

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

O.A. No. 788 of 2018

In the matter of :

Ex Hav Chandra Mohan

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. A K Trivedi, Advocate

For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of the 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) Quash and set aside the Impugned order dated 19/04/2017, 13/02/2018 and finding and opinion of Und Release Medical Board held on 30/03/2015 with regard to aggravation and consequently the applicant may be entitled for grant of disability element of disability pension wef 30/09/2015 i.e. from the date of his discharge as injury sustained by him though not attributable to but certainly aggravated by military service in terms of Medical Board Proceedings dated 28/02/2008 and also on the

fact that the applicant was retained in service and served in Field Area. The appellant may also be entitled for rounding off to 50% wef 1.1.1996 and entitled for arrears of his pension from the date of his discharge alongwith interest @ 18%.

(b) Any other order as may be deemed just and proper in the facts and circumstances of the case.

(c) Award Cost."

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 26.09.1991. Pursuant to policy guidelines issued by the Integrated Headquarters of the Ministry of Defence (Army) vide Letter No. B/10201/06-08 Vol-4/MP 3 dated 12.04.2007, which allowed for the discharge of personnel below officer rank who were in a permanent low medical category and had completed the requisite pensionable service, the applicant was discharged from service with effect from 30.06.2008. However, the Hon'ble Supreme Court, in its judgment dated 07.11.2008 in Civil Appeal No. 6587 of 2008, held that such personnel could only be discharged through an Invaliding Medical Board (IMB). Accordingly, the discharge carried out under the policy dated 12.04.2007 was deemed invalid. In compliance with the Hon'ble Supreme

Court's directive, the applicant was reinstated into service with effect from 20.01.2009, as per DEPOT COY Part-II Order No. 03/0037/2009. Thereafter, after rendering 24 years of service the applicant was discharged from service on 30.09.2015.

3. The first Release Medical Board (RMB) held on 28.02.2008 opined that the disabilities suffered by the applicant were aggravated by military service due to stress and strain, assessed at 30% for life and the second Release Medical Board (RMB) held on 30.03.2015 held that the applicant was fit to be discharged from service in composite low medical category S1H1A3(P)P1E1 for the disabilities of (i) Shaft Femur Fracture (LT) OPTD @ 20% for life, (ii) Subluxation of Knee (LT) OPTD @ 11-14% for life and (iii) Open Fracture Upper End of Fibula (LT) 20% for life compositely assessed @ 40% for life while the net qualifying element for disability was recorded as NIL for life on account of all the disabilities being treated as neither attributable to nor aggravated by military service.

4. The applicant preferred the first appeal dated 10.12.2015 against rejection of the disability pension claim

but the same was rejected by the respondents vide IHQ MoD (Army) letter No. B/40502/429/2016/AG/PS-4(Imp-II) dated 19.04.2017. Subsequently, the applicant preferred a second appeal on 18.06.2017 against rejection of the disability pension claim, which was adjudicated and rejected by the Second Appellate Committee on Pensions (SACP) with all disabilities conceded as 'NANA' vide letter No B/38046A/299/2017/AG/ PS-4 (2nd Appeal) dated 13.02.2018. Aggrieved by the rejection of the disability pension claim from the respondents, the applicant has filed this OA. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2)(b) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

5. 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. Learned counsel submitted that the applicant, during his casual leave w.e.f. 10.12.1993 to 23.12.1993, he was travelling on his two

wheeler scooter from his village Salempur to Mathura to attend the mourning of his relative and met with a road accident due to no fault of his own.

6. Learned counsel for the applicant further submitted that a Court of Inquiry was conducted and the injuries of the applicant were treated as not attributable to military service.

7. Learned counsel for the applicant further submitted that the Hon'ble Supreme Court of India, in the case of ***Joginder Singh (Lance Dafedar) vs Union of India & Ors [SLR-1996(2) 149]***, has held that when an army personnel sustains injuries during casual leave, he should be treated as being on duty, the Court directed the grant of disability pension from the date of discharge. The applicant's case is squarely covered by the said judgment, and therefore, he is also entitled to the grant of disability pension.

8. Learned counsel further submitted that due to his placement in a low medical category, the applicant was denied further promotion and retired in the rank of Havildar only. It is pertinent to mention that the Second Release Medical Board (RMB) held on 30.03.2015 gave a contradictory opinion, declaring the applicant's disability as

neither attributable to nor aggravated by military service, though assessed at 40% for life. The findings of the Second RMB are perverse and in total contradiction to the earlier RMB held on 28.02.2008, which had correctly concluded that the disability was aggravated by military service. Therefore, the findings of the Second RMB deserves to be quashed and set aside.

9. Learned counsel further submitted that after having been diagnosed with the aforesaid disability, the applicant continued to perform duties, including field postings and participation in Operation Meghdoot and CI Ops areas post-accident.

10. 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.

11. 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 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.

12. It was further submitted on behalf of the applicant that the respondents have failed to appreciate that the applicant was retained in service and served in the CI/Ops areas, from February 2009 to October 2011, Learned counsel further submitted that the finding and opinion of the Medical Board are contradictory and no fresh reasoning has been

given by the Release Medical Board-2015 in not agreeing with the finding of Release Medical Board held in 2008, therefore the finding of RMB are perverse.

