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

102.

OA 140/2018

Col Sunil Kumar Sharma (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Janak Raj Rana, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM

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

O R D E R
19.03.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, applicant has called in question tenability of an order Annexure A-1 whereby his first appeal claiming disability pension has been rejected and the original order dated15.05.2017, holding the injury sustained by the applicant as indicated in the Release Medical Board to be neither attributable to nor aggravated by military service, his claim has been rejected.

2. Applicant was commissioned into the Indian Army on 11th March 1989 as 2/Lt in the Regiment MECH INF. It is the case of the applicant that at the time of his entry, he was found medically fit in all respects. The applicant was posted at various locations during the service and participated in various operations. In July 2010, the applicant was holding the post of Col. and while posted

with DIPAC, Delhi Cantt. He was practicing for the forthcoming Golf tournament when he was hit by a Golf ball on his right eye.

3. It is the case of the applicant that on account of the same, he suffered eye injury which was further aggravated due to continuous eye strain in the service till 2013. He was performing duties of Image Analyst at Defence Imagery Processing Analysis Centre, Delhi Cantt. which involved working on high resolution satellite imagery data and this resulted in aggravation of the injury. The applicant was admitted to Military Hospital, Delhi Cantt. on 17 July 2010. The Court of Inquiry was held, wherein, the finding recorded was that the injury sustained is not attributable to military service.

4. In 2017, Release Medical Board was held at the time of retirement of the applicant which was due on 2nd April 2017. The Release Medical Board declared that the injury was not attributable to military service and even though it assessed the disability @ 20% for life. The applicant retired on superannuation on 2nd April 2017 and thereafter, claimed the disability pension which has been rejected by the impugned order. It is the case of the applicant that as he has suffered the injury while he was practicing to participate in the Golf tournament, therefore, the injury sustained by him is attributable to military service. Further, arguments was that on account of the nature of duty performed, the injury had aggravated and therefore, the applicant is entitled to disability pension. Reliance

is placed on judgment of the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India Civil appeal No. 4949/2013 decided on 02.07.2013.***, the judgment of Kolkata Bench of the Tribunal in the case of ***Manoj Kumar Vs. Union of India in TA No. 50/2011 decided on 17.07.2013*** and certain other judgments to say that the applicant was entitled to the benefit.

5. Respondents have filed a detailed counter affidavit and refuted the aforesaid contentions in its totality. According to the respondents, the applicant did not suffer the injury while on military duty and as the injury was neither attributable to nor aggravated by military service, he is not entitled to any relief.

6. Respondents contend that the injury was neither attributable to nor aggravated by military service and the applicant is not entitled to any relief. Learned counsel takes us to the medical evidence available on record and the Inquiry report which indicates that the injury was not attributable to anything connected with military duty.

7. We have heard learned counsel for the parties and we find that the Court of Inquiry was conducted on 20.12.2010 and subsequent date to investigate into the circumstances under which the applicant had sustained the injury on the right eye. According to the applicant's statement, he sustained injury in the Golf ground while playing golf in preparation for the golf tournament.

8. Various other witnesses were also examined. According to witness No. 2 to the incident, Col S.K.Bakshi, after finishing playing four holes while proceeding towards Green No. 05, a shot played by Col Bakshi hit the tree and came back and hit the applicant on his right eye. He was taken to the Base Hospital. Based on the evidence, it has come on record that the injury was totally accidental in nature and the finding recorded by the court is that the injury caused by accidental and was not attributable to military service. From the medical documents available on records particularly the Medical Board Proceedings or the invalidating medical board reports, it is seen that the opinion of the Medical Board reads as under:-

> ***"BRIEF JUSTIFICATION:-*** *The disability was caused by an injury (Hit by golf ball) to Right eye while playing golf. He was promptly treated at BHDC and AH R & R resulting in excellent recovery of eye sight. He was provided sheltered appointment to prevent worsening. He has a good vision of Rt eye and requires no active treatment. This disability is not aggravated by eye strain or image analysis on high end computers. Hence the disability is NANA"*

9. From the aforesaid, it is clear that the applicant was shifted for the injury to the Base Hospital, Delhi Cantt and the Army Hospital R & R resulting in excellent recovery of the eye sight. He was provided sheltered appointment to prevent worsening of his ailment. He has a good vision of the right eye and does not require any active treatment. The disability is found not aggravated by any Eye sight or Image Analyst. The aforesaid

Medical Board consists of three senior doctors who are experts on this subject. From the aforesaid documentary evidence available on record we find that the injury of the applicant is neither attributable to the military service nor aggravated by military service. In the case of ***Secretary, Government of India & Ors. Vs. Dharambir Singh, Civil appeal No.4981/2012*** decided by the Hon'ble Supreme Court of India on 20.09.2019 the issue of grant of disability pension or injury sustained have been considered by the Hon'ble Supreme Court in detail and in Para 36 of the said judgment, the final conclusion have been culled out in the following manner:-

> *"36. We find that summing up of the following guiding factos by the Tribunal in* ***Jagtar singh v. Union of India & Ors.*** *and approved in* ***Sukhvant Singh*** *and in* ***Vijay Kumar*** *do not warrant any change or modification and the claim of disability pension is required to be dealt with accordingly:-*
>
> > *"(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. <u>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.</u> 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 allen 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 behaviour.

(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."

10. The Hon'ble Supreme Court holds that there has to be a relevant and reasonable and causal connection, however remote between the incident resulting in such disability, death and military service for its attributability. The injury sustained or the consequent disability must relate to military service in some manner or the other or the act must fall as a matter of necessity from military service.

11. In the facts and circumstances of the case, we find that the applicant sustained the injury while playing golf. There is nothing on record to indicate that he was nominated or authorised to participate in a tournament and was playing the golf in practice for the tournament. Even in the finding recorded in the Court of Inquiry, there is nothing to indicate that the applicant was nominated for the event for which he was practicing. On the contrary, he is found to be playing golf with other members of the Army Environment Park and Training Area in the Delhi Cantt.

12. The respondents in Para 6 of their counter affidavit make the following averments:-

"6. That the applicant preferred first appeal on 17.06.2017 against rejection of his disability

pension claim which was not considered due to lack of part-I order of detailment for practicing game on 08.02.2011. the same has been intimated top the applicant vide AG/MP-6 (E) Letter No. 13301/IC-46311M/Mech/IMF/MP-6 (E) dated 26.12.2017 and advised to forward the same for considering his appeal. Meanwhile, the applicant approached to the Hon'ble Tribunal without caring his Appeal."

13. Witness No. 2 to the Court of Inquiry Col. S.K. Bakshi in his statement says that he has been playing golf for last 12 years as a member of AEPTA, Delhi. On 17.07.2010, we were playing golf at AEPTA, Delhi. Col Bakshi and Lt. Col. S.K. Sharma, the applicant was in the same group and the accident took place in the manner as described by him. There is nothing available on record from the statement of this witness or on the finding of the Court of Inquiry that any tournament was going to be held or the preparation for the tournament was on. No such finding has been recorded and no evidence has been produced in that regard. Taking note of the totality of the circumstances, we do not find any reason to grant any benefit to the applicant. The OA is therefore dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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