

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

129.

OA 305/2022 with MA 407/2022

Wg Cdr Dinesh Chandur Vaswani (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Baljeet Singh & Ms. Deepika Sheoran, Advocates
For Respondents	:	Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER
03.01.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant claims grant of disability pension @ 20% with effect from the date of retirement on the ground that the applicant has sustained an injury which has caused disability and the same is attributable to and aggravated by military service. Challenging the impugned order Annexure A1 dated 12.01.2022, when the claim for disability element of pension had been rejected, the applicant has approached this Tribunal.

2. The facts in nutshell indicate that the applicant was commissioned in the Indian Air Force on 14.12.1991. he entered the service in a totally fit medical condition after due medical

examination and it is his contention that in the time of enrolment he was not suffering from any disease or medical disability. After serving for more than 25 years, 03 months and 17 days, the applicant superannuated on 31.03.2017 and was holding the post of Wing Commander in the Air Force while in service. It is the case of the applicant that at the time of retirement, the applicant was subjected to a detailed Release Medical Board and in the proceedings of the RMB he was found to be suffering from the following disabilities:

- (i) Comminuted Undisplaced Fracture Of Lateral Inter Condylareminence Lt Knee (Old) assessed @ 20% and ID
- (ii) Grade II MCL Tear LT Knee (Old) assessed @ 20%

It is the case of the applicant that the composite assessment for both these disabilities has been recorded at 20%. However, it has been held that the disability and the injury is neither attributable to nor aggravated by Air Force service. It is the grievance of the applicant that the aforesaid injury was sustained by the applicant in mid-2016 while he was in active service and posted in Headquarter South Western Air Command, IAF Gandhi Nagar. While the applicant was on annual leave and in his home town in May 2016, he participated in a trekking activity organized in his personal capacity and placing reliance on judgments of the Hon'ble Supreme Court in the case of

Sukhvinder Singh v. Union of India and others (2014) STPL (Web)

468, the judgment of the Division Bench of the Punjab and Haryana High Court in the case of Ex Nk Umed Singh v. Union of India (CWP No. 7277/2013 decided on 14.05.2014) it is the case of the applicant that even while on leave he is considered to be on duty and as the injury was sustained by him while on duty in annual leave, he is entitled for the benefit. It is argued that based on the law laid down by the Hon'ble Supreme Court in the case of Union of India v. Ram Avtar (C.A No. 418/2012 decided on 10.12.2014) the applicant is entitled to the benefit of rounding off from 20% to 50%.

3. The respondents have filed a detailed counter affidavit and admitted that at the time of his discharge, the applicant was found to be suffering from the ailment as detailed in the Medical Board proceedings. However, it is the case of the respondents that the ailment of the applicant is neither attributable to nor aggravated by military service. The applicant suffered the injury on 14.05.2016 at Mount Abu while on annual leave and he sustained the injury by skidding during a trekking which he had undertaken in his personal capacity. He was initially treated in Global Hospital and Research Centre, Mount Abu, Rajasthan and after completion of leave, he reported to the Medical Unit in South Western Command on 19.05.2016 and was referred to Military Hospital, Ahmedabad for

further treatment. It is the case of the respondents that the ailment of the applicant is neither attributable to nor aggravated by any action connected with Air Force service and therefore he is not entitled to any disability element of pension.

4. We have heard the learned counsel for the parties at length and we have considered various aspects of the matter.

5. Even though there are judgments wherein disability element of pensions has been granted even for injuries sustained while on leave, treating certain period of leave to be on duty, the issue before us in this case is as to whether the injuries sustained by the applicant while participating in a game of trekking in his individual capacity at Mount Abu while on annual leave can be attributable to be an injury sustained while in Air Force service and attributable to military service.

6. In our considered view the issue should not detain us for long as the issue has been considered and decided by the Hon'ble Supreme Court on 20.09.2019 in C.A Nos. 4981 of 2012 (*Secretary Government of India and others v. Dharamvir Singh*). In the aforesaid case, various judgments wherein under similar circumstances disability pensions were granted is considered by the Hon'ble Supreme Court and in a detailed judgment passed after taking note of various judgments on the issue so also the Army Act,

1950, notifications issued under the Army Act, the Leave Rules of Service (Vol. I) (Army), the disability element for disability at the time of discharge and retirement Rules 2008 and the pension Regulations for the Army 1961 the Hon'ble Supreme Court came to the conclusion that three questions arise for consideration and in Para 10 the following three questions for considered were formulated:

- (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 casual connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?
- (iii) What is the effect and purpose of COI into an injury suffered by armed forces personnel?

As far a Question Nos. 1 and 2 are concerned, it is very much relevant for deciding the issue before us in this case.