13. *Per contra*, 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" as the injury sustained at peace station during his casual leave as per injury report and thus the disabilities were assessed @ 40% for life. Learned counsel further added that the Court of Inquiry investigated the circumstances under which the applicant sustained the injury while on casual leave and it was opined by the court that as the injury was sustained due to non-service action and in peace area, it is not attributable to military service.

14. Learned counsel further submitted that the disability of (ii) Subluxation of Knee (LT) OPTD @ 11-14% for life does not fulfil one of the mandatory twin conditions in terms of Regulation 173 of the Pension Regulations for the Army; 1961 (Part-I) of being assessed as 'attributable to or aggravated by military service' and assessed at 20% or more,

as the case may be, and, therefore, the applicant is not entitled to disability pension. Learned counsel prayed that the OA be dismissed.

ANALYSIS

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

16. It is not in dispute that when the applicant sustained the injury which led to the disabilities of (i) Shaft Femur Fracture (LT) OPTD and (ii) Open Fracture Upper End of Fibula (LT), he was on Casual leave. The Court of Inquiry investigated the circumstances under which the applicant sustained the injury while on casual leave and it was opined by the court that as the injury was sustained due to non-service action and in peace area, it is not attributable to military service.

17. 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]

18. It is seen that the Court of Inquiry (CoI) assembled on 03.06.1994 in order to investigate the circumstances under which the applicant sustained injury while on casual leave, after recording statements of the applicant, gave its findings which read as under :

"FINDING OF THE COURT"

1. *No. 9511789-F Hav/AEC Chandra Mohan was on 14 days C/L wef 10 Dec 1993 to 23 Dec 1993.*
2. *On 12 Dec 1993 at about 0930h, Hav/AEC Chandra Mohan was travelling on his scooter from village salempar to Mathura.*
3. *A jeep banged into his scooter, suddenly from behind and Hav Chandra Mohan fell down on the road and got injured. He was admitted in Military Hospital in Mathura.*

19. On the basis of the above findings, the COI opined that:

"Having perused the statements, the Court is of the opinion that No 9511789F Hav/AEC Chandra Mohan sustained injuries, having met with an accident on 12 Dec 1993 at about 0930h while on 14 days casual leave. Therefore, the Court is of the opinion that the injuries sustained is not attributable to military service.

From the above it is clearly established that the said injury to the applicant is not attributable to military service as there is no causal connection between the injury and the military service. However, as regards the issue of aggravation of the disability by the military service, we find that in the first RMB held on 28.02.2008, the disability of the applicant has been conceded to be aggravated by service and assessed @ 30% for life. To the contrary, the 2nd RMB held on 30.03.2015 gave a different finding and concluded that the disability of the applicant has been treated as neither attributable to nor aggravated by military service but assessed as 40% for life. It is not understood as to on what basis the 2nd RMB held that the disability of the applicant was not aggravated by the military as in the first RMB dated 28.02.2008 held the disability to be not attributable to military service but aggravated by service. Moreover, the percentage of disability was increased from 30% to 40%.

20. In view of the aforesaid circumstances, while the disability of the applicant is not attributable to military service, however, the aggravation of the same due to service conditions cannot be denied as the injury which led to the

present disabilities was sustained in December, 1993 and even after that the applicant was performing normal military duties till the date of his release from service on 30.09.2015. It is pertinent to note that at the time of release, the applicant was placed in permanent low medical category due to the disabilities in question and his disabilities has increased from 30% (2008 Release Medical Board) to 40% (2015 Release Medical Board). Hence, the disabilities of the applicant are to be conceded as aggravated by the military service.

21. In view of the above consideration, we hold that the applicant is entitled to the disability pension in respect of the disabilities of Shaft Femur Fracture (LT) OPTD @ 20% for life, and Open Fracture Upper End of Fibula (LT) 20% for life, as the applicant's (ii) Subluxation of Knee (LT) OPTD @ 11-14% for life is assessed less than 20% and does not qualify the twin criteria in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) as brought out hereinabove, the applicant is not entitled for the said disability. Accordingly, as per MoD letter No. 16036 /RMB /IMB /DGAFMS/MA(pens) dated 14.12.2009, the composite

disablement of both the disabilities is now being calculated as under:-

Disability 'Shaft Femur Fracture (LT) OPTD' = 20%

***Disability 'Open Fracture Upper End of Fibula (LT)' : (100-20)
= 80 × 20/100 = 16%***

Composite Assessment of two disabilities = 20+16 = 36%

CONCLUSION

22. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension for the disabilities of 'Shaft Femur Fracture (LT) OPTD @ 20% for life and 'Open Fracture Upper End of Fibula (LT) 20% for life'. Accordingly, O.A. No. 788 of 2018 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant @ 36% for life which is to be rounded off to 50% for life from the date of release in terms of the judicial pronouncement 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.

23. The respondents are thus directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within a period of three months from the date of

receipt of a copy of this order and the amount of arrears shall be paid by the respondents, *failing which*, the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

24. There is no order as to costs.

Pronounced in open Court on this 28 day of May, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/Pooja/