

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

1.

OA 1259/2017

Ex Rfn Jayber Singh Tomar ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. V S Kadian, Advocate  
For Respondents : Mr. YP Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE LT. GEN C.P. MOHANTY, MEMBER (A)

ORDER  
16.02.2024

Vide our detailed order of even date, we have partly allowed the OA 1259/2017. Learned counsel for the respondents 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 respondents and on perusal of our 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. Thus, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(LT. GEN C. P. MOHANTY.)  
MEMBER (A)

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**For Respondents** : Mr.Y.P. Singh, Advocate

**CORAM :**

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

**HON'BLE LT GEN CP MOHANTY, MEMBER (A)**

**O R D E R**

Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) Quash and set aside the impugned letter no. RNE/DP/2896686 dated 06.07.217. And/or*
- (b) Direct respondents to treat the disabilities of the applicant as attributable to or aggravated by military service and grant him disability element of pension with the benefits of broadbanding/rounding off.*
- (c) Direct respondents to pay due arrears of disability element of pension with all the consequential benefits with interest @ 12% p.a. from the date of discharge.*

***(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.***

**BRIEF FACTS**

2. The applicant was enrolled in the Indian Army on 14.02.2000 and was discharged from service on 28.02.2017 with a qualifying service of 17 years and 15 days.
3. As per the service records, the applicant was on 13 days casual leave with effect from 13.06.2005 to 25.06.2005, wherein he met with a road accident on 20.06.2005 when returning back from MH Gwalior on his motorcycle, as a result of which the applicant sustained injuries.
4. Subsequently, an Injury Report (IAFY-2006) was initiated by the Medical Authorities dated 21.06.2005 (placed as ANNEXURE R-2) which was followed by Court of Inquiry dated 13.08.2007 (placed at ANNEXURE R-3) by the order of Commanding Officer 15 RAJ RIF to investigate the circumstances under which the applicant sustained injury while on leave, wherein as per the remarks of Commanding

Officer, 15 RAJ RIF, the injury was held to be attributable to service with the opinion reproduced as under:

***"1. I agree with the opinion of the Court.***

***2. No 2896686P Rfn Jayber Singh Tomar of 15 RAJ RIF is not to be blamed for the injury sustained by him during the casual leave. The injury sustained by the individual is attributable to military service in a modified field area."***

5. The Release Medical Board dated 15.09.2016 considered the applicant fit for discharge in composite low medical category S1H1A3(P)P1E1 for the disabilities of (i) Compound Fracture Shaft Femur RT (Optd.) @ 20% for life (ii) Compound Fracture Both Bone RT Leg (Optd.) @ 20% for life (iii) Compound Fracture Calcaneum @ 20% for life and compositely assessed @ 50% for life, while the net qualifying element for disability was recorded as 50% for life<sup>1</sup> as all the three disabilities were opined as attributable to military service.<sup>2</sup>

6. On adjudication, Competent Authority vide Minute Sheet dated 24.06.2017<sup>3</sup> rejected the disability pension claim of the applicant with the opinion that even though the RMB considered the accidental injuries causing disability as

attributable to military service as there is no apparent 'causal connection' of his disabilities to military service as the accident occurred while the individual was on leave. Apropos recommended for adjudication and approval of the case as REJECTED. vide letter no RO/3305/3/Med dated 31.05.2019. The outcome was communicated to the applicant vide letter no RNE/DP/2896686 dated 06 July 2017. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

#### **CONTENTIONS OF PARTIES**

7. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors*** [2013 (7) SCC 36], the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Indian Army at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service. The learned counsel for the applicant also placed reliance on the judgment of the Hon'ble Supreme Court in the

case of ***Union of India Vs. Ram Avtar*** (Civil Appeal No. 418/2012), decided on 10.12.2014.

8. It is the contention of the Ld. Counsel of the applicant that the applicant suffered the disabilities during “casual leave” which means that they occurred while he was deemed to be “on duty”, and therefore, on the basis of Injury Report and the recommendation of COI along with that of the Commanding Officer, the disabilities were held to be attributable to service, on the recommendations of a duly constituted medical board, and that the administrative authorities cannot overrule the opinion of the Medical Board.

