

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

B.

OA 1239/2018 with MA 1177/2018

Ex Capt Rajneesh Bhardwaj Applicant
Versus
Union of India & Ors. Respondents
For Applicant : Mr. IS Singh/Abhishek Singh, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

ORDER
19.07.2024

Vide separate detailed order passed today. OA stands dismissed.

Learned counsel appearing for the applicant makes an oral prayer for grant of leave to appeal to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT. GEN. C.P. MOHANTY]
MEMBER (A)

/sm/

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

O.A. No. 1239 of 2018
with
M.A. No. 1177 of 2018

In the matter of :

Ex-Capt Rajneesh Bhardwaj ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri I.S. Singh, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

M.A. No. 1177 of 2018 :

Vide this application, the applicant seeks condonation of 43 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]*** and in ***Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]***, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 1239 of 2018 :

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

“(a) Set aside impugned order dated 31.10.2017 passed by the respondents;

(b) Direct the respondents to treat the disability with which the applicant is suffering as Aggravated by military service, if not as Attributable to military service;

(c) Direct the respondents to grant disability pension to the applicant w.e.f. the date of his release from the Army service i.e. 05.09.2008;

(d) Direct the respondents to extend the benefit of broad-banding to the applicant and thereby pay disability pension to the applicant @ 50% w.e.f. 05.09.2008 by rounding off the applicant's disability from 20% to 50%;

(e) Direct the respondents to pay 10% interest on the arrears of disability pension w.e.f. 05.09.2008; and

(f) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”

2. The facts of the case in brief are that the applicant, having been found medically and physically fit, was commissioned in the Indian Army in Dogra Regt (Infantry) on 06.09.2003 (SSC) and was released from service on completion of his term of contract w.e.f. 05.09.2008 in low medical category S1H1A2(PERM)P1E1. The Release Medical Board (RMB) held in July, 2009 assessed the applicant's disability 'FRACTURE LOWER END OF ULNA (LT) OPTD' @ 20% for life and considered the same as 'neither attributable to nor aggravated by military service'. Based on this, the applicant was denied the disability pension.

2. The applicant made a representation dated 12.08.2016 seeking the disability pension addressed to Adjutant General, Army HQ. Vide letter dated 06.10.2016, the Army HQ intimated the applicant of his case being rejected on the basis of the recommendations of the RMB. The applicant received a letter dated 24.03.2017 from the respondents instructing him to prefer the first appeal along with an

undertaking and the statement of case justifying the reasons for delay. Accordingly, the applicant preferred the first appeal dated 16.04.2017 along with the requisite undertaking and certificate. The first appeal was rejected by the respondents vide letter dated 31.10.2017 which was communicated to the applicant vide Army HQ letter dated 10.11.2017. Thereafter, the applicant preferred second appeal dated 01.12.2017 and when no response was received by the applicant despite reminders, he filed the present OA seeking grant of disability pension.

3. Learned counsel for the applicant submitted that the applicant, at the time of joining the Army, was declared fully fit mentally and physically and no note was made that he was suffering from any disease at that time. Learned counsel narrated that the applicant, while he was undergoing AAOCE-71 course at CME, Pune, had gone to the city on a motorbike along with another course-mate to buy certain items necessary for the training during the course and for having dinner, but while returning from the city, they met with a road accident and the applicant sustained injury on his left hand resulting into a fracture of his left ulna bone

and for that he was operated at Military Hospital, Kirkee (Pune).

5. The initial categorisation medical board held and the applicant was downgraded to the medical category S1H1A4 (T-04)P1E1 w.e.f. 11.05.2005. Thereafter, the Re-categorisation medical boards were held on 13.07.2005 and 28.12.2005 and the applicant was placed in temporary medical category A3(T-24) and A2(T-24), respectively, and in another medical board held on 04.10.2006, the applicant's medical category was upgraded to SHAPE-1.

6. It is submitted by the learned counsel that the applicant's medical category having been upgraded to SHAPE-1, the applicant performed all military duties as an infantry soldier and participated in military exercises, field-firing, routine physical training, sports and games (upto Divisional level), BPT, PPT etc. and all these strenuous physical activities had badly impacted on the injury/disability of the applicant and caused severe pain in his left hand which became unbearable and his mobility was also restricted; and being an infantry soldier, the duties performed by the applicant had worsened the injury; that the

applicant was treated by the Ortho Specialist at MH Suratgarh and on his advice, a medical board was held and the applicant's disability was assessed @ 20% for two year and he was put in medical category S1H1A2(PERM)P1E1.

7. Learned counsel went on to add that the applicant, being an SSC officer, was to be released from service on 05.09.2008, and as per existing policy, the applicant had applied for a re-settlement course at XLRI, Jamshedpur, which was to be held from 14.06.2008 to 13.12.2008; that while no intimation was received, the applicant still reported for the course and accordingly could not report to MH, Binnaguri for his RMB. It is further submitted that after his release from service, the applicant reported for the RMB to MH, Binnaguri on 11.07.2009 and RMB assessed the disability of the applicant @ 20% for life and considered the same as NANA.

