

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

A.

OA 298/2020

Ex EM(R) Ravi Dalal

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Mr. R S Chillar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
21.09.2023

Vide our detailed order of even date, we have allowed the OA 298/2020. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)

MEMBER (J)

(REAR ADMIRAL DHIREN VIG)

MEMBER (A)

CHANANA

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 298/2020

Ex EM (R) I RAVI DALAL

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Mr. RS Chillar, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The appellant is aggrieved by the actions of the respondent in rejecting the claim for grant of disability pension by Naval Pension office vide its letter PEN/600/D/LRDO I:07/2019/210307R dated 29.07.2019, and has therefore filed this O.A and the reliefs claimed in Para 8 - read as under:

- a. Quash the impugned order No. PEN/600/D/LRDO I:07/2019/210307Y dated 29.07.2019;***
- b. Direct the respondents to grant Disability element of Pension duly rounded off to @50% i.e. from the date of discharge;***
- 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 consequential element of benefits;***
- d. Any other relief which this Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with the cost of***

the application in favour of the applicant and against the respondents.

BRIEF FACTS

2. It is the case of the applicant that he was enrolled in the Indian Navy on 28.07.2004 and was discharged on 31.07.2019 in low medical category S3A2 (A) (Pmt) after 15 years of service. The RMB dated 07.02.2019 opined the injuries sustained by the applicant namely **(i)fracture anterior column acetabulum @20% and (ii) Open fracture distal 1/3rd tibia fibula (RT) @ 20%** as neither attributable to nor aggravated by military service. The composite assessment for both the disabilities was 40% for life and the net qualifying assessment for the disability pension was assessed as Nil.

3. The claim for the disability pension of the applicant was rejected by Naval Pension Office vide letter No. PEN/600/D/LRDO I:07/2019/210887R dated 29.07.2019 opining that the disability is neither attributable to nor aggravated by service. Subsequently, the first appeal preferred by the applicant was rejected vide DPA letter dated 06.08.2020. Hence, aggrieved by the ~~said~~ rejection, the

applicant has filed the present O.A. and in the interest of justice, we take up the same for our consideration under section 21(1) of the Armed Forces Tribunal Act, 2007.

CONTENTIONS OF PARTIES

4. The learned counsel for the applicant, submitted that on 14.01.2011, the applicant met with an accident and suffered injuries namely **(i)fracture anterior column acetabulum @20%** and **(ii) Open fracture distal 1/3rd tibia fibula (RT) @ 20%** and the said disabilities were assessed by the RMB as neither attributable to nor aggravated by military service. The learned counsel for the applicant submitted that the accident occurred when the applicant was coming back from short liberty to his unit as the applicant was in-living and was staying inside the unit. The learned Counsel further submitted that the applicant took proper permission from the Officer of the Day (OOD) for proceeding ashore and thus the injuries sustained by the applicant during the short liberty was connected to the service and should be considered as attributable to service.

5. The learned counsel for the applicant also placed reliance on the order passed by the Armed Force Tribunal, Principal Bench, New Delhi, in the case of **Smt Reena Vs Union Of India, OA No. 1149/2017**, wherein reference was made to the verdict of the Hon'ble Supreme Court in **Sukhwant Singh Vs. Union of India & Ors (2012) 12 SCC 228** qua observations to the effect :-

"5...

(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 relevant and reasonable causal connections, however remote between the incident resulting in such disability/death and military service for it to be attributable. This conditionally 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".
....."

In this case the applicant died in a road accident during casual leave. The death of the applicant was held attributable to service and special family pension was granted to the widow of the applicant.

6. The learned counsel submitted that as per Para 13 (a) of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 1982 which reads to the effect:-

"(a) Injuries sustained when the man is "on duty" as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered."

to contend that the applicant's injuries should be conceded as attributable to military service.

Furthermore, the learned counsel for the applicant submitted that as per the extract of Rule 12 of the said Entitlement Rules of 1982, the expression "on duty" is given an extended meaning though an accident occurs when the person concerned is not strictly "on duty".

7. Per Contra the learned counsel for the Respondents whilst denying the contentions of the applicant, stated that the competent authority has assessed the applicant's disabilities as not attributable to service and the Injury Report dated 29.03.2011 has considered the injuries of the applicant as not attributable to military service and hence he is not entitled to disability pension.

8. The learned counsel for the respondent invited our attention to the case of **Secretary, Government Of India &Ors Vs. Dharambir Singh, 2020 14 SCC 582** wherein the Hon'ble Supreme Court Of India held that:-

"In view of the provisions reproduced above, we find that the following questions arise for consideration: (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?"

Answer to Question No.1

11) In terms of Section 3(i) of the Act, the active service means time during which a person who is subject to the Act, is attached to, or forms part of, a Force which is engaged in operations against an enemy engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is attached to or forms part of a Force which is in military occupation of a foreign country. The present is not the case covered by the definition of Section 3(i) of the Act."

9. The learned counsel for the respondent whilst concluding his submissions drew our attention to Rule 8 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 1982 which reads to the effect as under:-

"Attributability/Aggravation shall be conceded if causal connection between the disablement and military service is certified by appropriate medical authority"

and contended that the Injury Report has not found any causal connection between the ex-sailor's disabilities and military service and hence the RMB has held the said

disabilities as neither attributable to nor aggravated by service.

