

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

OA 930 /2018 WITH MA 807/2018

Ex Sgt Mishra Vinay Kumar Kripashankar ... Applicant  
Versus  
Union of India and Ors. ... Respondents

For Applicant : Mr. J P Sharma, Advocate  
For Respondents : Dr. V.S. Mahndiyan, Advocate

CORAM

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

ORDER

MA 807/2018

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 930 /2018

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disability of the applicant as attributable to/aggravated by military service and grant disability element of pension @20% rounded of to 50% with

effect from the date of discharge of the applicant; along with all consequential benefits.

4. The applicant was enrolled in the Indian Air Force on 04.05.1995 and discharged on 31.05.2015 after rendering a regular service of around 20 years. The Release Medical Board dated 27.06.2014 held that the applicant was fit to be discharged from service in composite low medical category A4G4(P) for the disability - Fracture Medial Malleolus @ 20% for life while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

5. The claim of the applicant for grant of disability pension was rejected vide letter No. RO/2205/2/Med dated 27.11.2014 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

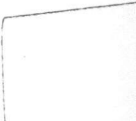
6. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], learned counsel for the applicant argues that no note of any disability was recorded in the service documents of the applicant

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 Air Force service. Further the injury sustained on duty was due to the stress and strain of service by arguing that the applicant had met with the accident while performing his duties, therefore, he is entitled to the aforesaid benefit and claim made by him in this OA.

7. Per Contra, learned counsel for the respondents submits that under the provisions of Regulation 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.

8. Relying on the aforesaid provision, learned counsel for the respondents further submits that the aforesaid disability of the applicant were assessed as “neither attributable to nor aggravated” as vide Injury Report dated 04.05.2013, the applicant stated that he sustained the injury while riding bike in Murugeshpalya, Bangalore on 29.04.2013 at 1530 hrs.

9. 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 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). Now, the only question that arises in the above backdrop is whether the disability suffered by the applicant was attributable to or aggravated by military service.

10. On a perusal of the Injury Report, it is clear that the applicant sustained the aforesaid injury on 29.04.2013 and vide the statement made by the applicant to the Medical Officers at the time of injury, it is clearly stated that the injury was sustained due to a road accident while riding a vehicle and in the Injury Report it has been clearly stated that the disability is not connected with Military Service. As far as the submission of the applicant that he had gone to encash a cheque and make a demand draft on an official task, we find there is neither any remark from the Commanding Officer in the Injury Report nor any evidence on record to substantiate the claim of the applicant.

11. The short issue which warrants consideration by us in this OA is as to whether the applicant is entitled to disability pension



and as to whether the accident which resulted in the disability or the injury was a direct consequence of Military Duty or had any causal connection with the Military Duty to be performed by the applicant?

12. In this background, 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 & international sports tournaments as member of service teams, or,*

*(ii) Mountaineering expeditions & gliding organised 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 organised 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."*

13. While observing to the effect that the act wherein the applicant suffered the injury was not in performance of an official task, nor in performance of any bonafide military duty, we find it pertinent to refer to the judgment of Hon'ble Supreme Court in Secretary, Govt of India Vs. Dharambir Singh (AIR ONLINE 2019 SC 1097), wherein the Apex Court has settled the issue vide its observations to the effect:

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

(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?

Answer to Question No.1

11) In terms of Section 3(i) of the Act, the active service means time during which a person who is subject to the Act, is attached to, or forms part of, a Force which is engaged in operations against an enemy engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is attached to or forms part of a Force which is in military occupation of a foreign country. The present is not the case covered by the definition of Section 3(i) of the Act.

12) Section 9 of the Act empowers the Central Government to declare that any person or class of persons subject to the Act, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, will be deemed to be on active service within the meaning of the Act. In pursuance of such provision, the Central Government has notified that all persons who are subject to the Act shall, wherever they may be serving, be deemed to be in active service within the meaning of the Act and of any other law for the time being in force.

13) Still further, in terms of leave rules, the casual leave and annual leave count as duty. However, in terms of Rule 11(a) of the Leave Rules for the Services, Volume-I (Army), an individual on casual leave is not deemed to actually perform duty during such leave.

