

**COURT No.3  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA No.229/2018**

**Wg Cdr DPS Yadav (Retd.)** ... **Applicant**  
**Versus**  
**Union of India and Ors.** ... **Respondents**

**For Applicant** : Mr. Praveen Kumar, Advocate  
**For Respondents** : Mr. Arvind Patel, Advocate

**CORAM**

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)**  
**HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to grant the disability pension @ 20% and rounding off the same to 50% for life with effect from 01 Jul 1994 i.e. the date of discharge from service with interest @ 12% p.a. till final payment is made.

**BRIEF FACTS**

2. The applicant was commissioned in the Indian Air Force on 05.01.1970 and discharged from service w.e.f. 30.06.1994 after serving for 24 years 05 months and 25 days. The

applicant sustained Fracture Patella (Rt) on 24.06.1988 in a road traffic accident in Delhi. He was admitted and treated at AHDC and was operated on 18.07.1988. He was placed in Lower Medical Category at Gt(T-6) vide AFMSF-15 dt. 06.08.1988. The applicant in his statement recorded in the Report on Accidental & Self-inflicted injuries (AFY-2006) dt 09.07.1988 submitted that he sustained the injury/disability while returning to unit after reserving railway seat for the purpose of proceeding T/D (Temporary duty) to 11 BRD, AF, when a Three Wheeler coming from the wrong side hit him. A medico legal case was registered at Khajuri Khas Police Port. Based on the applicant's statement and circumstances his injury was considered as not attributable to service. The percentage of disablement was assessed at 20% for 2 years and vide AFMSF-15 dt. 18.09.1990, the applicant was placed in medical category A4G5(T-24). The medical category of the applicant upgraded to A4G3, on the basis of the Review Medical Board conducted on 15.09.1989.

3. The Release Medical Board held on 16.02.1994 found the applicant fit to be discharged from service in medical category A4G3(P) for the disability – “**Fracture Patella (Rt)**” assessed @ 20% for two years while the qualifying element for disability

pension was recorded as 'NIL' on account of disability being treated as 'neither attributable to nor aggravated' (NANA) by the Competent Authority. Accordingly, the applicant was informed vide HQ letter No. Air HQ/24270/827/PP&R-3/2707/D(Pen-C) dt. 03.08.1994. Thereafter, the applicant represented his case for grant of disability element of pension vide letter dt 09.10.2017 and through a legal Notice-cum-Representation dt. 25.10.2017, which was replied vide Impugned Order dt. 08.12.2017 stating that disability being treated as 'neither attributable to nor aggravated' (NANA) he is not eligible for grant of disability element of pension. Being aggrieved by the rejection of his claim, the applicant has now filed this OA 229/2018.

#### **Contentions of the parties**

4. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs Union of India & Others** ; (2013) 7 SCC 316, , **Sukhvinder Singh Vs UOI & Ors [2014 (14) SCC 364** and **Union of India and others Vs. Rajbir Singh** (2015) 12 SCC 264 and catena of other orders of the Armed Forces Tribunal, learned counsel for applicant contended that the respondents have erred in rejecting his case for grant of disability element of pension. It is argued

that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary, to be a consequence of military service and thereby, any disability at the time of the discharge of the applicant is deemed to be attributable to or aggravated by military service

5. Learned counsel further argued that the applicant met with an accident and sustained injury "**Fracture Patella (Rt)**" on 24.06.1988 while returning to unit after purchase of rereserved ticket for going on T/D to Nasik for collection of New MIG 27 Aircrafts and the same is endorsed in the Injury Report.

6. *Per contra* learned counsel for the respondents submitted that the applicant sustained Fracture Patella (Rt) on 24 Jun 1988 in a road traffic accident. It is further stated the as per the provisions of **Regulation 37** of the Pension Regulation for the Air Force 1961 (Part-1), the primary condition for the grant of disability pension is when an individual retired on account of a disability which is attributable to or aggravated by such Service and is assessed @ 20% or more. In the Report on Accidental and Self-inflicted injuries (AFY2006) dt 09.07.1988, the Commanding Officer clearly mentioned that the injuries

sustained by the applicant were not connected with military service. Release Medical Board (RMB) held on 16.02.1994 also considered his disability as neither attributable to nor aggravated by service (NANA) as the injuries sustained due to the accident were not attributable to service conditions as the applicant was not on service related duty, when he met with the accident, hence held not eligible for disability element of pension.

