

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

O.A NO. 420 OF 2010

Ex Gunner Kunwar Sen

... Petitioner

Versus

Union of India and another

... Respondents

For petitioner : Mr. Sukhbir Singh, Advocate

For respondents : Mr. Ankur Chibber, Advocate

CORAM

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

J U D G M E N T

22.09.2011

S.S Dhillon, Member:

1. The applicant is aggrieved by the impugned discharge order dated 16.6.1992, whereby he was illegally discharged from service under

Army Rule 13(3)(iii)(v). He also seeks quashing of the respondents' letter of 3.9.2007, whereby his appeal for grant of disability pension was rejected by the authorities. The applicant seeks to be reinstated in service with consequential benefits as well as release of disability pension under Pension Regulation 173.

2. The brief facts of the case are that the applicant joined the Army on 31.1.1985 and was posted as a Gunner in the Air Defence Regiment of the Army. The applicant was an outstanding player of "Kabaddi" and in one of the Kabaddi matches between his unit (152 AD Regiment) and 26 AD Regiment, the right eye of the applicant was injured by the nail of Nk Rukkan Singh. As a result of this injury, the applicant was admitted to Military Hospital, Jalandhar, wherein the said eye was operated and he was treated for this injury for a very long time. However, like a good soldier, the applicant continued to represent his unit in Kabaddi matches. The said injury was attributable and aggravated by military service since he received this injury while participating in organised sports.

3. Between 20.6.1990 and 22.6.1990, the applicant was given three days of casual leave to attend the marriage of one of his friends. The applicant was issued with concession voucher for the journey to attend the said function. Therefore, for the duration of this period of casual leave, the applicant was reckoned to be on military duty. Unfortunately during the wedding celebration on 21.6.1990, an iron pipe in which the fire works for the wedding were operated burst and certain splinters hit the right eye of the applicant, which had not yet fully healed from the earlier injury. The applicant was sent to the closest hospital, i.e. Shamli Eye Hospital, wherein he was treated by a qualified eye specialist. On reporting back to the unit the next day on 22nd June, his Medical Officer attended to his injury and sent him to Military Hospital, Jalandhar for subsequent treatment. Despite the hospitalisation of the applicant at Military Hospital, Jalandhar, the eye could not be cured since it had already been damaged previously and accordingly he was placed in medical category "C" permanent and the disability percentage was assessed as 40% by the Medical Board at Jalandhar. Thereafter on 16.6.1992, the applicant was informed that his services were no longer required and that he was to be released from service; consequently he

was to appear before a release Medical Board. The applicant was discharged from service on 1.1.1993 and was not paid disability pension for his injury. The applicant made various representations to the concerned authorities, but all these were rejected on the ground that the injuries were not attributed or aggravated by military service. The applicant argued that due procedure was not followed by the authorities in the case of his discharge and he should have been permitted to continue to serve for 15 years in accordance with the Regulations. He is also aggrieved by the fact that he should have been entitled to a sheltered appointment which was denied to him, thereby resulting in his discharge from military service, which was illegal. The applicant also cited the decision in **Union of India v. Rajpal Singh and others** (2009(1) SCC 216).

4. The matter was contested by the respondents stating that there was no entry in the service records that the applicant was an outstanding Kabaddi player and that he sustained any injury while playing organised sports. No date of such injury while playing Kabaddi has been mentioned by the applicant. However, there is a record of his

admission to Military Hospital, Jalandhar from 7.8.1987 to 19.8.1987, however this was for treatment of "Peertgium (right) eye", which has nothing to do with any injury that could have been caused while playing Kabaddi. In the AFMSF-7A dated 18.8.1987, which was endorsed at the time of his discharge from hospital, the cornea of the applicant was clear and he was considered fit for discharge. Thereafter the applicant never reported again to the medical authorities for any problem with his eye.

