

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

B.  
OA 1436/2020

Ex GDSM Bobade Vivek Madhao Rao ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Aditya Bari, proxy for  
Mr. Indra Sen Singh, Advocate  
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM  
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
11.10.2023

Vide our detailed order of even date we have dismissed the OA 1436/2020. Learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the applicant and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

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(JUSTICE ANU MALHOTRA)  
MEMBER (J)

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(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 1436 of 2020**

**In the matter of :**

**Ex GDSM Bobade Vivek Madhao Rao      ... Applicant**

**Versus**

**Union of India & Ors.      ... Respondents**

**For Applicant      : Shri Indra Sen Singh, Advocate**

**For Respondents : Shri Avdhesh Kumar Singh, Advocate**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (a) *Set-aside order dated 27.07.2020 passed by the Respondents, thereby rejecting Applicant's 2<sup>nd</sup> Appeal dated 14.09.2019 seeking disability pension;***
- (b) *Direct the Respondents to treat the disability with which the Applicant is suffering, namely 'COMPRESSION FRACTURE LV3', as Aggravated, if not Attributable, by military service;***

- (c) Direct the Respondents to grant disability pension to the Applicant w.e.f. 01.10.2019;**
- (d) Direct the Respondents to pay disability pension to the Applicant at-least @ of 50% (30% rounded-off to 50%) w.e.f. 01.10.2019 by rounding off the Applicant's disability to 50%;**
- (e) Direct the Respondents to pay 10% interest on the arrears of disability pension w.e.f. 01.06.2001; and**
- (f) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case."**

#### **BRIEF FACTS**

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Army on 26.03.2002 and was discharged from service on 31.03.2019 in low medical category S1H1A2(P)P1E1, after rendering 17 years and 06 days of service. At the time of discharge, the Release Medical Board (RMB) held on 13.12.2018 assessed the applicant's disability 'BIMALLEOLAR FRACTURE (LT) ANKLE (OPTD)' @ 30% for life and held the same as 'neither attributable to nor aggravated by military service' (NANA).

3. Initially, the case of the applicant for grant of disability pension was adjudicated by the competent authority i.e. Officer-in-Charge, Records, Brigade of The Guards and the same was rejected vide letter dated 19.01.2019 in terms of Para 53(a) of the Pension Regulations for the Army, Part -II (2008) and the disability was conceded as 'neither attributable to nor aggravated by military service. The said decision was communicated to the applicant vide Records, The Guards letter dated 07.02.2019. The applicant preferred the first appeal dated 29.03.2019 against rejection of the disability pension. The ACFA rejected the appeal vide letter dated 09.08.2019. The decision of the ACFA was communicated to the applicant vide letter dated 26.08.2019. Against this, the applicant preferred the second appeal dated 14.09.2019, which was forwarded by the Records, Brigade to The Guards to the Second Appeal Committee on Pension (SACP) at IHQ of MoD (Army). The SACP also rejected the second appeal of the applicant vide letter dated 27.07.2020. Aggrieved by the same, the applicant has filed the present Original Application seeking disability pension and in the



interest of justice, in accordance with Section 21(1) of the AFT Act, 2007, we take up the matter.

### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note has been made in the service documents of the applicant regarding any disease suffered by him at that time. The learned counsel submitted that the applicant, while on duty, during his posting at Guard Regimental Centre (GRC), Kamptee, on the night of 15.07.2010, whilst returning from his regular Roll-Calls to his barracks walking, was hit by a motor-cycle inside the GRC premises due to which, the applicant sustained severe injury in his left ankle joint; and was immediately taken to MI Room by his colleagues for first hand treatment. He was subsequently transferred to MH Kirkee on 21.07.2010 and the injury was surgically treated and 1 plate along with 4 screws were implanted in the area of injury; the injury was diagnosed as 'Bimalleolar Fracture (Lt) Ankle (Optd.)' and the applicant was discharged in medical category A3 (T-24) with six weeks' sick leave. The learned

counsel further submitted that after the six weeks' sick leave were over, the applicant reported to his unit to join duty and continued to serve in the Army and kept performing the normal duties as MT-Driver of military vehicles and other duties till his discharge from the Army.

5. The learned counsel for the applicant further submitted that a Court of Inquiry (CoI) was held on 01.02.2011 (copy of which was filed as Annexure A-7) where the applicant made his statement and narrated the incident of the injury being sustained, and the witnesses were also examined who supported the statement of the applicant regarding the accident. It was further submitted on behalf of the applicant that he was neither drunk/intoxicated nor negligent in any manner. The learned counsel submitted that the injury of the applicant was reviewed at MH Kamptee on 24.05.2011, wherein the Surgical Specialist observed no improvement in the applicant's medical condition and recommended the applicant to be placed in low medical category of A-3 advising certain restrictions. The counsel submitted that again a Re-cat Medical Board was held on 16.11.2011, which upgraded the applicant's medical category

to A2 (P) for two years declaring the injury of the applicant as 'Permanent' and later when the applicant started having pain at the injured/fractured area due to stress and strain of service, another Medical Board was held on 13.11.2015, and after conducting X-rays and thorough examination, the Specialist doctor downgraded the applicant's medical category from A2(P) to A3(P) @ 30% w.e.f. 13.11.2015. The counsel submitted that at the time of release from service, the RMB assessed the applicant's disability/injury @ 30%, however, assessed it as NANA without assigning any cogent reason and the RMB committed grave error in not considering the fact that the applicant sustained injury while he was on duty and had a causal connection with military duty. The learned counsel further submitted that the respondents failed to appreciate that after treatment, the applicant reported to the unit and continued to perform normal military duties as a soldier and a MT Driver till his discharge on 31.09.2019 (31.03.2019), which aggravated the disability due to injury and he is, thus, entitled to disability pension.

