

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

-.-

OA 538 of 2014

Kushal Singh Jaryal	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

-.-

For the Petitioner (s) :	Mr CDS Guleria , Advocate
For the Respondent(s) :	Mr RN Sharma,CGC

**Coram: Justice Rajesh Chandra, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.**

-.-

**ORDER
21.04.2014**

-.-

1. Prayer in this petition is for grant of disability element of disability pension for 30% disability for life from the date of discharge together with benefit of rounding off.
2. In brief, the allegations that the petitioner was enrolled in the Army on 21.01.1971 in AYE medical category. On 01.04.1988 he sustained injury which caused fracture in **left Patella** and was downgraded to low medical category. This injury was considered by the Medical Board as attributable. Despite the petitioner being in low medical category, he was posted in the Field and hard living area and due to stress and strains of the service the disability aggravated. The petitioner was discharged from service on 14.03.1991. At the time of discharge, his release Medical Board was held which assessed the disability as attributable to military service being 30% for five years. However, the claim for disability pension was rejected by the PCDA(P) Allahabad vide letter dated 11.11.1991 by superseding the decision/opinion of the medical board and held the disability as not attributable to military service with an advice to the petitioner that he may prefer an appeal. The petitioner submitted appeal on 10.12.1991 but the same was rejected by the Government of India, Ministry of Defence vide letter dated 31.01.2005. Further the representation made by the petitioner on 04.09.2013 was rejected by the respondents vide letter dated 21.11.2013. Further contention is that once the medical

board held the disability of the petitioner as attributable to military service, the PCDA(P) Allahabad had no authority to reject the same.

3. As the matter can be decided without calling for reply of the respondents, the arguments of the parties were heard and the case is being decided on merits.

4. The petitioner has filed the Photo Stat copy of the Release Medical Board as paper No.41 to 54. It is clear from the medical board proceedings that at the time of discharge the petitioner was found suffering from the disability **fracture Patella (left)** attributable to military service for five years.

5. The petitioner has filed the grounds of second appeal as paper 14 onwards in which he has been mentioned that in the month of April,1988 there was an inspection of Army Commander and the petitioner was posted as a special assignment in the Infantry School and was engaged on duty on day and night basis. The petitioner was ordered to put up the order-sheet of 'A' matters early in the morning although next day was a holiday. Under the orders of superior officer communicated to the petitioner through Ram Singh, messenger of the Infantry school, the petitioner was to reach in the office before 5.30 a.m. in Uniform. When the petitioner was going to the office in Uniform, he slipped in the bath room due to darkness and sustained injury. The Court of Inquiry was held in which it was found that the disability of the petitioner is attributable to military service. Brigade Commander also endorsed the finding of the Court of Inquiry in favour of the petitioner and held that the injury was attributable to military service.

6. The petitioner has filed the report of "Accidental and Self Injury-Officers/JCO/OR etc." as paper No.61 to 64 in which it has clearly been mentioned that Court of Inquiry was held and Brigade Commander came to the conclusion that the injury was attributable to military service. On the basis of this Court of Inquiry and the order of Brigadier Commander, the Release Medical Board also held that the disability was attributable to military service at 30% for five years. The claim of disability pension was forwarded to the PCDA(P)

Allahabad but the same was rejected by PCDA(P) on the ground that disability was not attributable to military service.

7. The contention of learned counsel for the petitioner is that once the disability was held by the competent authority attributable to military service, PCDA(P) Allahabad had no jurisdiction to take a contrary view and hold that the disability was not attributable to military service.

8. The learned counsel for the respondents, on the other hand, argued that from the facts as narrated by the petitioner in the second appeal to the Defence Minister's Appellate Committee on Pensions it is clear that the injury was sustained by the petitioner when he had slipped in the bath room and as such this injury has no causal connection with the military service.

9. We have considered the respective arguments.

10. The aspect about the authorities competent to alter the recommendations on the Court of Inquiry is dealt under the provisions of Regulation 520 which stipulates that these cannot be violated by the PCDA(P), Allahabad. The Central Government is the competent authority. We consider it appropriate to reproduce Regulation 520. The same reads thus:

"520. Inquiry to a Person subject to Army Act. - (a) When an officer, JCO, WO, OR or nurse, whether on or off duty, is injured (except by wounds received in action), a certificate on IAFY-2006 will be forwarded by the medical officer in charge of the case to the injured person's CO as soon as possible after the date on which the patient has been placed on the sick list, whether in quarters or in hospital. In the case of injuries which are immediately fatal, a report of the court of inquiry proceedings referred to in sub-para (c)(i) will take the place of IAFY-2006.

(b) If the medical officer certifies that the injury is of a trivial character, unlikely to cause permanent ill-effects, no court of inquiry need be held, unless considered necessary under sub-paras (c) (ii), (iii), (iv) or (v). In any event, however, IAFY-2006 will be completed and in all cases, except those of JCOs, WOs and OR will be forwarded through the prescribed channels to Army Head Quarters, Org Dte in the case of non-medical officers and Medical Dte in other cases, a copy being retained at Command or other headquarters. In the case of a JCO, WO or OR, IAFY-2006 will be forwarded to the Officer i/c Records for custody with the original attestation, after the necessary entry, stating whether he was on duty and whether he was to blame, has been made by the CO in the Primary Medical examination report (AFMSF-2A).