5. The applicant sustained severe injury (blast injury on right eye) on 21.6.1990 while on casual leave attending the marriage function of his friend. He was admitted to Military Hospital, Jalandhar on 23.6.1990 and he himself has given a statement in the injury report, which accepted that he had obtained the injury while attending a marriage ceremony. Subsequently, a Court of Inquiry was held to investigate into the circumstances under which the applicant sustained this injury. The Court of Inquiry was of the opinion that the injury sustained by the applicant was not attributable to military service in peace station, but he was retained in service. However, such retention in military service of a medical category person is always subject to

availability of suitable alternative appointment, commensurate with his medical category. Subsequently the Commanding Officer was of the view that he could not provide him any sheltered appointment commensurate with his medical category and recommended his discharge from service. Before discharge from service, the applicant was medically examined by a duly constituted Release Medical Board, which opined that he was suffering from "(i) BLAST INJURY RT EYE (NO 951) (E 985); and (ii) COMPLICATED CATARACT RT EYE (OPTD) (366)", which is neither attributable nor aggravated by military service. However, both the disabilities were assessed at 40% for five years and accordingly he was discharged from service on 1.1.1993 under Army Rule 13(3)(iii)(v) after serving for 7 years, 11 months and 1 day. His appeals against this decision were decided upon by PCDA, Government of India as well as the Raksha Manthri's Appellate Committee. He was informed that in accordance with Rule 173 of Pension Regulations for the Army, disability pension could only be granted to an individual provided his disability is either attributable or aggravated by military service. In the instant case, the disability of the applicant was neither attributable nor aggravated by military service and hence no disability pension was admissible.

6. With regard to the applicant being on duty during casual leave at the time of his injury, the respondents referred to the judgment of this Tribunal in **Smt. Shakuntala Devi v. Union of India and others** dated 20.7.2011 in O.A No. 203 of 2010, wherein it was held at Paragraph 11 thus:

“11. Therefore what emerges from these two decisions-one delivered by Hon’ble Delhi High Court and other delivered by Hon’ble Punjab & Haryana High Court is that the crux of the matter which has been touched upon by the Hon’ble Delhi High Court is that “since travel to and from the place of posting may not appear to everyone as an incident of military service, a specific provision has been incorporated in the Pension Regulations to bring such travel within the entitlement for Disability Pension if an injury is sustained in this duration.” Therefore the Hon’ble Delhi High Court has correctly summed up the matter after discussion of the judgment of the Hon’ble Punjab & Haryana High Court and other judgments delivered from time to time by various High Courts, that only journey from place of posting to the home station and on way back for attending duty at place of posting, these are the two situations wherein, if anything happens, then it can be deemed to be attributable to military service. The idea is that when a

person leaves his place of posting to reach his home on casual leave with authorised warrant and permission that can be treated to be on duty. Likewise when he leaves his house for attending the place of posting during casual leave and any accident happens then it can be attributable to military service. But when any person on casual leave meets with an accident during the course of his private work, can by no stretch of imagination be deemed to be on military service as there is no causal connection whatsoever. Therefore, in our view, the view taken by the Full Bench of the Hon'ble Delhi High Court correctly lays down the position of law and rightly sums up the proposition that every accident during casual leave cannot be treated to be on duty and attributable to military service. We are of the view that the decision delivered by the Hon'ble Delhi High Court correctly sums up the position of law and we agree with that. Learned counsel for the petitioner has also invited our attention to a decision of the Division Bench of the Hon'ble Punjab and Haryana High Court following this Full Bench judgment wherein the same was challenged before the Apex Court and it was dismissed in limini by the order dated 10th December 2010 in Special Leave to Appeal (Civil) No. 33614 of 2010. Therefore that dismissal of petition in limini does not lay down any proposition of law."

7. Keeping in view the above, it is evident that the applicant was not on duty during the casual leave period from 20.6.1990 to 22.6.1990 when he sustained this injury and the duly constituted medical Board opined that his injury was neither attributable nor aggravated by military service. Accordingly, no disability pension could be given to the applicant. In view of the above, the petition is dismissed. No order as to costs.

A.K MATHUR
(Chairperson)

S.S DHILLON
(Member)

Pronounced in open Court
on 22nd September 2011