Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI
(Sl. No. 40)

O.A. No. 03 of 2021 with M.A. No. 05 of 2021

Lt. Col. K. Ibohal Singh (Retd.) Applicant
By Legal Practitioner for the Applicant : Shri A.R. Tahbildar, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Shri PO.K. Garodia, Advocate

Notes of the Registry	Orders of the Tribunal
	05.04.2023 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Air Marshal Balakrishnan Suresh, Member (A)** **M.A. No. 05 of 2021** Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Shri P.K. Garodia, Ld. Counsel for the respondents. This application has been filed for condoning delay of 18 years, 06 month and 07days in filing of Original Application for the grant of disability pension to the applicant. It is submitted by the Ld. Counsel for the applicant that delay in filing the Original Application is not deliberate. It is further submitted that limitation is not applicable in pensionary matters. Ld. Counsel for the respondents has vehemently opposed the prayer on the premise that delay has not been properly and satisfactorily explained. Upon hearing submissions of Ld. Counsel of both sides and keeping in view that pensionary benefits cannot be denied on the ground of delay, delay, if any, in filing of Original Application is condoned. Delay condonation application stands disposed off. **O.A. No. 03 of 2021** Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Shri P.K. Garodia, Ld. Counsel for the respondents. Original Application is **dismissed**. For orders, see our order passed on separate sheets. Misc. Application(s), pending if any, shall be treated to have been disposed of. **(Air Marshal Balakrishnan Suresh)** **Member (A)** **(Justice Umesh Chandra Srivastava)** **Member (J)** AKD/MC/-

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

ORIGINAL APPLICATION No. 03 of 2021

Wednesday, this the 05th day of April, 2023

"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Air Marshal Balakrishnan Suresh, Member (A)"

IC-27485-X Lt. Col. Konsam Ibohal Singh (Retd.)

..... **Applicant**

Counsel for the Applicant : **Shri A.R. Tahbildar,** Advocate

Versus

Union of India & Others

.....**Respondents**

Counsel for the Respondents. : **Shri P.K. Garodia,** Advocate
Central Govt. Counsel

ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

(I) To quash and set aside impugned Army HQ's letter No. 52334/Gren/IC27485/MP6D/919/R/2002/ AG/PS-04(d) dated 23.09.2002 (Annexure 'G'/Page – 28) wherein and whereby applicant's claim for disability pension was arbitrarily rejected.

(II) To pay disability element of pension along with rounding off benefit from 30% to 50% to the applicant with arrear and interest thereon.

And/or pass such order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

2. Facts giving rise to Original Application in brief are that applicant was commissioned in the Indian Army on 24.12.1972 and retired from service on 31.12.2001 in low medical category on attaining the age of superannuation. The applicant was granted Annual Leave from 18.10.1979 to 16.11.1979. According to the applicant, during the said annual leave, on 09.11.1979 applicant while returning from Imphal to his permanent place of residence at Manipur on a two wheeler after booking a ticket in bus for his return journey to his Unit at Dimapur met with an accident and sustained multiple injuries to right leg and right upper arm, which after investigation was found to be a case of "**BRACHIAL PLEXUS INJURY (RT) (OPTD)**". Before being retired from service, Release

Medical Board (RMB) was held at Military Hospital, Bhopal on 24.06.2000 in which applicant was found suffering with 30% disability for five years. Despite being retired from service in low medical category, disability pension was denied to applicant on the reason that his disability was neither attributable to nor aggravated by military service vide letter dated 23.09.2002. The applicant preferred First Appeal which too was rejected vide letter dated 26.02.2020. The applicant preferred Second Appeal which too was rejected vide letter dated 17.11.2020. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was on Annual Leave which is to be treated on duty when he sustained injuries as applicant while returning from Imphal to his residence at Maniput on two wheeler after booking a ticket in bus for his return journey to his Unit met with an accident, which ultimately resulted into 30% disability for five years, because of "**BRACHIAL PLEXUS INJURY (RT) (OPTD)**". He submitted that various Benches of AFT, Hon'ble High Courts and the Hon'ble Apex Court, in the matter of disability, has held that if an armed forces

personnel suffers with disability during the course of service, which was never reported earlier when he/she was enrolled/recruited in the army, the said disability would be treated to be attributable to or aggravated by military service and he/she shall be entitled to the disability pension for the same. Thus, he submitted that applicant's case being fully covered with above, as he also suffered injuries while on duty and same being not reported earlier at the time of his enrolment, he is entitled to disability pension.

4. Per contra, learned counsel for the respondents submitted that the applicant was granted Annual Leave from 18.10.1979 to 16.11.1979. The applicant during said annual leave, on 09.11.1979 sustained injuries in due to two wheeler accident. As held in report dated 24.06.2000 of the Release Medical Board Proceedings, applicant was on Annual Leave. For grant of the disability pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injury and military service. He further submitted that unless injuries sustained have causal connection with military service, armed forces personnel cannot be allowed disability pension merely on the

reason of being on duty or disability was not reported/detected while being enrolled or commissioned. He further submitted that in the given facts, applicant being injured due to two wheeler accident, there was no causal connection between the injuries sustained and military service and, therefore, applicant is not entitled to disability pension, as he is claiming.

5. We have heard Shri A.R. Tahbildar, learned counsel for the applicant and Shri P.K. Garodia, learned 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 commissioned in the Indian Army on 24.12.1972 and retired from service on 31.12.2001 on attaining the age of superannuation, he sustained injuries in his right leg and right upper arm while on annual leave due two wheeler accident and placed in low medical category for the disability "**BRACHIAL PLEXUS INJURY (RT) (OPTD)**" vide Release Medical Board report dated 24.06.2000 and his disability was assessed at 30% for five years, the disability claim of the applicant was rejected.

7. The respondents have denied disability pension to the applicant on the reason that for getting disability pension, in respect of injuries sustained during the course of employment, there must be some causal connection between the disability and military service, and this being lacking in applicant's case, as there was no causal connection between the disability and military 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

military 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 military 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 duly?.

(b) Whether the injury or death caused if any, 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?.

(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 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 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 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. We have considered the applicant's case in view of above guiding factors and we find that applicant was on Annual Leave and due two wheeler accident sustained injuries resulting into disability of to the extent of 30% for five years, on account of "**BRACHIAL PLEXUS INJURY (RT) (OPTD)**". Although the applicant has stated that he met with accident while returning home after booking a bus ticket for his return journey to his Unit, but has failed to produce any documentary proof in support of his submission like bus ticket etc. as such we are of the opinion that it is an afterthought cooked up story to show the causal connection. In fact, the activity in which he sustained injury being not connected with his military duties in any manner, he is not entitled to the disability pension for the same.

14. In the result, we hold that the claim of applicant's disability pension has rightly been rejected by the respondents which

needs no interference. Resultantly, Original Application is **dismissed**.

15. No order as to cost.

(Air Marshal Balakrishnan Suresh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 05 April, 2023

AKD/MC/-