### **Analysis**

7. Having heard the learned counsel for the parties and careful perusal of the pleading available on record.

8. It is not in dispute that the extent of disability was assessed 20% which is the bare minimum for grant of disability pension in terms of Regulation 37 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). However, the same is considered as neither attributable nor aggravated (NANA) by the Medical Board.

9. Now, the only question that arises in the above backdrop is whether the disability suffered by the applicant was attributable to or aggravated by Military Service. Claim of the applicant that he was assigned the T/D to go to Nasik for

collection of New MIG 27 Aircrafts and sustained injury while he had gone to reserve the railway ticket for proceeding on T/D to Nasik, is disputed by the respondents. To decide the controversy in question as to whether the applicant sustained the knee injury while he had gone to reserve his ticket when he was assigned temporary duty from Air Force Station Hindon to Air Force Station Nasik and this has got any connection with the discharge of his Military Duty, the applicant was directed by the Tribunal on 01.08.2024 to produce orders granting him temporary duty, mode by which he undertook journey and the ticket details, PNR etc. by filing an affidavit. However, the same was not done, instead the applicant submitted copy of a document dt. May 1989 to show that he surrendered his unused FRW, wherein the date of ticket was mentioned as 26.06.1988 and reason for applying refund as "service exigency" and not due to accident. In the "Report on Accidental and Self-inflicted injuries (AFY 2006) dt 09.07.1988 filed by applicant, answer to the question by the Commanding Officer is 'No' given at (Pg 37) (ii), which may be reproduced as under:

*(ii) Did the accident occur during the journey or transport by a reasonable route under organized arrangements from the individual's quarter to or*

*No*

*back from an appointed place of duty?*

10. It is undisputed that the applicant suffered injury and sustained Fracture Patella (Rt) on 24 Jun 1988 in a road traffic accident, while he was on duty. Now, the moot question is whether the injury sustained by the applicant has any causal connection, and whether the disability can be held attributable to or aggravated by military service. To decide the limited question of attributability, with respect to an accident where the applicant's claim was that he sustained injury while he was returning to unit after reserving railway seat for the purpose of proceeding T/D to Nasik and subsequent, causal connection, we find that the said issue has been settled by the judgement of Hon'ble Supreme Court in **Secretary, Ministry of Defence v. Dharambir Singh [Civil Appeal No. 4981/2012; Date of decision: 20.9.2019]** which observed as under:

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

***(i) xxxxxxxxx***

***(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) What is the effect and purpose of COI into an injury suffered by armed forces personnel?**

**Answer to Question No.1**

**xxxxxxx**

**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) The question whether a disability or death is attributable to or aggravated by military service or not, is to be decided by the Medical Board. The opinion of Medical Board with regard to actual cause of disability or death and the circumstances under which it originated will be regarded as final in terms of Rule 17 of 1982 Rules which is to the effect that at initial claim stage, medical views on entitlement and assessment shall prevail for decisions in accepting or rejecting the claim.*

*19) Regulation 423(d) provides that the question whether a disability or death is attributable to or aggravated by service or not, will be decided as regards to its medical aspects by a Medical Board/ medical officers. Such opinion of the Medical Board insofar as it relates to the actual cause of disability or death and the circumstances in which originality will be regarded as final. The Commanding Officer has to record his opinion as to whether injured person was on duty and whether he or she was to blame in a COI. Therefore, the scope of COI is to examine the conduct of the injured person to determine whether the person has made himself liable to be proceeded against departmentally. In respect of the injury, causal connection of injury*

*to the army service is not final in the COI proceedings.*

*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.*

*21 to 23... xxx xxx xxx xxx*

*24) Having considered the provisions of the statutes, rules and regulations, we now refer to the judgments referred to by the learned counsel for the parties.*

