

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

OA 1517/2019

GP Capt Ram Kumar Yadav (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Baljeet Singh, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of Armed Forces Tribunal Act, 2007, this OA praying to direct the respondents to grant the disability element of pension and further grant the benefit of rounding off from the date of retirement.

2. The factual matrix of the case is that the applicant was commissioned in the Indian Air Force on 08.06.1984 and superannuated on 31.07.2018 after about 34 years of qualifying service. During the Release Medical Board conducted vide AFSMF-16 dated 09.03.2018 prior to his retirement, he was found to be suffering from disabilities - (i) Obesity @ 1-5% (ii) Diabetes Militus Type-2 @ 20% (iii) Trimallaeolar

Fracture(Lt) Ankle Optd @ 20% & (iv) Cataract(Rt) Optd with Pseudophakia for life and was found fit to be released from service in low medical category A4G4(P), while his disabilities were held to be Not Attributable Nor Aggravated (NANA).

3. The initial claim of the applicant for the disability pension was rejected by the Competent Authority and the outcome of the same was communicated to the applicant vide dated 10.10.2018. Thereafter, the applicant filed a First Appeal vide letter dated 06.08.2018 which was rejected vide letter dated 18.06.2019. Aggrieved by the aforesaid inaction, the applicant has filed this OA.

4. Learned counsel for the applicant stresses that the disability was detected in 2001, after more than 34 years of Air Force service due to continuous service stress, and strain of Air Force service, dietary compulsion of service and being posted to different field areas and lack to time for proper rest, exercise and walking wherein the causal connection of the disability is clearly established with the Air Force service.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], Learned Counsel for applicant argues that no note of

any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

6. Per Contra, learned counsel for the respondents submits that under the provisions of Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

7. Relying on the aforesaid provision, learned counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as “neither attributable to nor aggravated” by Air Force service and not connected with the Air Force service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

8. Learned counsel further argues that the weight of the

applicant was of 54 kgs at the time of commissioning, and that gradually gained weight and by the time of onset of the disability, applicant was overweight by around 11-14 kgs, purely due to dietary indiscretion, lack of exercise and a sedentary lifestyle, and his own lack of health consciousness, hence, the disabilities cannot be held attributable to or aggravated by service as he is solely responsible for his unreasonable weight gain in violation of the service requirements of maintaining physical fitness at all times.

9. Learned counsel for the respondents submits that the aforesaid disability ID(iii) Trimalleolar Fracture(Lt) Ankle Optd @ 20% of the applicant was assessed as “neither attributable to nor aggravated” as vide RMB, it was clearly stated that the injury was in in a peace area and there is no close time association with service in Field/ CI Ops areas, further there was no delay in diagnosis or treatment; thus, the injuries sustained were not attributable to service conditions as the applicant was not on a service related duty when he met with the accident.

10. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties,

we are of the opinion that it is not in dispute that the extent of disabilities (ii) and (iii) was assessed to be above 20% which is the bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I), while other two disabilities (i) & (iv) do not qualify. The only question that arises in the above backdrop is whether disabilities (ii) and (iii) suffered by the applicant were attributable to or aggravated by military service.

11. It is relevant to note that the applicant is constantly overweight ranging between 11-30 Kgs in the period from 16.06.1998 to 09.03.2018, with his actual weight ranging between 72-92 Kgs as against the Ideal weight of 61-62 Kgs, with the same trend visible before the onset of both the disabilities under consideration.

12. We have further analyzed the Re-categorization Medical Boards conducted since Initial Medical Examination and we find the same trend, with the applicant not reducing the weight even after slew of directions advised by the medical experts including brisk walking, jogging and reducing the weight. However, we observe that the weight has not been reduced, thereby, clearly showcasing that onset of disability is the result

of the applicant being alarmingly overweight. Therefore, the argument that the applicant suffered the disability due to stress and strain of the service is wholly unfounded on the simple reasoning that the organization cannot be held liable for the own actions of the applicant.

13. We cannot shy away from the fact, that the disabilities - Obesity and Diabetes Mellitus is due to interplay of metabolic and lifestyle factors and failure in maintaining the ideal body weight which can be managed by regular exercise and restricting diet, and the fact that the applicant is alarmingly overweight signifies that the applicant has remained obese over a period of time, thereby, himself inviting the disability, and in such a case, it would be grossly unjustified for us to ignore the aforesaid facts.

14. With regards to ID(iii) Trimalleolar Fracture(Lt) Ankle Optd @ 20% it is has been accepted by the applicant that he sustained the injury while he was getting ready for office and slipped in the bathroom. Upon pursuing the records and in line with the observations of the RMB was found that there is no causal connection to service, and it has been seen that , in absence of any causal connection, attributability of injury

cannot be conceded in such cases.

15. In the Full Bench decision of Hon'ble Delhi High Court in the case of Ex Nk Dilbag Singh Vs. Union of India & Ors delivered on 22.08.2008 in Writ Petition No. (C) 6959 of 2004 and connected matters, their Lordships observed in Para-19, 23 and 24 as under:-

"19. For similar reasons we are unable to subscribe to the views in Ex. Sepoy Hayat Mohammed -vs- Union of India, 138(2007) DL T 539(08) to the effect that the petitioner was eligible for the grant of Disability Pension owing to the fact that while on casual leave in his home he suffered several injuries owing to a steel girder and roof slabs falling on him. One of the reasons which appear to have persuaded the same Division Bench was that persons on annual leave are subject to the Army Act and can be recalled at any time as leave is at the discretion of the Authorities concerned. A rule of this nature is necessary to cover the eruption of insurgencies or the breakout of a war. They neither envisage nor attempt to deal with liability to pay Disability Pension. It is impermissible to extrapolate a rule catering for a particular situation to altogether different circumstances.

