

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1629/2018 WITH MA 1747/2018

Sgt Ajay Kumar Jaiswal ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Abhishek R Shukla, Advocate
For Respondents : Mr. Harish V Shankar, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA praying to direct the respondents to grant disability element of pension @6-10% rounded off to 50% with effect from the date of discharge of the applicant; along with all consequential benefits.

2. The applicant was enrolled in Indian Air Force on 07.05.1997 and discharged on 26.02.2017 under the clause 'at own request' after serving for 19 years 9 months 20 days. The Release Medical Board dated 07.10.2016 diagnosed the case of ACL TEAR RT KNEE (OLD) Z09.0 @ 6 -10% for life while the qualifying element for disability pension was

recorded as NIL for life on account of disability being treated as neither attributable nor aggravated by military service (NANA).

3. The claim of the applicant for grant of disability pension was rejected vide letter No. Air HQ/99798/1/773645/02/17/DAV (DP/RMB) dated 30.08.2017 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. The applicant preferred first appeal on 20.11.2017 against the rejection of the claim for disability pension, but the same was not replied. Aggrieved by the aforesaid inaction, the applicant has approached this Tribunal.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in *Dharamvir Singh v. 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 even after his injury 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 Air Force service.

5. 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.

6. Relying on the aforesaid provision, learned counsel for respondents further submits that the disability has been assessed as 6-10% and has also been affirmed as neither attributable nor aggravated by the Release Medical Board, as the applicant sustained the injury while he was climbing the stairs of the flat, thus, the injuries sustained were not attributable to service condition as the applicant was not on a service related duty when he met with the accident.

7. 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

disability was assessed to be 6-10% which is less than 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). However, the applicant has refused to undergo surgery as recorded by the Release Medical Board. Notwithstanding, the primary condition to be satisfied in above backdrop is whether the disability suffered by the applicant was attributable to or aggravated by military service.

8. On a perusal of the medical documents, we find that as per the statement of the applicant recorded in the Release Medical Board, he sustained the injury on 29.06.2015 at around 1800 hrs, while climbing the stairs of his flat, wherein his right knee got twisted and he fell down and therefore, in absence of any causal connection, attributability of injury cannot be conceded in such cases.

9. In the full bench decision of Hon'ble Delhi High Court in the case of Ex Nk Dilbag Singh v. 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."

10. 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. A careful study of observations made in the case of Ex Nk Dilbagh Singh v. Union of India, 2008 (106) (DRJ

865) shows that it considered the word "duty" as given in Appendix II of Regulation 423 of Medical Services of Armed Forces Regulations, 1983 defining the attributability to service.

11. Hon'ble Apex Court in Union of India & Ors v. 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.

12. Hon'ble Apex Court in the case of Sukhwant Singh v. 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.*"

13. To consider as to what acts are covered by the term 'duty' we may like to make reference to Entitlement Rules, Appendix II of Clause 12 which defines the word duty, which for convenience sake may be reproduced as under:

"DUTY: 12. A person subject to the disciplinary code of the Armed Forces is on "duty":- (a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him.

(b) When moving from one place of duty to another place. of duty irrespective of the mode of movement.

(c) During the period of participation in recreation and other unit activities organised or permitted by Service Authorities and during the period of travelling in a body or singly by a prescribed or organised route.

Note:1

(a) Personnel of the Armed Forces participating in

(i) Local/national I international sports tournaments as member of service teams, or,

(ii) Mountaineering expeditions gliding organized by service authorities, with the approval of Service Hqrs. will be deemed to be "on duty" for purposes of these rules.*

(b) Personnel of the Armed Forces participating in the above named sports tournaments or in privately organized mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be „on duty" for purposes of these rules, even though prior permission of the competent service authorities may have been obtained by them.

(c) Injuries sustained by the personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, or disability arising from such injuries, will continue to be regarded as having occurred while „on duty" for purposes of these rules.

Note:2

The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional courses or exercises for the Defence Services for the purpose of the grant of disability family pension

on account of disability/death sustained during the courses.

(d) When proceeding from his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher, on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for the journey.

(e) When journeying by a reasonable route from one's quarter to and back from the appointed place of duty, under organised arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available.

(f) An accident which occurs when a man is not strictly on duty, as defined may also be attributable to service, 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. Thus for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed „on duty“ at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act."

14. The co-ordinate Bench of the Armed Forces Tribunal, Regional Bench, Chandigarh in the case of Baldev Singh v. Union of India 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. Talwinder 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.

15. As far as disability of the applicant is concerned, we are in full agreement with the views expressed by the co-ordinate 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 due to accident at his home has any causal connection with Air Force duty. 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.

16. 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.

17. Consequently, the OA 1629/2013 along with MA 1747/2018 is dismissed on the ground of delay as well as on merits.

18. No order as to costs.

Pronounced in the open Court on 15 day of July, 2024.

H
15

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

X

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

Akcs