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E-CourtARMED FORCES TRIBUNAL, REGIONAL BENCH,
SRINAGAR AT JAMMUSrl. No. 31TRANSFERRED APPLICATION No. 75 of 2016
(O. A No. 1020 of 2014)Monday, this the 8th day of May, 2023"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Lt General Ravendra Pal Singh, Member (A)"Arup Laha (Ex Hav No. 15121039F),
Last posted with 141 Field Regiment (Kargil),

..... Applicant

Ld. Counsel for the : **Shri Arjun Bhatia**, Advocate
Applicant

Versus

1. Union of India, through the Secretary to Government of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, through Officer-in-Charge, Records, the Artillery Regiment, Nasik Road Camp, PIN 422102, Maharashtra.
3. The Commanding Officer, 141 Field Regiment (Kargil).
4. The Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Shri Vikas Sharma**, Advocate
Respondents. Sr. Central Govt. Standing Counsel

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Prepared by...08/5/23

Checked By...22/5/23

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"AFT (Procedure) Rules 2008"
TA 75 of 2016 Ex Hav. Arup Laha

(Section 23/5/23)

ORDER(ORAL)

1. The applicant had approached the Armed Forces Tribunal, Chandigarh Bench by filing Original Application being O.A No. 1020 of 2014, under Section 14 of the AFT Act, 2007, seeking the following reliefs :-

- i. *To set aside the impugned action of the respondents whereby they have not extended the benefits of disability pension to the applicant for the invading injury "ACL TEAR GRADE III", which was suffered by him on leave.*
- ii. *To grant disability pension for the disabilities suffered by the applicant due to which he has been invalided out of the Army, along with arrears, interest and consequential benefits, from the date of discharge.*
- iii. *To grant the benefits of rounding off to the tune of 50% as applicable for 20% disability.*
- (iv) *Any other order or direction as this Hon'ble Tribunal deems fit in the peculiar facts and circumstances of the case."*

The said Original Application has been transferred to this Tribunal for adjudication and the same is registered as Transferred Application No. 75 of 2016.

2. Briefly stated, applicant was enrolled in the Indian Army on 26.08.1994. The applicant was promoted to the rank of Havildar. While posted to 54 Artillery Brigade Headquarter in September, 2005, the applicant was posted back to 141 Field Regiment in April, 2006. The applicant was granted five days PAL which was to commence from 21.04.2006 to 25.04.2006 and further a preparatory leave of six days from 26.04.2006 to 01.05.2006. While the applicant was on leave, on 24.04.2006, when the applicant was

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approaching the Railway Station for getting his ticket reserved for travelling back to join his duty, a stray cow came in front of his Motorcycle due to which the applicant lost control and fell down. Due to accident, left leg of the applicant was severely injured. The applicant was taken to nearest Military Hospital in Panagarh and applicant got admitted there. The applicant was then discharged from Military Hospital, Panagarh. The applicant joined his Regiment on 05.05.2006 but again reported sick for the said injury and thereafter shifted to Command Hospital, Chandimandir. The applicant was informed by the Medical Specialist that he had received an injury viz., "**ACL TEAR GRADE III (LT)**" and the applicant was operated on 22.09.2006 for the said injury and then discharged from the Hospital on 13.12.2006. Due the said injury, the applicant ceased duty with effect from 28.07.2006. Medical Board Proceedings were held by the respondents and the applicant was placed in low medical category S1H1A3 (T-24) P1E1 and was shown as suffering from "**(a) ACL TEAR (OPTD) & (b) PCL RTEAR (LEFT) KNEE**". On 24.03.2007, Court of Inquiry proceedings were done at 141 Field Regiment by the order of the Commanding Officer so as to investigate the circumstances under which the applicant sustained severe injury i.e., "**ACL TEAR GRADE III**" on 24.04.2006 while on leave. Thereafter, the applicant was put to re-categorization medical board proceedings from time to time. On 25.02.2010, Release Medical Board (RMB) proceedings were held and the applicant was found suffering from

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"ACL TEAR (OPTD)" and "PCL TEAR (LT) KNEE" and the said disabilities were held to be neither attributable to nor aggravated (NANA) by military service and the percentage of the disabilities has been assessed @20% for life. Thereafter, the applicant was discharged on 01.08.2010 under Rule 13 (3) Item III (iv) of the Army Rules, 1954 after rendering 15 years 11 months and 06 days of service. No benefits against the disability pension were extended to the applicant by the respondents. The applicant served a Legal Notice dated 21.09.2013 on the respondents for grant of disability pension but of no avail. It is in this perspective that the applicant has preferred the present Transferred Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 50%.
4. Per contra, learned counsel for the respondents conceded that applicant was granted 05 days of Part of Annual Leave from 21.04.2006 to 25.04.2006 and on 24.04.2006 while the applicant was approaching the

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Railway Station for getting his ticket reserved for travelling back to join his duty, a stray cow came in front of his Motorcycle due to which the applicant lost control and fell down. Due to the accident, left leg of the applicant was severely injured. The applicant was subsequently diagnosed as a case of **"ACL TEAR (OPTD)" and "PCL TEAR (LT) KNEE"**. He further contended that disability of the applicant @20% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Shri Arjun Bhatia, learned counsel for the applicant and Shri Vikas Sharma, learned Senior Central Government Standing Counsel for the respondents and have also perused the record.

