

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

108.

OA 1973/2018 with MA 2175/2018

Ex POELR Mahabir Singh Applicant

Versus

Union of India & Ors. Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Mr. Shyam Narayan, Advocate

CORAM

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

ORDER
19.03.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has filed this application and the prayers made in Para 8 of the application reads as under:-

- (a) Declare the disability of the applicant as attributable to or aggravated by Military Service and grant him disability element of pension.
- (b) Round off the disability percentage of the applicant from 20% to 50%.
- (c) Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

2. The applicant was enrolled in the Indian Navy on 10.01.1980. The applicant in the year 1991 was serving in INS Rajali, Arakonnam and while he was on casual leave, sustained the injury namely Fracture Tibial Spine (LT). Claiming the injury to have caused 20% disability and attributing it to be on account of military service, the applicant has filed this application claiming disability pension.

3. Placing reliance on various judgments, it is the case of the applicant that even while on casual leave, a man in uniform is considered to be on duty and for injury sustained even on leave is entitled to be granted disability pension. The applicant has since been discharged from service and has been granted service pension as is stated by the respondents in the counter affidavit.

4. It is the case of the respondents that while the applicant was on three days' casual leave, he met with road accident because of which he suffered the fracture and as the injury was neither caused on account of military service, it was held neither attributable to nor aggravated by military service and the claim has been rejected.

5. Having heard learned counsel for the parties at length we are of the considered view that the issue of grant of disability pension while on leave is no more under dispute having been settled by the Hon'ble Supreme Court on 20.09.2019 in *Civil appeal No. 4981/2012, Secretary, Govt. of India Vs. Dharambir Singh*. In the said case, the primary issue which was to be considered by the Hon'ble Supreme Court was to whether an armed forces personnel who proceeds on casual leave or annual leave or leave of any kind is on duty and if he suffers injury or death while on duty is he entitled to disability pension or compensation. Before the Hon'ble Supreme Court, three issues were formulated for consideration. The issues were formulated in Para 10 which read as under:-

- (i) Whether, when armed forces personnel proceeds on casual leave, annual leave or leave of any other kind, he is to be treated on duty?
- (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) What is the effect and purpose of COI into an injury suffered by armed forces personnel?

6. Thereafter, in detail, the Hon'ble Supreme Court has considered the medical regulation, the entitlement rules for grant of disability pension etc. and large number of judgments not only of the Supreme Court but also various High Courts and the Armed Forces Tribunal and finally the issue and the questions framed are answered and the guidelines and guiding factors for deciding the issues have been laid down in Para 36 in the following manner:-

"36. We find that summing up of the following guiding factors 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. 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'.

(Emphasis supplied)

(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.

(Emphasis supplied)

(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.

(Emphasis supplied)

(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 behaviour.

(e) 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."

(Emphasis supplied)

7. From the aforesaid, it is seen that the mere fact that a person being on duty or otherwise, at the place of his posting or on leave cannot be the sole criteria for deciding attributability of disability. There has to be a relevant and reasonable causal connection, howsoever, remote it may be between the incident resulting in such disability/death and military service for its attributability. It has been held by the Hon'ble Supreme Court that this condition will apply even when the person is in unit. If the injury suffered by member of the Armed Force, according to the Hon'ble Supreme Court, if it is the result of an act alien to the sphere of military service or in no way be connected to his being on duty and omission or commission which results in injury is not in any manner connected with military service, disability cannot be granted. It is held disability should not be result of an accident which could be attributable to risk common to human existence in modern conditions.

8. If we analyse the case in hand in the backdrop of the aforesaid principals of law, it is clear that the applicant suffered a motor accident resulting in his fracture and this has got nothing to do with his military service. There is nothing to indicate that

the accident took place in connection with any military duty. On the contrary, the applicant was on leave and was riding the vehicle in his private capacity for private work and therefore, in the facts and circumstances, we see no reason to grant any benefit to the applicant as causal connection with the military service and accident has not been established. Accordingly, finding no ground, the application is dismissed.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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