7. After analyzing the entire rule position and after taking note of various aspects of the matter, all the three questions have been answered by the Hon'ble Supreme Court. As far as Question No. 1 is concerned, it has been held that when an Armed Forces personal is availing casual leave or annual leave, he is treated to be on duty, but in

the matter of granting him disability or disability element of pension, certain aspects have to be taken note of and while considering this question while answering Question No. 2 it has been held that in view of the provisions of Regulation 423 (a), (b) and (d) there should be causal connection between the injury caused and the military service. It has been held by the Hon'ble Supreme Court that the determining factor in a causal connection between the accident and the military duties. The Hon'ble Supreme Court emphasizes that the injury or death while on leave must be connected with military service, however 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 being. It is held that when a person is going on a scooter to purchase household articles, such activity even remotely has no causal connection with military duty. After answering Question Nos. 1 and 2 in the foresaid manner, the Hon'ble Supreme Court goes on to analyse the issue from Para 24 onwards in the following manner:

24) *Having considered the provisions of the statutes, rules and regulations, we now refer to the judgments referred to by the learned counsel for the parties.*

25) *The judgments in Madan Singh Shekhawat, Pension Sanctioning Authority, PCDA(P), Allahabad & Ors. v. M.L. George, Ex. SGT (2015), 15 SCC 319, Nand Kishore Mishra v. Union of India & Ors. (JT 2013 (10) SC 466, and Union of India & Anr. v. Surendra Pandey (2015) 13 SCC 625, 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.

26) The Full Bench judgment of Punjab and Haryana High Court in *Khushbash Singh* has devised a new expression 'unmilitary activity'. Since the rules and regulations framed under the Act provide for disability pension only if there is causal connection of injuries with the military service, thus warranting a positive finding. The 'unmilitary activity' is not an expression used in the rules or regulations and is based on negative proof. What is unmilitary activity is vague, indefinite and is based upon surmises and conjectures. Therefore, we find that in terms of the provisions of the Act, Rules and instructions keeping in view the policy decisions of the appellants, the disability pension is admissible only if injury is either attributable to or aggravated by military service and not 10 (2015) 15 SCC 319 11 JT 2013 (10) SC 466 12 (2015) 13 SCC 625 that any activity which is unmilitary activity.

27) Mr. Sehgal has relied upon Division Bench judgment of Delhi High Court in *Vardip Singh & Anr. v. Union of India & Ors.* (2004 (3) SLR 500. It was a case where a Captain saved 150-160 lives in a tragic fire incident in Uphaar Cinema, New Delhi. The High Court has considered it appropriate to grant disability pension to the family of the deceased Major. Said judgment is in the peculiar facts of that case.

28) However, the reliance of Mr. Sehgal upon Division Bench judgment in *Barkat Masih* is not tenable. We find that the judgment is correct to the limited extent that personnel of Armed Forces when on leave are also on duty. However, the subsequent question, whether an injury or death suffered by a personnel has some causal connection with military service, was not examined except referring to Full Bench judgment of that Court wherein, it was held that unmilitary service activity alone will be excluded from the expression 'death' or 'injury' caused by military service or aggravated to military service. We find that such conclusion is not sustainable as per the applicable rules and regulations.

29) In *Barkat Masih*, such Armed Forces person was riding a scooter which was hit by army truck in the cantonment area. Such accident with the army truck has no causal connection with the military service as the deceased was on casual leave. Even a civilian could meet with an accident with the army truck within or 13 2004 (3) SLR 500 outside the cantonment area. Such accident has no causal connection with the military service of an injured or the deceased. Therefore, the Full Bench judgment of Punjab & Haryana High Court in *Khushbash Singh* and that of the Division Bench of that Court in *Barkat Masih* are not the good law. It may be noticed that special leave petition in the *Barkat Masih* order was dismissed but it was dismissed on the ground of delay, therefore, in view of the judgment of this Court in *Khoday Distilleries Limited & Ors. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal* (2019) 4 SCC 376, it does not amount to merger of the order passed by the High Court with that of this Court.

30) Another order referred by the respondent is *Lance Dafedar Joginder Singh v. Union of India & Ors.* (1995 Supp(3)SCC 232). In that case, this Court granted disability pension when no rules or regulations were produced that the appellant was not entitled to disability pension.

31) The judgments in *Union of India & Ors. v. Keshar Singh* (2007) 12 SCC 675, *Union of India & Anr. v. Baljit Singh* (1996) 11 SCC 315, *Union of India & Ors. v. Dhir Singh China, Colonel (Retd.)* (2003) 2 SCC 382 and *Controller of Defence Accounts (Pension) & Ors. v. S. Balachandran Nair* (2005) 13 SCC 128 are the cases arising out of disability on account of some disease which, in the opinion of the Medical Board, was said to be paramount. Such judgments are not applicable in the cases of 14 (2019) 4 SCC 376 15 1995 Supp (3) SCC 232 16 (2007) 12 SCC 675 17 (1996) 11 SCC 315 18 (2003) 2 SCC 382 19 (2005) 13 SCC 128 injuries.