6. After having heard the submissions of learned counsel of both sides we found that there are certain facts admitted to both the parties, i.e., applicant was enrolled in the Indian Army on 26.08.1994 and discharged from service on 01.08.2010. He sustained injury on 24.04.2006 while the applicant was approaching the Railway Station for getting his ticket reserved for travelling back to join his duty, a stray cow came in front of his Motorcycle due to which the applicant lost control and fell down. Due to the accident, left leg of the applicant sustained injury viz. **"ACL TEAR (OPTD)" and "PCL TEAR (LT) KNEE"**. The disabilities were assessed at 20% for life by the RMB, but the disability claim of the applicant was rejected on 20.07.2006 which was communicated to the applicant vide letter dated 25.02.2011.

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7. The respondents have denied disability element of disability pension to the applicant on the reason that for getting disability pension, in respect of injury sustained during the course of employment, there must be some causal connection between the disability and Army service, and this being lacking in applicant's case, as there was no causal connection between the disability and Army service, he is not entitled for the same.

8. This question has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the Hon'ble Apex Court. In a more or less similar matter, **Secretary, Govt of India & Others Vs. Dharamveer Singh**, decided on 20 September 2019, in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with '**Faciomaxillary and Compound Fracture 1/3 Femur (LT)**'. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave Report, dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to Air Force service. One of the findings of the report recorded under Column 3 (c) was that "No one was to be blamed for the accident. In fact respondent lost control of his own scooter". In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by Air

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Force service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of **Madan Singh Shekhawat v. Union of India & Ors**, (1999) 6 SSC 459 was allowed by the Tribunal holding that respondent was entitled to disability pension. Aggrieved by the same, this Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 points for consideration:-

(a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?.

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with Army service so as to hold that such injury or death is either attributable to or aggravated by Air Force service?.

(c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?.

9. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

10. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

"In view of Regulations 423 clauses (a), (b), there has to be causal connection between the injury or death

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caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury be connected with military service howsoever remote it may be. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributed to risk common to human being. 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".

11. Regarding question number 3, the Hon'ble Apex Court held that if a causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well as the various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and, for such injury, resulting in disability, the injury would be considered attributable to or aggravated by military service.

12. The Hon'ble Apex Court while summing up took note of following guiding factors by the Armed Forces Tribunal, Regional Bench, Chandigarh, in the case of **Jagtar Singh v. Union of India & Ors**, Decided on November 02, 2020 in TA No 61 of 2010 approved in the case of **Sukhwant Singh** and **Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability pension is

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required to be dealt with accordingly. Those guiding factors are reproduced below for reference:-

"(a) 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 disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.

(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to

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claim under Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior".

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

13. The respondents submitted that as per report of Court of Inquiry the injury sustained by the applicant was declared as 'not attributable to military service' on the ground that the applicant was on leave.

14. We have considered the applicant's case in view of above guiding factors and we find that applicant while approaching the Railway Station for getting his ticket reserved for travelling back to join his duty, a stray cow came in front of his Motorcycle due to which the applicant lost control and fell down. Due to the accident, left leg of the applicant sustained injury resulting into disabilities to the extent of 20% for life, on account of **"ACL TEAR (OPTD)" and "PCL TEAR (LT) KNEE"** which establishes causal connection with Army duty.

15. We also find that the RMB has denied attributability to the applicant only by endorsing that the disabilities **"ACL TEAR (OPTD)" and "PCL TEAR (LT) KNEE"** are neither attributable to nor aggravated (NANA) by service stating that injury sustained while on leave. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter.

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We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in and the disability of the applicant should be considered as attributable to Army service.

16. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of *Union of India and Ors vs Ram Avtar & ors* (Civil appeal No 418 of 2012 decided on 10th December 2014). In this Judgment the Hon'ble Apex Court noded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalidated out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

"4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard Learned Counsel for the parties to the lis.

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6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."

17. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

18. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability element of disability pension @

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20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Transferred Application.

19. In view of the above, the **Transferred Application No. 75 of 2016** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held as attributable to Army Service. The applicant is entitled to get disability element of disability pension @20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Transferred Application. The respondents are directed to grant disability element of disability pension to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Transferred Application. The date of filing of Transferred Application is 30.06.2014. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment

20. No order as to cost.

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(Lt General Ravendra Pal Singh)
Member (A)

Dated : 9th May, 2023
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Prepared by... A.19/5/23

Checked By... A.19/5/23

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(Justice Umesh Chandra Srivastava)
Member (J)

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