ANALYSIS

10. We have heard the learned counsel for the parties at length and gone through the records produced before us. After perusal of the records produced and arguments advanced, we are of the view that it is a fact that the applicant sustained the said injuries during the short liberty. It is also a fact that the applicant took prior permission from the Officer of the Day of his unit to proceed on short liberty.

11. The Leave Regulations/Orders/Instructions pertaining to leave of naval personnel were perused by us. From the documents produced on record and after perusal of Navy Order (Spl) 02/2018 which deals with leave, it can be seen that 'short liberty' does not form part of any Order/Regulation/Instruction concerning leave. Thus, 'short liberty' is not a 'leave' covered under the ambit of other 'leaves' which are duly granted and form part of Orders/Regulation of the Navy. Since, the applicant was returning from 'short

liberty' to his unit, he will be considered to be on duty as he was returning to his unit on completion of his short liberty.

12. Short liberty is permitted to inliving sailors in the Indian Navy after completion of the working hours of the unit to proceed ashore to attend to their personal requirements. There is a time limit for the inliving sailors to return to their respective ships/units as per the Ship's Standing Orders on completion of the short liberty. Usually the time of returning to the unit is 0130 hours for senior sailors and 0030 hours for junior sailors. Thus, the short leave is akin to an 'out pass' given to the Army personnel for leaving the military campus for short duration to attend to their needs and returning back thereafter to the unit.

13. Reliance in this regard may be placed on the verdict of the Hon'ble Supreme Court in **Secretary, Union Of India Vs. Dharambir Singh, Civil Appeal No. 4981/2012**, which lays down as under :-

“

10) In view of the provisions reproduced above, we find that the following questions arise for consideration:

(i)....

(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)....

Answer to Question No.1

(11)....

(12)....

(13)....

(14)....

Answer to Question No.2

15) The 1982 Rules give expansive definition to the expression 'duty' being undertaken by the personnel of the Armed Forces. It includes the period when Armed Forces personnel is proceeding from his leave station or returning to duty from his leave station. It includes even an accident which occurs when a man is not strictly on duty provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in

modern conditions in India. However, as per Regulation 423 of the Medical Regulations, such injury has to have causal connection with military service or such injury is aggravated by military service.

16) In Regulation 423(a) of the Medical Regulations, it has been specifically mentioned that it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service or active service area or under normal peace conditions, will be deemed to be duty. Regulation 423(a) mandates that it is essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to individual. For the sake of repetition, the said clause reads as under:

“a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a

causal connection with the service conditions..."

17) Clause (b) of Regulation 423 of the Medical Regulations presumes that disability or death resulting from wound or injury, will be regarded as attributable to service if the wound or injury was sustained during actual performance of 'duty' in Armed Forces. This is in contradiction to "deemed to be duty" as per Rule 12(f) of 1982 Rules, as the Rule is when a man is not strictly on duty. However, the injuries which are self-inflicting or due to individual's own serious negligence or misconduct even in the cases of active duty, are not to be conceded unless, it is established that service factors were responsible for such action.

18)

19)....

20) In view of Regulation 423 clauses (a), (b) and (d), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury or death must be connected with military service howsoever remote it may be. The injury or death must be intervention of armed service and not an accident which could be attributed to risk common to human beings. When a person is

going on a scooter to purchase house hold articles, such activity, even remotely has no causal connection with the military service.

21. ...

22. ...

23. ...

24. ...

25. The judgments in Madan Singh Shekhawat, Pension Sanctioning Authority, PCDA(P), Allahabad & Ors. v. M.L. George, Ex. SGT10, Nand Kishore Mishra v. Union of India & Ors. and Union of India & Anr. v. Surendra Pandey, are the cases where the Armed Forces personnel have suffered injuries while returning from or going on leave. In terms of Rule 12 Note 2(d) of 1982 Rules read with Regulation 423(a), any injury or death while returning from or going to duty has a causal connection with the military service and, thus, such injury or death is considered attributable to or aggravated by military service.

.....”

A disability sustained by a military personnel while returning from leave is taken as attributable to military service as held by the Hon'ble Supreme Court in **Secretary, Union Of**

India Vs. Dharambir Singh (supra). In the instant case the applicant was returning back to his unit when he sustained the said injuries which is adverted to in para 5.2 of the present O.A, which has not been refuted by the respondents in their counter affidavit.

14. Furthermore, it is an undisputed fact that the RMB has assessed the disability of the applicant to be 40% for life. Since the sailor suffered the above said injuries as he was returning back to the unit on completion of short liberty, which was not refuted by the respondents and the Injury Report dated 29.03.2011 has only referred to the cause of accident and has not mentioned about anything whether the sailor was actually returning back to unit or otherwise when he met with the accident, therefore as averred by the applicant in the O.A , there is deemed to be a causal connection between the injuries sustained and the military duty.

CONCLUSION

15. In view of the above, we are therefore of the considered view that the applicant's injuries have to be assessed as

attributable to military service, as there is an apparent causal connection between the injuries sustained and military duty.

16. Thus, the applicant is entitled to the grant of the disability element of pension for the said injuries and the respondents are thus directed to grant the disability element of pension @40% for life rounded off to 50% for life, in terms of the law laid down by Hon'ble Supreme Court Of India in the case of **Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)** decided on **10.12.2014**, from the date of discharge i.e. 31.07.2019, within a period of three months from the receipt of copy of this order, failing which the applicant will be entitled to interest @6% p.a. on the arrears, from the date of receipt of the copy of the order, by the respondents.

Pronounced in the open Court on this 21st day of September, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER(J)

/pranav/