(c) In the following cases a court of inquiry will be assembled to investigate the circumstances:-

- (i) If the inquiry is fatal or certified by the medical officer to be of serious nature. Where an inquest is held, a copy of the coroner's report of the proceedings will be attached to the court of inquiry proceedings.
- (ii) If, in the opinion of the CO, doubt exists as to the cause of the injury.
- (iii) If, in the opinion of the CO, doubt exists as to whether the injured person was on or off duty at the time he or she received the injury.
- (iv) If, for any reason, it is desirable thoroughly to investigate the cause of the injury.
- (v) If the injury was caused through the fault of some other person.

In cases where the injured person is a JCO, WO or OR, the court may consist of one officer as presiding officer, with two JCOs, WOs or senior NCOs as members.

(d) The court of inquiry will not give an opinion, but the injured person's CO will record his opinion on the evidence, stating whether the injured person was on duty and whether he or she was to blame. When no evidence as to the circumstances attending the injury beyond that of the injured person is forthcoming it should be stated in the proceedings. The proceedings will then be sent to the Brigade Commander or the officer who has been authorized under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander who will record thereon his decision whether disability or death was attributable to military service and whether it occurred on field service. After confirmation, the medical officer will, in all cases except those of JCOs, WOs and OR, record his opinion in the proceedings as to the effect of the injury on the injured person's service. The proceedings will then be forwarded by the CO through the prescribed channel to Army Headquarters, Org Dte in the case of non-medical officers and Medical Dte in other cases, a copy being retained at Command or other headquarters. In the case of a JCO, WO or OR a record will be made in the primary medical examination report (AFMSF-2A) by the CO that a court of inquiry has been held, and also as to whether the man was on duty and whether he was to blame. The primary medical examination report will then be passed to the medical officer who will record his opinion as to the effect of the injury on the man's service. The proceedings of the court of inquiry will then be forwarded to the Officer i/c Records for enclosure with the injured person's original attestation (see sub-para (b) above), except in the case of a court of inquiry under sub-para (c)(v) above, in which case the proceedings, together with a copy of the medical opinion as to the effect of the injury on the man's service, will be forwarded without delay to Army Headquarters.

(e) When an officer, JCO, WO, OR or nurse, not on duty, is injured in any way by or through the fault of a civilian or civilians, and receives compensation from such civilian or civilians, in lieu of any further claim, this will be recorded in the proceedings of the court of inquiry.

(f) A Court of inquiry need not necessarily be held to investigate deaths or injuries sustained through taking part in organized games, sports and other physical recreations as defined in Para 271.

In all cases where a court of inquiry is not held, IAFY-2006 will be completed with the statements of witnesses as required by item 4 thereon and when applicable, the CO will certify that the games, sports, or physical recreations were organized ones.

(g) The injury report will be submitted to the Brigade Commander or the officer who has been authorized under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander only if

the injury is severe or moderately severe or if a court of inquiry to enquire into the causes of injury has been held. The Brigade Commander or the officer who has been authorized under Section 8 of the Act to exercise the legal and disciplinary powers of a brigade commander will record on the form his decision whether or not the injury was attributable to military service, and whether it occurred on field service. In all other cases, the CO will record his opinion.

(h) In case where the injury report on IAFY-2006 is prepared in addition to the court of inquiry proceedings and the Brigade Commander or the officer who has been authorized under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander has recorded his opinion on the court of inquiry proceedings or adjudicated the case, it will not be necessary for him to do so again on the injury report (IAFY-2006) which may be signed by a senior staff officer on his behalf. The senior staff officer will, however, clearly state that the decision given is as recorded by the Brigade Commander or the officer who has been authorized under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander on the court of inquiry proceedings.

(j) IAFY-2006 or the proceedings of the court of inquiry, so endorsed, as the case may be, will accompany the pension claim when submitted to the pension sanction authority, who will either accept the decision of the Brigade Commander, or, if in doubt, will submit the pension claim for the orders of the Central Government. The medical board or the medical officer who furnishes a death certificate will not express any opinion in such cases in regard to attributability to service, except on purely medical grounds which should be clearly specified.

11. In the case of the petitioner the Court of Inquiry was carried out which found the disability as attributable to military service. Final decision was taken by Brigade Commander and was to the same effect. However, the claim of disability pension was rejected by PCDA(P) Allahabad vide letter dated 11.11.1991 (Annexure A-1). There being disagreement between the opinion of the Brigade Commander and PCDA(P) Allahabad, the matter should have been submitted to the Central Government for orders under Regulation 520(j) of the Regulations for the Army. This does not appear to have been done. In this context the Hon'ble Delhi High Court in the case of **Hony Capt Vardip Singh Vs. UOI (CWP No.284 of 2000)** had observed as under :

“If there is any doubt in the mind of the pensioning authority, the pensioning authority sends the case for orders of the Government of India. From sub – para (g) it is manifestly clear that in a case where parameters of regulation 520 has not been observed by the Court of Inquiry or the brigade commander, the Central Government may, by recording sufficient reasons, call for more information or pass appropriate orders but the Central Government cannot simply disagree with the findings of fact recorded by court of inquiry and opinion rendered by the Brigade Commander in terms of sub – para (g) of regulation 520 and take a different view that the death caused was not attributable to military service”.

13. Under the facts and circumstances we consider it appropriate to set aside the decision of the PCDA(P), Allahabad and the same is set aside.

14. The PCDA(P), Allahabad, may refer the matter to the Central Government under the provisions of Regulation 520(j) of the Regulations for the Army, and if so done, the competent authority to decide the matter in accordance with the Regulations and on its merit within four months of receipt of certified copy of this order by the respondents.

15. This petition is disposed of with the above directions.

(Justice Rajesh Chandra)

(Air Marshal (Retd) SC Mukul)

21.04.2014

tyagi

Whether the judgment for reference to be put on internet-Yes/No.