9. Ld. Counsel submits that as per the posting profile of the applicant<sup>4</sup>, it is clear that the applicant suffered the disabilities in his 5th posting while being posted at Suratgarh (Raj), Modified Field Area, from 24.05.2003 to 20.07.2006, and even after being injured on 20.06.2005, he was posted in the same Modified Field area posting for an year, and was later posted to CI (OP RAKSHAK) Nathua Tibbia (J&K), a Field Area Posting from 19.07.2009 to 10.05.2012 in his 7th posting, then again

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<sup>4</sup> ANNEXURE R-4 - Page 81 of the Counter Affidavit

posted to BD Bari (Jammu), a Modified Field Area from 11.05.2012 to 25.10.2014 in his 8th posting, followed by a High Altitude Area Posting in Tawang (A.P.) (HAUCH) from 26.10.2014 till his discharge in his 9th posting.

10. Submitting on the issue of aggravation of the disabilities, Ld. Counsel submits that from his 7th to 9th postings, all three postings post the onset of his disabilities, were in either Field or Modified Field area, and it is well established that the applicant had suffered disabilities of fracture, which aggravates in the field and high altitude area.

11. Per contra, the learned counsel for the respondents submits that the competent authority has rejected the claim for disability only after due consideration, noting the fact that applicant suffered accidental injuries while the individual was on casual leave, and there is no 'causal connection' of his disabilities to military service in terms of Para 6 of 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, and therefore, his claim for disability pension has been rejected by the competent authority.



12. Responding to the issue of aggravation of the disabilities, Ld. Counsel for the respondents highlighted the Opinion of the Release Medical Board Part-V to the effect that the disabilities of the applicant have been held to be not aggravated by service, and the same reads as under:-

<b>1. Casual Relationship of the disability with service conditions or otherwise</b>				
<b>Disability</b>	<b>Attributable to Service Y/N</b>	<b>Aggravated by Service (Y/N)</b>	<b>Not connected with service (Y/N)</b>	<b>Reason/cause/specific condition and period in service</b>
<b>COMPOUND FRACTURE SHAFT FEMUR (RT) OPTD</b>	Yes	No	No	Injury sustained while being on bonafide mil duty. Hence ID conceded as attributable to mil service as per Injury Report (IAFY-2006) dt 30 Aug 2007 and Court of Inquiry dt 18 Aug 2007.
<b>COMPOUND FRACTURE BOTH BONES (RT) LEG OPTD</b>	Yes	No	No	
<b>COMPOUND FRACTURE CALCANEUM (RT)</b>	Yes	No	No	

### **ANALYSIS**

13. While the applicant has placed his reliance on the Para 12 of the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel, 1982, we find that the

same has been superseded by 'The Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel, 2008, which take effect from 01.01.2008, the relevant Paras 6,7,9 & 10 are reproduced thereof as under:-

**"6. Causal connection:**

*For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.*

**7. Onus of proof:**

*Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.*

**9. Duty:**

*For the purpose of these Rules. a person subject to the disciplinary code of the Armed Forces shall be treated on 'duty':*

*(a) When performing an official task or a task failure to do which would constitute an offence, triable under the disciplinary code applicable to him.*

*(b) When moving from one place of duty to another place of duty irrespective of the mode of movement.*

***(c) During the period of participation in recreation and other unit/sports activities organized or approved by service authorities and during the period of traveling in relation thereto.***

***Note 1: Personnel of the Armed Forces participating in local/national/ international sports tournaments as members of service teams; or mountaineering expeditions/gliding organized by service authorities, with the approval of Service HQs, shall be deemed to be 'on duty' for the purpose of these Rules.***

***Note 2: Personnel of Armed Forces participating in sports tournaments or in privately organized mountaineering expeditions of indulging in gliding as a hobby in their individual capacity, shall not be deemed to be 'on duty' for the purpose of these Rules even though prior permission of the competent service authorities may have been obtained by them.***