32) In *Secretary, Ministry of Defence & Ors. v. Ajit Singh* (2009) 7 SCC 328, the personnel had suffered disability on account of electric shock in his house, when

on leave. It was held that such disability is not attributable to or aggravated by military service.

33) In Sukhwant Singh v. Union of India & Ors. (2012) 12 SCC 228, the Armed Forces personnel suffered injury in a scooter accident which rendered him unsuitable for any further military service. It was held that there was no causal connection between the injuries suffered and the services in the army referring to judgment of this Court in Union of India & Ors. v. Jujhar Singh (2011) SCC 735).

34) In Vijay Kumar, the person was climbing stairs of the house of his sister. He accidentally slipped on account of darkness on account of failure of electricity supply. This Court held that the injuries sustained were accidental in nature and nobody can be blamed for the same. Thus, the order of the Tribunal granting disability pension was set aside.

35) Another judgment referred to by the learned counsel for the appellants is Renu Devi. It is a case of special family pension on account of death of the Armed Forces personnel during casual leave in a road accident. The principles laid down are in tune with the judgments where the causal connection of the injury with the 20 (2009) 7 SCC 328 21 (2012) 12 SCC 228 22 (2011) 7 SCC 735 military service was not found and, therefore, the disability pension cannot be granted.

36) We find that summing up of the following guiding factors by the Tribunal in Jagtar Singh v. Union of India & Ors (TA No. 61/2010.) and approved in Sukhwant Singh and in Vijay Kumar do not warrant any change or modification and the claim of disability pension is required to be dealt with accordingly:-

“(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 a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality 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'.

(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some 23 T.A. No. 61 of 2010 decided on November 2, 2010 by the Tribunal casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability

pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

A perusal of the aforesaid would go to show that the injury or death while returning or going to duty when on annual leave has to have certain causal connection with the military service. By referring to various judgments in the paragraphs reproduced hereinabove, it would be seen that in certain cases, disability pension or disability element of pension had been granted even while on leave and in certain cases, it had not been granted. Only in such cases, where there is some causal connection with the cause for the disability or injury with the military service, it has been granted. In *Vardip Singh* (supra) while on leave the officer saved the lives of about 150-160 persons in a tragic fire incident which took place in Uphaar Cinema, New Delhi and the High Court considered it to be on duty and benefit was granted. In other cases like *Barkat Masih*, etc. where

benefit was granted they have been held as not good law. A perusal of the judgment indicates that in the case of *Ajit Singh* (supra), a person who had suffered disability on account of electric shock in his house while on leave had been denied disability pension on the ground that it was neither attributable to nor aggravated by military service. Similarly, an injury sustained on account of scooter accident in the case of *Sukhwant Singh* (supra) was held to be having no causal connection with military service. In the case of *Vijay Kumar* (supra) accidental slip in the house from a stair case on account of failure of electric supply was held to be not attributable to military service. Similarly in the case of *Renu Devi* (supra), death due to while on casual leave in a road accident was not established and disability pension was not granted.

8. A perusal of Para 36, as reproduced herein above, would clearly show that the Supreme Court has laid down the guiding factors based on which disability pension can be granted and if we analyse the facts of the present case, in the backdrop of these guidelines we find that the case in hand is a mere case of accident falling in a category where the injury suffered was while the applicant was undertaking trekking in his personal capacity while on annual leave in Mount Abu and it has got nothing to do with the military service of the applicant and therefore in the light of the principles culled out by the Hon'ble Supreme Court as discussed

herein above, we find that the hazard of military service as laid down by the Hon'ble Supreme Court cannot be stretched to the extent unlawful and entirely unconnected acts of omission on the part of a member of the Force who was on leave. If we read together the various observations and guidelines laid down by the Hon'ble Supreme Court from Para (a) to (f) of Para 36 we find that the injuries sustained by the applicant in the present case by no stretch of imagination can be termed as injuries which are attributable to military service of the applicant.

9. Apart from the above even earlier to deciding the case of Wg Cdr Dinesh Chandur Vaswani (Retd), the Hon'ble Supreme Court in Union of India and Ors Vs. Ex Naik Vijay Kumar (Civil Appeal 6583/2015) decided on 26th August, 2015, in this case the officer was on annual leave in his home town when suffered an injury by falling from the stairs in his house and the disability pension was granted by the Armed Forces Tribunal, Regional Bench Chandigarh in OA 248/2011 on an appeal filed by the Union of India, it has been held that the accident took place when the employee was not actually performing the military service and therefore the disability cannot be attributed to military service nor it can be said to have been aggravated due to stress and strain of military service. The Hon'ble Supreme Court goes on to hold in the aforesaid case that the injury suffered by the applicant has no casual connection with the

military service and accordingly the order passed granting disability pension was quashed by the Hon'ble Supreme Court.

10. Accordingly, finding no case for grant of any benefit we dismiss the OA.

11. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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