

**COURT No.1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA 365/2022**

**Ex Hav Binod Kumar Yadav** ... **Applicant**  
**Versus**  
**Union of India and Ors.** ... **Respondents**

**For Applicant** : Mr. Shakti Chand Jaidwal, Advocate  
**For Respondents** : Mr. Niranjana Das, Advocate

**CORAM**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT GEN C.P. MOHANTY, 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 accept the disability of the applicant - FRACTURE DV2 DV3 WITH PARAPLEGIA (OPTD) as held "attributable to military service" as recommended by the Invalid Medical Board and grant disability element of pension @100% with effect from the date of retirement of the applicant; along with the Constant Attendant Allowance and all consequential benefits.

2. The applicant was enrolled in the Indian Army on 28.02.1996 and invalided out on 03.03.2017 after serving for 21 years and 4 days of qualifying service. The Release Medical Board held that the applicant was fit to be discharged

from service in composite low medical category S1H1A1P5E1 for the disability - FRACTURE DV2 DV3 WITH PARAPLEGIA (OPTD) and the same was assessed @100% for life.

3. It has been brought out by the Respondents in their Counter Affidavit filed on 29.03.2003, that the applicant met with an accident on 23.07.2014 while he was returning back to his unit from 29 days casual leave, travelling in a civil vehicle, wherein which he fell and sustained injury to his backbone. Subsequently, a Court of Inquiry was held by the Officer Commanding, 2(I) Armd Bde Sig Coy, of which the relevant portion of the opinion is reproduced as under:

*“The court is of the opinion that:-*

*(a) The injury “SEVERE TRAUMATIC FRACTURE DV2-DV3 WITH PARAPLEGIA (OPTD)” occurred accidentally because of road accident while travelling in a civil veh while on 29 days CL.*

*(b) The injury sustained by No 15394536X Hav (OCC) Binod Kumar Yadav is attributable to military service as per para 9(d) of GOI MoD letter No 1(3)/2002/D(Fen/Pol) dt 18 Jan 2009.*

*(c) There is no foul play involved and no body is to be blamed for the injury.”*

4. Consequently, the same was approved by the Brigade Cdr 2(I) Armd Bde, with the Attributability Certificate recording that the disability of the applicant was held as ‘attributable to military service’. At the time of discharge, he was brought before the Invalid Medical Board on 20.01.2017 at MH, Kirkee which held the disability as ‘attributable to military service’, with reason that the disability is

conceded attributable to military service as per Injury Report IAFY-2006 dated 02.02.2016 and C of I dated 02.02.2016.

5. However, the competent authority held that the disability of the applicant - FRACTURE DV2 DV3 WITH PARAPLEGIA (OPTD) is neither attributable nor aggravated by military service and thus, the claim for grant of disability pension was rejected, and the same was communicated to the applicant vide Signal Records letter No P/15394536/DP-1/Rejection/NER dated 04.04.2019. On preferring first appeal by the applicant dated 03.05.2019, the same was rejected by the competent authority vide ADG PS (AG's Branch), IHQ of MoD (Army) letter no B/40502/752/2019/AG/PS-4(Imp-II) dated 21.07.2020, recording to the effect:

*“The individual sustained injuries on 23 Jul 2014 in a road accident when he was travelling along with his luggage in the back of an open tempo at his home town. The individual was returning back to duty station for his personal work (i.e. to get Admission for his children and settling up luggage in Govt accommodation) during his leave. The circumstance of injury of the individual does not fulfill the conditions of attributability of Rule 9(d) Note-2 of ER-2008. The appeal merits rejection.”*

6. Subsequently, the applicant preferred second appeal dated 19.11.2020 against rejection of first appeal, which was not accepted by the competent authority vide communication letter dated B/38046A/230/2021/AG/PS-4(2nd Appeal) dated 06.10.2021 on the ground that, “at the time of incident,

*the indl was on leave and was not performing official task as required under Rule 9 of ER 2002 (Amendment 2008). Further, as per Rule-6 of ER-2002 (Amendment 2008), no casual connection between his disability and military service is established. There was no worsening of condition because of military service. Hence, the appeal is conceded as neither attributable to nor aggravated by military service.”*

Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

7. Learned counsel for the applicant argues that the disability of the applicant has causal connection with his military service, since he was returning from his Leave Station in Bihar to Duty Station in Pathankot, when he met with accident on 23.07.2014, and thus, in terms of Rule 9(d) of Entitlement Rules, 2008, an Armed Forces Personnel in treated ‘On Duty’ when proceeding from Duty Station to Leave Station and returning from Leave Station to Duty Station, and therefore, the findings of Injury Report recorded the disability as ‘attributable to military service.’

8. Stressing on the issue of attributability, learned counsel further submits that the applicant suffered injury while on official duty and not during any leave, and in view of the principle laid down by Dharambir Singh Vs. UOI & Ors. (C.A.

No 4981 of 2012), 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 or aggravated by military service.