8. Learned counsel for the applicant relied on various provisions of the Entitlement Rules, 1982 to submit that the injury sustained by the applicant when 'on duty' shall be deemed to have resulted from military service. Learned counsel further submitted that the applicant had served in

many peace, field, HAA and active operational posting places during his tenure of service and as the disability of the applicant had occurred while in service, therefore there is a causal connection between the service of the applicant and the disability due to stress and strain of service. Learned counsel further stated that the RMB has erred in considering the disability as neither attributable to nor aggravated by service as the injury/disability had occurred while in service.

9. Learned counsel then submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under various rules including Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. Learned counsel further relied on various provisions of the Entitlement Rules to submit that 'inherent constitutional tendency' is not a disease in itself and further that any disease contracted during service, would be presumed to be

attributable to service and worsening of the same during service would be treated as aggravated by military service and onus to prove otherwise lies with the respondents only.

10. Learned counsel placed reliance on various judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and Ors.** [(2013) 7 SCC 316], **Union of India & Ors. Vs. Rajbir Singh** [(2015) 12 SCC 264] and **Ex Gnr Laxmanram Poonia (Dead) Through LRs Vs. Union of India & Ors.** [AIR 2017 SC 1179] and submitted that the respondents' action in denying the disability pension is unjustified and unlawful, when the disability recorded by the RMB occurred during the military service and was caused due to injury sustained while on military duty and it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disability noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions.

11. *Per contra*, learned counsel for the respondents contended that the applicant was not entitled to the relief claimed on the basis of the opinion of the RMB, which is an expert body, that the disability is neither attributable to nor aggravated by military service as the injury has no causal connection with the military duties and that the disability of the applicant does not fulfil the eligibility conditions for grant of disability pension as per existing rules and regulations. Learned counsel, therefore, prayed that the OA has no merit and the same may be dismissed.

12. We have heard the learned counsel for the parties and have also perused the records.

13. In the instant case, the applicant's disability i.e. 'Fracture Lower End of Ulna (Lt) Optd' has been assessed @ 20% for life by the RMB. Now the issue which is to be determined is whether there is causal connection between the disability/injury and the military service so as to hold the injury/disability as either attributable to or aggravated or both by military service ?

14. In the present case, on 14.04.2005, the applicant was returning from the market whilst on a course at CME Pune,

T

the injury was sustained on 14.04.2005 at Junglee Maharaj Road opposite Bal Gandharv Rang Mandir, when the applicant was returning from the city on a motorbike along with a course-mate from the city. As per the Entitlement Rules, 2008, the relevant provisions relating to attributability of an injury while on leave are given as under:

"10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

- i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).***
- ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.***

15. From the aforesaid provisions, it is clear that the attributability should be conceded if the injury sustained when the individual is 'on duty' provided a nexus between injury and military service is established. With regard to deciding the causal connection between the injury and the military service, we may refer to the judgment of Hon'ble Supreme Court in **Union of India & Ors. Vs. Baljit Singh [(1996) 11 SCC 315]**, wherein it was observed that in each

case where a disability pension is sought for and claim made, it must be affirmatively established as a fact as to whether the injury sustained was due to military service or was aggravated by military service.

16. It would be pertinent to refer to the judgment passed on somewhat similar issue by the Hon'ble Supreme Court in the case of **Secretary, Govt. of India Vs. Dharambir Singh** [2019 Latest Caselaw 851 SC] decided on 20.09.2019, which lays down as under :

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

(i) xxx

(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) xxx

Answer to Question No.1

(11) to (14) xxx xxx

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) and (19) xxx xxx

(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.*

[Emphasis supplied]

17. Further, the Hon'ble Supreme Court in the case of **Union of India & others Vs. Ex Naik Ram Singh [2022 SCC OnLine SC 889]**, held that there has to be a reasonable causal connection between the injuries resulting in disability and the military service.

18. As far as assessment made by the RMB in respect of the disability in question with regard to attributability is concerned, the Hon'ble Supreme Court in the case of **Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 13 SCR**

260] observed that though the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board.

19. In the case in hand, it is undisputed that the applicant had met with a road accident while returning from the city on a motorbike and the applicant sustained injury on his left hand which was indicated as 'Fracture Lower End of Ulna (Lt)'. However, the contention of the applicant that he had gone to the city on motorbike for purchase of some items necessary for training, is not substantiated by any written or oral evidence. There is no evidence to show that the applicant had gone to the city in relation to the military duty purpose. Hence the applicant was not performing any duty or any act which, by any stretch of imagination, is connected with the service. Therefore, we are of the considered view that the injury sustained by the applicant does not have any causal connection, even remotely, with the service and thus, the disability cannot be held attributable to or aggravated by military service.

20. In view of the aforesaid judicial pronouncements and the parameters referred to above, the disability of the applicant 'Fracture Lower End of Ulna (Lt) Optd' has rightly been opined by the medical board as 'neither attributable to nor aggravated by service' as there is no causal connection established between the injury sustained/disability and the military service. Accordingly, finding no infirmity in the opinion of the RMB, we dismiss the OA.

21. There is no order as to costs.

Pronounced in open Court on this 19th day of July, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN P.M. HARIZ]
MEMBER (A)**

/ng/