6. The learned counsel submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. The learned counsel further relied on various provisions of the Entitlement Rules, 1982 to submit that any disease contracted during service, would be presumed to be attributable to service and worsening of the same during service would be treated as aggravated by military service and onus to prove otherwise lies with the respondents only. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]*** and ***Union of India and Ors. Vs. Rajbir Singh (2015) 12 SCC 264***, which have been followed in number of orders of the Tribunal, wherein it was held that whenever a member which has been considered and taken note of by the Hon'ble Apex

Court in many judgments, wherein the Hon'ble Supreme Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed to be due to service conditions. It was further submitted on behalf of the applicant that the Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent was suffering is neither attributable to nor aggravated by military service. Referring to Rule 9 of the Entitlement Rules for Causality Pensionary Awards, 1982, the learned counsel for the applicant submitted that the applicant should have been given the

benefit of doubt and the disability should have been conceded aggravated by service only. The learned counsel further submitted that the Tribunal has already granted disability pension to many similarly situated persons.

7. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability "Neither Attributable to Nor Aggravated by Military Service". The learned counsel submitted that while rejecting the first and second appeals of the applicant, the ACFA and SACP have given detailed reasons for considering the disability as NANA to the effect that the documents placed did not establish that at the time of incident, the applicant was on duty and that at the time of incident in question, the applicant was not performing any official task at the material time as required under Rule 9 of the Entitlement Rules and no causal connection between the disability and the military service was established and there was no worsening of condition of the applicant due to military service. The learned counsel submitted that the RMB rightly considered the disability of the applicant as NANA and thus he is not

entitled to disability pension. Therefore, the learned counsel for the respondents prays for dismissal of the OA.

### **ANALYSIS**

8. We have heard the learned counsel for the parties and have gone through the records produced before us.

9. In the instant case, the applicant's disability i.e. Bimalleolar Fracture (Lt) Ankle (Optd) has been assessed @ 30% for life by the RMB. Now the issue which is to be determined is as to whether there is causal connection between the injury/disability and the military service so as to hold that such injury/disability is either attributable to or aggravated by military service ?

10. The applicant, while posted in the Guards Regimental Centre (GRC), Kamptee on the night of 15.07.2010 on returning from his regular Roll-Calls, met with an accident when a motor cycle hit him while he was walking in the GRC premises, and sustained injury to his left ankle joint. He was given first aid treatment in MI Room in the premises, and then taken to MH, Kamptee for initial treatment and from there, the applicant was transferred to MH Kirkee on

21.07.2010 and underwent surgery and 1 plate along with 4 screws were implanted in the area of injury. There is no denying the fact that at the time of incident, as the applicant was returning from his daily Roll-Calls, he can be considered to be 'on duty' on the day when the accident occurred. However, with regard to deciding the causal connection between the injury and the military service, it would be pertinent to refer to the judgment passed by the Hon'ble Supreme Court in the case of **Secretary, Govt. of India Vs. Dharambir Singh [2019 Latest Caselaw 851 SC]** decided on 20.09.2019, which lays down as under :

*"....(10) In view of the provisions reproduced above, we find that the following questions arise for consideration:*

*(i) xxx*

*(ii) Whether the injury or death caused even if, 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?*

*(iii) xxx*

*Answer to Question No.1 ....*

*(11) to (14) xxx xxx*

*Answer to Question No.2*

*(15) The 1982 Rules give expansive definition to the expression 'duty' being undertaken by the personnel of the Armed Forces. It includes the period when Armed Forces personnel is proceeding from his leave station or*



returning to duty from his leave station. It includes even an accident which occurs when a man is not strictly on duty provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. However, as per Regulation 423 of the Medical Regulations, such injury has to have causal connection with military service or such injury is aggravated by military service.

(16) In Regulation 423(a) of the Medical Regulations, it has been specifically mentioned that it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service or active service area or under normal peace conditions, will be deemed to be duty. Regulation 423(a) mandates that it is essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to individual. For the sake of repetition, the said clause reads as under:

“(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions...”

(17) Clause (b) of Regulation 423 of the Medical Regulations presumes that disability or death resulting from wound or injury, will be regarded as attributable to service if the wound or injury was sustained during

actual performance of 'duty' in Armed Forces. This is in contradiction to "deemed to be duty" as per Rule 12(f) of 1982 Rules, as the Rule is when a man is not strictly on duty. However, the injuries which are self-inflicting or due to individual's own serious negligence or misconduct even in the cases of active duty, are not to be conceded unless, it is established that service factors were responsible for such action.