9. Per Contra, learned counsel for the respondents submits that in the instant case 'FRACTURE DV2 DV3 WITH PARAPLEGIA (OPTD)' had been opined as '*neither attributable nor aggravated by military service*' vide Signals Records letter No P/15394536/DP-1/Rejection/NER dated 04.04.2019. Furthermore, the First and Second Appellate Committees had also rejected the disability element claim of the applicant considering his disability as neither attributable nor aggravated by military service, and therefore, the applicant had not been granted disability pension, and since, he is not entitled to disability pension, the question of Constant Attendant Allowance does not arise.

10. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, the only question that arises in the above backdrop is whether disability suffered by the applicant has to be held to be attributable to military service or not ?

11. To consider as to what acts are covered by the term 'duty' we may like to make reference to Entitlement

Rules, 1982 Appendix II of Clause 12 which defines the word duty, which for convenience sake may be reproduced as under:

*"DUTY: 12. A person subject to the disciplinary code of the Armed Forces is 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 activities organized or permitted by Service Authorities and during the period of travelling in a body or singly by a prescribed or organized route.*

*Note:1*

*(a) Personnel of the Armed Forces participating in*

*(i) Local/national & international sports tournaments as member of service teams, or,*

*(ii) Mountaineering expeditions & gliding organized by service authorities, with the approval of Service Hqrs. will be deemed to be "on duty" for purposes of these rules.*

*(b) Personnel of the Armed Forces participating in the above named sports tournaments or in privately organized mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be 'on duty' for purposes of these rules, even though prior permission of the competent service authorities may have been obtained by them.*

*(c) Injuries sustained by the personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organized by, or disability arising from such injuries, will continue to be regarded as having occurred while "on duty" for purposes of these rules.*

*Note: 2*

*The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional courses or exercises for the Defence Services for the purpose of the grant of disability family pension on account of disability/death sustained during the courses.*

*(d) When proceeding from his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher, on cash TA*

*(irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for the journey.*

*(e) When journeying by a reasonable route from one's quarter to and back from the appointed place of duty, under organised arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available.*

*(f) An accident which occurs when a man is not strictly on duty, as defined may also be attributable to service, 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. Thus for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed "on duty" at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act."*

13. A cursory look at aforesaid rule would reveal that the 1982 Entitlement 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 are 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.

14. With respect to the process followed in determining the attributability of an injury, we find that in terms of Para 520 of the Defence Services Regulations, a certificate on I.A.F.Y.-2006 is required to be forwarded by the

Medical Officer In-charge to the Commanding Officer. The COI is assembled to investigate the circumstances leading to injury (clause c). The Commanding Officer has to record his opinion as to whether the injured person was on or off duty including as to whether he or she was to blame. The proceedings are then to be sent to Brigade Commander or the officer authorized under Section 8 of the Act to record reasons as to whether disability or death was attributable to military service and whether it occurred on field service. The Commanding Officer has reported that the injury is attributable to military service, and I.A.F.Y.-2006 produced before the Tribunal at the time of hearing of the present case, as well as the CoI shows that the Brigade Commander has endorsed that the injury is attributable to military service.

15. We now find it pertinent to refer to Note 1 to Rule 9(d) of Entitlement Rules, 2008, which reads to the effect:

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

*Note 1: An Armed Forces personnel while traveling between his place of 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.*

16. On an analysis of aforesaid Note 1 to Rule 9(d) of Entitlement Rules, 2008, it is well clear that even if the applicant was arriving early from his leave station to the duty station, the applicant would still be treated as to be on 'duty', during which he suffered the aforesaid injury, leading to disability, thereby, making it clear that the disability suffered by the applicant is on duty, thus, leaving leaving no room for doubt regarding the attributability, especially when a duty constituted CoI has clearly held the disability to be 'attributable to service', and the same has been endorsed by the Brigade Commander.

17. With respect to the prayer for grant of Constant Attendance Allowance, we find it pertinent to refer to Para 89 of Pension Regulations for Army, 2008, reproduced as under:

*"89. (a) Constant attendance allowance at a uniform rate of Rs. 600/- per month shall be granted to Service personnel who is awarded a disability pension for 100 per cent disablement, if in the opinion of the Invaliding Medical Board or Review Medical Board he needs the services of a constant attendant for at least a period of 3 months, and the necessity arises solely from the condition of the accepted disability or disabilities.*

*(b) The allowance shall also be granted if the accepted degree of disablement of service personnel is assessed at 100 per cent, but a reduced award is made under Regulation 84 & 85 of these Regulations.*

*(c) The grant of allowance is subject to the condition and that he actually employ an attendant to look after him.*

*(d) The allowance shall not be payable for any period during which the pensioner is an inmate of a Government Institution or Hospital or is gainfully employed.*

*(e) Payment of constant attendance allowance shall be made in arrears along with disability pension etc. on the basis of declaration as in APPENDIX-VI of these Regulations which shall be submitted to the Pension Disbursing Authority in May and November each year."*

18. Noting the aforesaid, we now refer to the opinion of Release Medical Board recorded vide Question 8 of Part V of the Release Medical Board to the effect:

*8. Does the individual require an attendant ? If so, how long ?*

*Yes for life*

19. Thus, it is clearly opined by the Release Medical Board that the applicant is requiring an attendant, and that too for life, and thus, no question is left unanswered.