23. We have also perused the detailed Judgment of the Division Bench of this Court in Shri Bhagwan wherein Jarnail Singh also came to be discussed. The Bench observed that - "An individual may be "on duty" for all practical purposes such as receipt of wages etc. but that does not mean that he is "on duty" for the purpose of claiming disability pension under the 1982 Entitlement Rules..... A person to be on duty is required, under the 1982 Entitlement Rules, to be performing a task, the failure to do which would constitute an offence triable under the disciplinary code applicable to him. A person operating a wheat thresher while on casual leave cannot, by any stretch of imagination, be said to be performing an official duty or a task the failure to perform which would lead to disciplinary action". We respectfully affirm these views of the Division Bench.

24. *To sum up our analysis, the foremost feature, consistently highlighted by the Hon'ble Supreme Court, is that it requires to be established that the injury or fatality suffered by the concerned military personnel bears a causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the concerned personnel was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the causal connection which alone is relevant. Fourthly, since travel to and fro 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. Fifthly, the Hon'ble Supreme Court has simply given effect to this Rule and has not laid down in any decision that each and every injury sustained while availing of casual leave would entitle the victim to claim Disability Pension. Sixthly, provisions treating casual leave as on duty would be relevant for deciding questions pertaining to pay or to the right of the Authorities to curtail or cancel the leave. Such like provisions have been adverted to by the Supreme Court only to buttress their conclusion that travel to and fro the place of posting is an incident of military service. Lastly, injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death has occurred at the place of posting or during working hours. This is because attributability to military service is a factor which is required to be established."*

16. The view expressed by the Full Bench of Hon'ble Delhi High Court, approved by Hon'ble Apex Court, clearly establishes that the requirement of law is that it has to be established that the activity resulting in injury suffered by the military personnel bears a causal connection with military

service. Whether injury was suffered during annual leave or casual leave or at the place of posting or during working hours is not relevant because attributability to military service is a factor which is required to be established in all such cases.

17. Hon'ble Apex Court in Union of India & Ors. Vs. Baljit Singh, (1996) 11 SCC 315, has 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.

18. Hon'ble Apex Court in the case of Sukhwant Singh Vs. Union of India & Ors, (2012) 12 SCC 228 has again considered this point and held in para 6 as under:-

"6. In our view, the Tribunal has rightly summed up the legal position on the issue of entitlement of disability pension resulting from any injuries, etc. and it has correctly held that in both cases there was no causal connection between the injuries suffered by the appellants and their service in the military and their cases were, therefore, clearly not covered by Regulation 173 of the Regulations. The view taken by the Tribunal is also supported by a recent decision of this Court in Union of India vs Jujhar Singh."

19. The co-ordinate Bench of the Armed Forces Tribunal, Regional Bench, Chandigarh in the case of Baldev Singh Vs. Union of India & Ors. [O.A. No. 3690 of 2013 decided on

02.03.2016] has considered this question in great detail. It would be fruitful to reproduce Para-21:-

"21. Recently, the Apex Court in Civil Appeal No.6583 of 2015 Union of India & others Versus Ex Naik Vijay Kumar, vide its judgment dated 26th August, 2015 has held that if the injury suffered or death caused to an individual, has no causal connection with the military service, it cannot be said that the said disability or death is attributable to military service. In the said judgment, the apex court has considered para 12 of the judgment given in another case Union of India and Another Vs. Ta/winder Singh (2012) 5 SCC 480 which is reproduced as below :

"12. A person claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from such person. As the military personnel sustained disability when he was on annual leave that too at his home town in a road accident, it could not be held that the injuries could be attributable to or aggravated by military service. Such a person would not be entitled to disability pension. This view stands fully fortified by the earlier judgment of this court in Ministry of Defence V. Ajit Singh, (2009) 7 SCC 328.

20. As far as attributability of the disability is concerned, we are in full agreement with the views expressed by the coordinate Bench of Armed Forces Tribunal, Chandigarh in the case of *Baldev Singh* (supra), which finds full support from several pronouncements of the Hon'ble Apex Court, and keeping in view the principle of law laid down in that case, we find that learned counsel for the applicant has not been

able to make out a case in the present O.A. that the applicant's injury has any causal connection with Air Force duty.

21. Applying the above parameters to the case at hand, we are of the view with respect to disabilities - ID (i) Obesity and ID(ii) Diabetes Mellitus -II, there is no denial from the fact that if the claimant is himself not responsible enough to control the factors which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions. Further, for ID (iii) the activity in which he sustained injury being not connected with his military duties in any manner, he is not entitled to the disability pension for the same as there is no causal connection between the injury/disabilities suffered by the applicant and military service. With respect to ID(iv) does not qualify the minimum requirement of 20% as per the of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I).

22. In view of the aforesaid analysis, we are of the view that the present OA is devoid of merits and hence, liable to be dismissed.

23. Consequently, the OA 1517/2019 is dismissed.
24. No order as to costs.
25. Miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on 18 day of October, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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