***Note 3: Injuries sustained by personnel of the Armed Forces in impromptu games and sports which are organized by or with the approval of the local service authority and death or disability arising from such injuries. will be regarded as having occurred 'on duty' for the purpose of these Rules.***

***Note 4: The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling and other similar institutes shall be treated at par with personnel attending other authorized professional courses or exercise for the Defence Services for the purpose of grant of disability/family pension***

*on account of disability/death sustained during the courses.*

*d) When proceeding on leave/valid out pass from his duty station to his leave station or returning to duty from his leave station O11 leave/valid out pass.*

*Note 1: An Armed forces personnel while traveling between his place or duty to leave station and vice-versa is to be treated on duty irrespective of whether he has availed railway warrant/concession vouchers/cash TA etc or not for the journey. This would also include journey performed from leave station to duty station in case the individual returns early.*

*Note 2: The occurrence of injury should have taken place in reaching the leave station from duty station or vice versa using the commonly available/adopted route and mode of transport.*

*(e) When traveling by a reasonable route from one's official residence to and back from the appointed place of duty, irrespective of the mode of conveyance (whether private or provided by the Government).*

*(f) Death or injury which occurs when an individual is not strictly 'on duty' e.g. on leave, including cases of death/disability as a result of attack by or action against extremists or, anti social elements may also be considered attributable to service, provided that it involved risk which was due to his belonging to the Armed Forces and that the same was not a risk faced by a civilian. Death and disability due to personal enmity is not admissible.*

**Note: For the purpose of these Rules, leave shall include casual leave. Leave/casual leave shall not be treated as 'duty' except in situations mentioned above.**

**10. Attributability:**

**(a) Injuries:**

**In respect of accidents or injuries, the following rules shall be observed:**

**i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).**

**ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.**

**(b) Disease:**

**(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-**

**(a) that the disease has arisen during the period of military service, and**

**(b) that the disease has been caused by the conditions of employment in military service.**

**(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on**

***the basis of clinical courses as determined by the competent medical authority.***

***(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.***

***(iv) when the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.***

14. On a perusal of 'Note' to Para 9(f) of "Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, we find that the leave/casual leave shall not be treated as 'duty' except in situations as mentioned in Para 9. It is pertinent to observe that the facts of the instant case does not satisfy the conditions as enshrined in Para 9 of the aforesaid rules, for the disabilities suffered by the applicant while on casual leave to be considered as 'duty' for the purpose of attributability.

15. As far as the question of aggravation of the disabilities suffered by the applicant, is concerned, we find it pertinent to

refer to Para 11 of the Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel, 2008, reproduced as under:

**11. Aggravation:**

***A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitude etc.***

16. An analysis of the aforesaid provision specifies that the disability shall be conceded as aggravated if the subsequent course is worsened by specific conditions of military service, including postings in Fields, Operations and High Altitude areas. It is clear from the posting profile of the applicant attached with the Release Medical Board that the applicant has served in Field, Operation as well as High Altitude area, post the onset of his disabilities.

17. However, it is pertinent to observe that the disability of fracture suffered by the applicant is in his legs, which is presumed that the injuries like fracture are of temporary nature, like the disabilities in the instant case, which are

known to heal with time and specifically, post surgery of the injury. It is important to note that the applicant suffered the injury on 20.06.2005, which is now approximately 18 years old, we find it more appropriate to have a re-assessment to assess the present percentage of disablement.

18. In view of the aforesaid discussion, we are of the view that the disabilities of the applicant being temporary in nature, warrant reassessment by a suitable medical board, and the respondents are directed to give effect to such re-assessment by an appropriate medical board, within two months from the date of this order, The applicant shall have be liberty to re-agitate the matter if aggrieved.

19. No order as to costs.

Pronounced in the open Court on this day of <sup>16<sup>th</sup></sup> February, 2024.

**[LT GEN CP MOHANTY]**  
**MEMBER (A)**

**[JUSTICE ANU MALHOTRA]**  
**MEMBER (J)**

*Akc*