

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

O.A NO. 278 OF 2010

Ex Sgt Bijender Singh Palarwal Applicant

Versus

Union of India and Others Respondents

For the Petitioner : Mr. J.S Mann, Advocate

For the Respondents : Mr. Ankur Chibber, Advocate

C O R A M:

**HON'BLE MR. JUSTICE A.K MATHUR, CHAIRPERSON
HON'BLE LT. GEN. S.S DHILLON, MEMBER (A)**

J U D G M E N T

9th May 2011

1. Aggrieved by the arbitrary rejection of his appeal to the Air Force and the Ministry of Defence authorities for treating the two injuries sustained by him while in service as attributable to military service, the appellant has sought to set aside the impugned order of

22.5.2009 passed by the Government of India wherein his second and final appeal for grant of disability pension was rejected by the authorities. The appellant seeks grant of disability pension.

2. The appellant was enrolled in the Indian Air Force on 23.12.1986 and discharged from service on 31.12.2006 after completion of 20 years of service. While posted at 511 Signal Unit, when he was proceeding for "Shramadan" in the afternoon of 23.9.1993, he met with a scooter accident thereby fracturing his right leg. It was emphasised that Shramdan is a compulsory physical activity and his failure to report for such duty would have invited severe disciplinary action against him. Therefore, the appellant emphasised that he was on duty in a military station and proceeding for military duty at the time he met with the accident.

3. The second injury was sustained by the appellant on 13.11.1996 when he was coming down the stairs from the married accommodation allotted to him at Kanpur. The appellant had specifically requested for a ground floor accommodation as it was difficult for him to negotiate the stairs. For reasons unknown to him, he was not allotted a

ground floor accommodation, but allotted a first floor accommodation. Resultantly, while coming down the steps at night on 13.11.1996, he slipped and fell thereby fracturing his leg and sustaining the second injury.

4. Counsel for the appellant urged that both the injuries had occurred due to service exigencies and that the appellant was on duty on the date and time when the scooter accident took place and also when he fell down the staircase. Accordingly, both the injuries are directly attributable to Air Force service since the appellant was on duty and consequently entitled to disability pension from the respondents. It was also argued that during his Release Medical Board on 16.5.2006, he had mentioned that "both these fractures were the result of his Air Force service" and the appellant was placed in Low Medical Category A4 G4 (P). The appellant filed a claim for disability pension after his Release Medical Board, but was informed that he was not entitled to disability pension. He filed his first appeal on 25.8.2006, which was rejected by the authorities on 6.2.2007 and the second appeal was filed by him on 20.2.2008, which was rejected on 22.5.2009.

5. Counsel for the respondents argued that the appellant was discharged after 20 years of service on fulfilling his normal terms and conditions of service. It was clarified by the respondents that whenever a serving Air Force person sustains any injury, an injury report is prepared, which bears his signature of the injured person. This had been done for both the injuries sustained by the appellant. For the first injury sustained on 23.9.1993, the injury report was prepared on 15.6.1994 and bears the following statement as signed by him:

"On 23 Sep 93 at about 1500 hours, while I was driving a scooter, the engine of the scooter suddenly seized and I fell down sustaining an injury to the right ankle".

There is no mention of his proceeding on any duty in his own statement and accordingly, the injury was considered as not attributable to military service. On 13.11.1996 at 2230 hours, the appellant sustained the second injury when he fell from the stairs and fractured his leg. In the injury report prepared on 14.11.1996, he has given the following statement:

"I am an old case of comminuted fracture dislocation talus (RT) w.e.f 23.09.93. Now on 13.11.96, at about 2230 hours,

while I was coming down the stair case without crutches, I slipped and I fell down sustaining injury to my right leg."

In view of the appellant's own signed statement and the rules prescribed thereof, this injury was also considered as not attributable to service. The Release Medical Board on 16.5.2006 had assessed his disabilities as "composite for 30% for life and recommended both disabilities as neither attributable to nor aggravated by Air Force service". Accordingly, the appellant is not entitled to any disability pension. It was also mentioned that although the first injury was sustained by him on 23.9.1993, the request for a ground floor accommodation was made two years and four months after the injury, i.e. on 29.1.1996 and the authorities very expeditiously allotted him an accommodation out of turn i.e. on 29.2.1996. At that point of time, no other accommodation was available and the appellant accepted this accommodation without any hesitation. It is, therefore, incorrect of him to now blame the authorities for allotting him accommodation out of turn.

6. Although both the injuries have been sustained by the appellant while in Air Force service, that does not necessarily make the

injury attributable to or aggravated by Air Force service. Based on the appellant's own statement in both the injury reports and the existing rules, the authorities very rightly summarised that these injuries were neither attributable nor aggravated by Air Force service.

7. We do not find any error on the part of the authorities in classifying both injuries as not attributable or aggravated by Air Force service. Accordingly, the appeal is dismissed. No order as to costs.

(Justice A.K Mathur
Chairperson

(Lt Gen. S.S Dhillon)
Member (A)

New Delhi
9th May, 2011