

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

118.

OA 556/2017 with MA 474/2017

Ex JWO Satyabeer Singh

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Paveen Kumar, Advocate

For Respondents : Mr. V Pattabhi Ram, Advocate

CORAM

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

ORDER  
12.02.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant seeks quashing of the impugned order dated 27.09.2016 by which his claim for disability pension has been rejected. The applicant has also prayed for grant of disability pension at the rate of 50% after rounding it off from 40% for life as recommended by the Release Medical Board.

2. The facts in brief indicate that the applicant was enrolled in the Indian Air Force on 12.09.1983. He was declared medically fit for performing the duties. At the time of entry into service, he was subjected to medical examination conducted by the Recruiting Medical Officer and he was found fit in all respects for serving in the

Indian Air Force. It is the case of the applicant that in the medical examination and in the report submitted there is no mention about the applicant suffering from any kind of disease, injury or wound. After the training, the applicant performed various duties at various places and it is the case of the applicant that he worked with full dedication. However, it is his further case that in the year 2007, when the applicant was posted in MOFTU Bagdogra, West Bengal, he was exposed to extreme hot and cold climatic conditions. He was physically and mentally under stress and strain due to military condition. Being a senior officer in his section, he was responsible for smooth functioning of his department. In the year 2011, he was granted annual leave and while so, on 18.06.2007, in the midnight when he was sleeping on the roof of his house, he woke up for urination, fell down from the roof and sustained head injury. He was initially treated in St. Stephen's Hospital, a private hospital in New Delhi and thereafter shifted to the Base Hospital, where he was diagnosed with severe head injury with (LT) Fronto Temporal EDH for life at 40%. On account of the aforesaid disability, he was discharged from Air Force Service on 30.09.2009 from MOFTU, Bagdogra.

3. During the course of arguments, the learned counsel for the applicant took us through various documents to contend that the

injury suffered by the applicant is attributable to military service. He fell from the roof because of the stress and strain of military service and therefore he should be granted disability pension. In support of his contention, he placed reliance on the judgments of the Hon'ble Supreme Court in the case of Deokinandan Prasad v. State of Bihar (AIR 1971 SC 1409) and Dharamvir Singh v. Union of India and others (2013 AIR SCW 4236).

4. The respondents have filed a detailed counter affidavit and have also brought on record the medical records, and rejected the contentions of the applicant and seek dismissal of the application on the ground that it is neither attributable to nor aggravated by military service.

5. It is an admitted position that the applicant went on annual leave and suffered the injury while on leave in his house. After he returned back from annual leave on 23.07.2007, he reported to the SMC with history of fall from the roof of his house while on leave and produced documents of his treatment in the Civil Hospital during the leave period. Taking note of this medical condition, he was referred to 158 Base Hospital for opinion and further evaluation. When he was diagnosed to be suffering from head injury

with (LT) Fronto Temporal EDH taking into account his medical condition he was discharged from service.

6. The issue involved in this case is as to whether the injury suffered by the applicant while on annual leave and his disability arising out of the injury which rendered him unfit for service is attributable to or aggravated by military service?

7. The applicant has not produced any medical document with regard to his treatment in the Civil Hospital. However, the records of his treatment indicate that he was referred to the Base Hospital, after he reported on completion of his annual leave and the injury shown to have been caused because of fall from the first storey of his house as narrated by the learned counsel.

8. In the case of *The Secretary, Government of India & Ors. Vs. Dharmabir Singh*, Civil Appeal No. 4981/2012 decided on 20<sup>th</sup> September, 2019, the Hon'ble Supreme Court considered the issue was with regard to grant of disability pension to an employee who suffered the disablement on account of the injury sustained by him while on annual leave or any other form of leave in his native place, etc. In Para 10, the Hon'ble Supreme Court after considering various aspects that were canvassed before it formulated three questions for consideration. They are reproduced as under:

- (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?
- (iii) What is the effect and purpose of COI into an injury suffered by armed forces personnel?

After discussing each and every issue threadbare based on the Rules and the Regulations applicable to the Armed Forces and various judgments from Para 24 to 35, the Hon'ble Supreme Court considered the issue 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 21 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 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 23 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 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) 7 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 military service was not found and, therefore, the disability pension cannot be granted.*

Finally, in Para 36, the Hon'ble Supreme Court crystallized the law with regard to grant of benefit in a claim made for pensionary benefits in the following manner:

*36) We find that summing up of the following guiding factors by the Tribunal in Jagtar Singh v. Union of India & Ors (T.A No. 61 of 2010 decided on November 2, 2010 by the Tribunal) 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 26 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 close scrutiny of the aforesaid law laid down by the Hon'ble Supreme Court particularly the principles culled out in Para 36 clearly shows that the mere fact of a man in uniform being on duty or otherwise at the place of posting or on leave is not the sole criteria for deciding attributability for disability or death. The Hon'ble Supreme Court goes on to hold that there has to be a relevant and reasonable causal connection howsoever remote between the incident resulting in such disability or death and the military service for its attributability. Even when the person is present and posted in

his unit, this causal connection has to be established. The injury suffered by the member of the Armed Forces has to be the result of his duty sphere in the military service. It has been held by the Hon'ble Supreme Court that the act, omission or commission which results in the injury should be consequent to and related to the military service in some manner or the other. It has been held by the Hon'ble Supreme Court that the act must flow as a matter of necessity arising out of military service. A perusal of the principles culled out in Para 36(d) goes to show that an act which even remotely does not fall within the scope of his duties and function as a member of his Corps 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 Forces must have some causal connection with the military service.

9. If we analyze the facts of the present case and the manner in which the injury was sustained by the applicant, it is very clear that the applicant was on annual leave, he was sleeping on the roof of his house and when he got up for urination he accidentally fell from the roof and sustained the injury. If this act of commission and omission which resulted in the injury is analyzed in the backdrop of the principles laid down by the Hon'ble Supreme Court in the case of

*Dharambir Singh* (supra), particularly the principles in Para 6 and a specific reference to the principle laid down in Para 36(d) we are of the considered view that the injury suffered by the applicant cannot be in any manner said to be one attributable to or connected with military service and therefore we see no reason to interfere with the matter and grant any benefit to the applicant.

10. The application filed by the applicant is devoid of merit and is therefore dismissed. No order as to costs.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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