(18) and (19)            xxx            xxx

(20) In view of Regulation 423 clauses (a), (b) and (d), 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 or death must be connected with military service howsoever remote it may be. The injury or death must be intervention of armed service and not an accident which could be attributed to risk common to human beings. 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."

[Emphasis supplied]

11. Further, a Court of Inquiry (CoI) was held and the court had assembled in February, 2011 for determining the reason for the accident, wherein, having examined the three witnesses including the applicant himself, the CoI gave its finding as under:

**"FINDING OF THE COURT"**

**1. No. 15616276K Gdsm Vivek M Bobade depot coy  
RR platoon Brigade of the Guards Regimental Centre  
Kamptee main 15 July 2010 ko ORI se loutate samay**

bike se takkar ho jane ke karan Gdsm Vivek M Bobade ka bayan pair main chot laga hai.

2. No. 15616276K Gdsm Vivek M Bobade RR platoon depot coy Brigade of the Guards Regimental Centre Kamptee ko motor cycle se accident ho gaya aur isse military hospital mein ilaz karaya gaya.

3. No. 15616276K Gdsm Vivek M Bobade RR platoon depot coy ka treatment military hospital main hua.

Presiding Officer 1) Sub Maj Uma Shankar  
Members 2) JC 403969M Sub SL Gupta  
3) 13692924H Bijan Nandi"

12. Further, the Opinion of ADM BN Cdr reads as under :

*"Injury sustained by No. 15616276K Gdsm Vivek M Bobade of Depot Coy GUARDS RR is not attributable to mil service and no one is blamed for the same.*

Sd/- GS Bhandari  
Col  
Admn Bn Cdr"

13. The Attributability Certificate is also reproduced for coming to the conclusion as below :

**"ATTRIBUTABILITY CERTIFICATE"**

The injury sustained by 15616276K Gdsm Vivek M Bobade Arms/Service Mech Inf Record office Records, Brigade of The Guards, Present Unit Brigade of The Guards Regimental Centre on 15 Jul 2010 while he was walking by foot on road and met with an accident by other person's motor cycle is declared as not attributable to military service in terms of Rule of the Entitlement Rules to Casualty Pensionary Awards to Armed Forces Personnel 1982. The declaration is however subject to approval of the competent authority as mentioned in Govt. of India, Min of Def letter No. 1(2)/2002/D/(Pen-C) dt 01 Sept 2005 as amended.

Station : Kamptee

Dated : 13 May 2011

Sd/-  
Coy Cdr  
Sd/-  
OC 'C' Coy  
17<sup>th</sup> Bn Brigade of The Guards"

14. On perusal of the injury report titled Report of Accidental and Self-Inflicted Injuries – Officers dated 13.05.2011, we find that in the statement made by the applicant and signed by him, he has stated to the effect that that on 15.07.2010 at 9:00 O’ Clock at night at P.T. Ground, he was talking over mobile, when a bike hit him from behind and ran over his foot and went away, and due to the foot injury, he fainted/became unconscious. The Commanding Officer has also recorded under Column 4(c) of the finding in the above report, his answer to a question “Was any one else to blame for the accident?” as ‘No’. In view of the above, we find that there is sufficient evidence on record to show that there is no nexus established between the injury sustained/disability and the military duties. In view of Regulation 423 of the Entitlement Rules, there has to be a 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 and the injury has to be connected with military service, howsoever remote it may be. In the instant case, there is no record to substantiate the fact that the cause of the injury sustained by

the applicant had any causal connection with the military service as, while the applicant was examined during the Col being Witness No. 1, he stated that on the night of 15.07.2010 (the day when the incident took place), the applicant was returning after an entertainment programme in another institute and was talking over mobile on a call from his home, when suddenly a bike hit him from behind, which, by no stretch of imagination, can be said to be connected with the military duty. Even if the applicant be considered 'on duty' at that time, still 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 a disability/injury. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/injury and military service for it to be attributable. Further, we do not find any particular record, such as any clinical finding or report, to say that the applicant's disability has been aggravated due to the nature of the duties performed by the applicant. In the absence of any causal connection found between the injury sustained by the applicant and the military service, in our view, the


applicant would not be entitled to the disability pension. Further, the medical category at the time of the injury was A3 (T-24) on 03.12.2010. At the time of discharge on 31.03.2019, the medical category was A2(P).


### **CONCLUSION**

15. In view of the aforesaid judicial pronouncements and the parameters referred to above, the disability/injury of the applicant has rightly been opined by the RMB as 'neither attributable to nor aggravated by service' as there is no causal connection established between the injury sustained/disability and the military service. Accordingly, finding no infirmity in the opinion of the RMB, we dismiss the OA.

16. In view of the above, OA 1436/2020 stands dismissed. However, there shall be no order as to costs.

Pronounced in open Court on this 11<sup>th</sup> day of October, 2023.

  
[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

  
[JUSTICE ANU MALHOTRA]  
MEMBER(J)

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