Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.*

(k) *Casualties due to vehicle accidents while performing bonafide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations.*

*(l) Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/buses/ships/aircrafts during mobilization or deployment in war/war like operations.*

*(m) Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/war.*

*(n) Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.*

*(o) Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.*

*(p) Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on international border or line of control.*

*(q) Army personnel killed/wounded by own troops running amok in an operational area.*

*(r) Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel.*

**Physical Casualties.**

*2. Deaths caused due to natural causes/illness/accident/ suicide/murder due to family disputes in operational and non-operational areas will be treated as physical casualties.*

**Miscellaneous Aspects**

*(a) Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action and encounters against them as encounters against the enemy.*

*(b) Report regarding personnel wounded or injured in action will specify the nature of the wound or injury and will also state whether the personnel remained on duty.*

(c) Reports on personnel missing in action will indicate, if possible, their likely fate, eg, 'believed killed'. 'believed prisoner of war', of 'believed drowned' etc.

(d) Any casualty occurring deployment/ mobilization of troops for taking part in war or war like operation, will be treated as battle casualty.

(b) **Govt of India, Ministry of Defence letter No. 1(2)/97/D/(Pen-C) dated 31.01.2001**

1. to 3.                      xxx                      xxxx  
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4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/ aggravated causes, the cases will be broadly categorized as follows:-

**Category A**

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

**Category B**

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

**Category C**

Death or disability due to accidents in the performance of duties such as :-

- (i) Accidents while travelling on duty in Government Vehicles or public/private transport;
- (ii) Accidents during air journeys;
- (iii) Mishaps at sea while on duty'
- (iv) Electrocution while on duty, etc.
- (v) Accidents during participation in organized sports events/ adventure activities/ expeditions/ training.

**Category D**

*Death or disability due to acts of violence/attack by terrorists, anti-social elements, etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.*

**Category E**

*Death or disability arising as a result of:-*

- a) *Enemy action in international war.*
- b) *Action during deployment with a peace keeping mission abroad.*
- c) *Border skirmishes.*
- d) *During laying or clearance of mines including enemy mines as also minesweeping operations.*
- e) *On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating mine-field laid by enemy or own forces in operational areas near international borders or the line of control.*
- f) *War like situations, including cases which are attributable to/aggravated by :-*
  - (i) *Extremist acts, exploding mines etc., while on way to an operational area*
  - (ii) *Battle inoculation training exercises or demonstration with live ammunition.*
  - (iii) *Kidnapping by extremists while on operational duty.*
- (g) *An act of violence/attack by extremists, anti-social elements etc while on operational duty.*
- (h) *Action against extremists, antisocial elements, etc. Death/disability while employed in the aid of civil power in*

*quelling agitation, riots or revolt by demonstrators will be covered under this category.*

*(j) Operations specially notified by the Govt. from time to time.*

*(k) Death or disability arising as a result of poisoning of water by enemy agents while deployed in operational area in active hostilities.*

*4.2 Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.*

**Notes:-**

*(i) The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*

*(ii) The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time*

*(iii) In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/ discharge/invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defense letter No.1(I)99/D(Pen/Ser) dated 7.7.99.*

*(iv) Where an Armed Forces personnel is invalided out of service due to non-attributable/non-aggravated causes, Invalid pension/gratuity shall be paid in terms of Para 9 of Ministry of Defense letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defense letter No. 1 (I)/99/D(Pen/Ser) dated 07.06.99.*

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*10.1. Where an Armed Forces Personnel is invalided out of service on account of disabilities sustained under circumstances mentioned in Category "E" of Para 4.1 above, he/she shall be entitled to War*

*Injury Pension consisting of Service element and War Injury element.”*

8. On perusal of above policy, it is clear that injury sustained by the officer was not declared as Battle Casualty hence, the injury sustained by the officer is not covered under the provisions of Category E of Ministry of Defence letter dated 31.01.2001 and applicant is not entitled to War Injury Pension. Keeping in view the facts and circumstances of the case, various policies and judgements in similar cases, we converge to the view that claim of the applicant for grant of war injury pension has rightly been rejected.

9. With regard to the submission by the applicant that pages 8 and 9 of the initial RMB were replaced and the duration of disability was reduced to 2 years, we feel that the respondents (approving authority) has followed due process in making the correctness/ amendments for reducing the duration of disability from 'for life' to '2 years' as this was in accordance with the policy on the subject. Thus the composite disability for both diseases is treated as 30% for two years.

10. Learned counsel for the applicant at the time of argument submitted that in case, applicant is not entitled for war injury pension, his case may be considered for grant of disability pension. In the instant case, disabilities of the officer were assessed @ 30% for two years (as explained in para above) and considered as attributable to military service. Further as per existing policy, SSC Officers who are found in lower medical category at the time of release than the one in which they were recruited and whose disability is accepted as attributable to or aggravated by service and is assessed by RMB @ 20% or above, are entitled to Disability Pension comprising service element and disability element. Hence, applicant is entitled for grant of disability pension @ 30% for two years. (Refer MoD letter of ESM Welfare letter No 1(9)/2006/D(Pen-C) dated 30.08.2006 and 23.03.2015).

11. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of judgment of the Hon'ble Supreme Court 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). The applicant is entitled to broad banding of

disability pension from 30% to 50% for two in terms of judgment of Ram Avtar (supra).

12. Since the medical board has assessed the disability as 30% for two years, as such keeping in view the judgment of ***Veer Pal Singh vs Ministry of Defence***, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further entitlement of disability pension, if any.

13. In view of the above, the **Original Application** deserves to be partly allowed, hence, **partly allowed**. The impugned order passed by the respondents is set aside. The applicant is not entitled for grant of War Injury Pension. Since the approving authority has restricted the disability for 2 years only (as opposed to 2 years for disability (i) and lifelong for disability (ii) recommended by RMB), he is held entitled for grant of disability pension @ 30% for two years which shall be rounded of to 50% for two years from the next date of discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. The RSMB will be held for disability (i) only as in RMB disability (ii) has been conceded for life. The respondents are



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

14. No order as to costs.

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

Dated : 19 May, 2022

Ukt/-