20. Before parting, it is important to note that when a soldier puts his life on the peril of duty, and has almost rendered more than almost 20 years of his life to the Armed Forces, with the fact that being wheelchair bound with 100% disability, the administrative authorities are required to adopt a compassionate approach and look beyond mechanical rejection mechanism.

21. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to grant benefit of disability element of pension compositely @ 100% for life along with Constant Attendance Allowance as assessed and opined by the Release Medical Board from the date of invalidation i.e. 03.03.2017. However, the arrears shall be

restricted to 3 years prior to the date filing of OA which is 24.02.2022 in view of the judgement of Hon'ble Supreme Court in UoI & Ors. Vs. Tarsem Singh (supra). The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

22. Consequently, the OA 365/2022 is allowed.

23. No order as to costs.

Pronounced in the open Court on 6 day of January, 2025.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

Akcs

COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

41.

RA 5/2025 IN OA 365/2022

Ex Hav Binod Kumar Yadav ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate  
For Respondents : Mr. Niranjana Das, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER  
20.03.2025

RA 5/2025

This application has been filed seeking review and modification of an order passed by this Tribunal in OA No.365/2022 on 06.01.2025 praying for payment of arrears from the date of cause of action and not from three years prior to the filing of the OA No.365/2022.

2. The applicant was invalided out of service on 03.03.2017 and when his claim for grant of disability pension was rejected by the First Appellate Authority, the applicant submitted 2<sup>nd</sup> Appeal for grant of disability pension which was also rejected by the Second Appellate Authority only on 06.10.2021. After rejection of the same, within a period of six months, the applicant invoked the jurisdiction of this Tribunal by filing of OA No.365/2022 on 22.02.2022,

i.e., within six months from the date of rejection of the 2<sup>nd</sup> Appeal. Copy of the order passed in 2<sup>nd</sup> Appellate Authority on 06.10.2021 is filed as Annexure RA-2.

3. While hearing this application on merit by the order in question, review of which is sought for, even though the applicant has been granted the benefit of disability element of pension as prayed for by him, however, arrears have been restricted to three years prior to filing of OA No.365/2022 in view of the law laid down by the Hon'ble Supreme Court in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648]. It is the case of the applicant, now before us, in this application that there is an error apparent on the face of the records in the matter of restricting of arrears. It is the contention of the applicant that the cause of action for claiming disability element of pension accrues to the applicant when he was discharged from service on being invalided out on 03.03.2017. The PPO granting him pension was issued by the PCDA (P), Allahabad on 24.05.2019 wherein he was only granted Ordinary Pension. The applicant preferred 1<sup>st</sup> Appeal against the said order denying him disability pension. After the 1<sup>st</sup> appeal preferred on 03.05.2019 which was rejected by the competent authority on 21.07.2020 against the same, the

applicant preferred a 2<sup>nd</sup> Appeal on 19.11.2020 which was rejected by the impugned order on 06.10.2021 and within a period of six months of rejection of the 2<sup>nd</sup> Appeal, the OA No.365/2022 was filed on 24.02.2022, i.e., within a period of six months from the date of rejection of the 2<sup>nd</sup> Appeal.

4. Accordingly, from the fact that has come on record it is clear that the applicant had been diligently prosecuting his matter, immediately after his claim was rejected and the PPO was issued to him in 2019, i.e., 24.05.2019, he preferred the 1<sup>st</sup> Appeal and 2<sup>nd</sup> Appeal which was finally decided on 06.10.2021 and within the period stipulated under Section 22, he had invoked the jurisdiction of the Tribunal by filing the OA No.365/2022. It is, therefore, clear that the applicant had invoked the jurisdiction of this Tribunal within a reasonable period of time and there is no reason for denying him the benefit of arrears of salary from the date he was invalided out from service and the law laid down in the case of *Tarsem Singh* (supra) will not apply as this is not a case when there is an inordinate delay in raising the claim and, therefore, payment of arrears is to be restricted to three years.

5. Finding there to be an error apparent on the face of the record, this application is allowed. Order dated 06.01.2025 passed in OA No.365/2022 is modified to the extent that the arrears payable to the applicant shall be paid from the date he was invalidated out from service, i.e., 03.03.2017 and not from the date three years prior to the filing of the OA No.365/2022.

6. This order shall form part of the order dated 06.01.2025 in OA No.365/2022.

7. In view of the aforesaid, the RA stands disposed of.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C.F. MOHANTY]  
MEMBER (A)

Neha  
RA 5/2025