*25) The judgments in Madan Singh Shekhawat, Pension Sanctioning Authority, PCDA(P), Allahabad & Ors. v. M.L. George, Ex. SGT, Nand Kishore Mishra v. Union of India & Ors. and Union of India & Anr. v. Surendra Pandey, are the cases where the Armed Forces personnel have suffered injuries while returning from or going on leave. In terms of Rule 12 Note 2 (d) of 1982 Rules read with Regulation 423(a), any injury or death while returning from or going to duty has a causal connection with the military service and, thus, such injury or death is considered attributable to or aggravated by military service.*

*26) The Full Bench judgment of Punjab and Haryana High Court in Khushbash Singh has devised a new expression 'unmilitary activity'. Since the rules and regulations framed under the Act provide for disability pension only if there is causal connection of injuries with the military service, thus warranting a positive finding. The 'unmilitary activity' is not an expression used in the rules or regulations and is based on negative proof. What is unmilitary activity is vague, indefinite and is based upon surmises and*

*conjectures. Therefore, we find that in terms of the provisions of the Act, Rules and instructions keeping in view the policy decisions of the appellants, the disability pension is admissible only if injury is either attributable to or aggravated by military service and not that any activity which is unmilitary activity.*

*27) Mr. Sehgal has relied upon Division Bench judgment of Delhi High Court in Vardip Singh & Anr. v. Union of India & Ors. It was a case where a Captain saved 150-160 lives in a tragic fire incident in Uphaar Cinema, New Delhi. The High Court has considered it appropriate to grant disability pension to the family of the deceased Major. Said judgment is in the peculiar facts of that case.*

*28) However, the reliance of Mr. Sehgal upon Division Bench judgment in Barkat Masih is not tenable. We find that the judgment is correct to the limited extent that personnel of Armed Forces when on leave are also on duty. However, the subsequent question, whether an injury or death suffered by a personnel has some causal connection with military service, was not examined except referring to Full Bench judgment of that Court wherein, it was held that unmilitary service activity alone will be excluded from the expression 'death' or 'injury' caused by military service or aggravated to military service. We find that such conclusion is not sustainable as per the applicable rules and regulations.*

*29) In Barkat Masih, such Armed Forces person was riding a scooter which was hit by army truck in the cantonment area. Such accident with the army truck has no causal connection with the military service as the deceased was on casual leave. Even a civilian could meet with an accident with the army truck within or outside the cantonment area. Such accident has no causal connection with the military service of an injured or the deceased. Therefore, the Full Bench judgment of Punjab & Haryana High Court in Khushbash Singh and that of the Division Bench of that Court in Barkat Masih are not the good law. It may be noticed that special leave*

***petition in the Barkat Masih order was dismissed but it was dismissed on the ground of delay, therefore, in view of the judgment of this Court in Khoday Distilleries Limited & Ors. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal , it does not amount to merger of the order passed by the High Court with that of this Court.***

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xxx”

***(emphasis supplied)***

11. In the case in hand, it is undisputed that the applicant had met with a road accident and sustained injury Fracture Patella (Rt), but in the absence of sufficient documentary evidence and keeping in view the non-availability of records with the respondents being a very old case and discrepancy in the FRW submitted by the applicant, we are of the considered view that even if, the applicant was considered on duty but in the absence of any document to substantiate that injury sustained by the applicant was in connection with discharge of his military duty, the disability cannot be held attributable to or aggravated by military service.

12. The injury sustained by the applicant has been clearly mentioned by the Commanding Officer in the Injury Report and also in the RMB as not attributable by service’.

Accordingly, finding no infirmity in the opinion of the RMB, we dismiss the OA.

13. Consequently, the OA 229/2018 is dismissed.

14. No order as to costs.

15. Pending miscellaneous application(s), if any, stand closed.

Pronounced in the open Court on 9<sup>th</sup> December, 2025.

**(JUSTICE NANDITA DUBEY)**  
**MEMBER (J)**

**(RASIKA CHAUBE)**  
**MEMBER (A)**

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