1982 Rules provide that a person is on duty when he is proceeding from his leave station or returning to duty from his leave station. Still further, in terms of clause (f) of Rule 12 of the 1982 Rules, an accident can be said to be attributable to service when a man is not strictly 'on duty' as defined, 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. Therefore, a person if killed or injured by another person for the reason he belongs to the Armed Forces, he shall be deemed to be 'on duty'.

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14) Thus, it is held that when Armed Forces personnel is availing casual leave or annual leave, is to be treated on duty. 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 an 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) The question whether a disability or death is attributable to or aggravated by military service or not, is to be decided by the Medical Board. The opinion of the Medical Board with regard to actual cause of disability or death and the circumstances under which it originated will be regarded as final in terms of Rule 17 of 1982 Rules which is to the

effect that at initial claim stage, medical views on entitlement and assessment shall prevail for decisions in accepting or rejecting the claim.

19) Regulation 423(d) provides that the question whether a disability or death is attributable to or aggravated by service or not, will be decided as regards to its medical aspects by a Medical Board/ medical officers. Such opinion of the Medical Board insofar as it relates to the actual cause of disability or death and the circumstances in which originality will be regarded as final. The Commanding Officer has to record his opinion as to whether the injured person was on duty and whether he or she was to blame in a COI. Therefore, the scope of COI is to examine the conduct of the injured person to determine whether the person has made himself liable to be proceeded against departmentally. In respect of the injury, causal connection of injury to the army service is not final in the COI proceedings.

20) In view of Regulation 423 clauses (a), (b) and (d), there has to be a 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 the 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 household articles, such activity, even remotely, has no causal connection with the military service.

Answer to Question No.3

21) Before we answer Question No.3, para 520 of the Defence Services Regulations needs to be reproduced, which is as under:

*"520. Injury to a Person Subject to Army Act.-(a) When an officer, JCO, WO, OR or nurse, whether on or off duty, is injured (except by wounds received in action), a certificate on IAFY-2006 will be forwarded by the medical officer in charge of the case to the injured person's CO as soon as possible after the date on which the patient has been placed on the sick list, whether in quarters or in hospital. In the case of injuries which are immediately fatal, a report of the court of inquiry proceedings referred to in sub-para (c) (i) will take the place of IAFY-2006.*

*(b) If the medical officer certifies that the injury is of a trivial character, unlikely to cause permanent ill-effects, no court of inquiry need be held, unless considered necessary under sub-para (c) (ii), (iii), (iv) or (v). In any event, however, IAFY-2006 will be completed and in all cases, except those of JCOs, WOs and OR will be forwarded through the prescribed channels to Army Headquarters, Org Dte in the case of non-medical officers and Medical Dte in other cases, a copy being retained at command or other headquarters. In the case of a JCO, WO or OR, IAFY-2006 will be forwarded to the officer i/c records for custody with the original attestation, after the necessary entry, stating whether he*

*was on duty and whether he was to blame, has been made by the CO in the Primary Medical examination report (AFMSF-2A).*

*(c) In the following cases a court of inquiry will be assembled to investigate the circumstances:-*

*(i) If the injury is fatal or certified by the medical officer to be of a serious nature. Where an inquest is held, a copy of the coroner's report of the proceedings will be attached to the court of inquiry proceedings.*

*(ii) If, in the opinion of the CO, doubt exists as to the cause of the injury.*

*(iii) If, in the opinion of the CO, doubt exists as to whether the injured person was on or off duty at the time he or she received the injury.*

*(iv) If, for any reason, it is desirable thoroughly to investigate the cause of the injury.*

*(v) If the injury was caused through the fault of some other person.*

*In cases where the injured person is a JCO, WO or OR, the court may consist of one officer as presiding officer, with two JCOs, WOs or senior NCOs as members.*

*(d) The court of inquiry will not give an opinion, but the injured person's CO will record his opinion on the evidence, stating whether the injured person was on duty and whether he or she was to blame. When no evidence as to the circumstances attending the injury beyond that of the injured person is forthcoming it should be stated in the proceedings. The proceedings will then be sent to the brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander who will record thereon his decision whether disability or death was attributable to military service and whether it occurred on field service. After confirmation, the medical officer will, in all cases except those of JCOs, WOs and OR, record his opinion in the proceedings as to the effect of the injury on the injured person's service. The proceedings will then be forwarded by the CO through the prescribed channel to Army Headquarters, Org Dte in the case of non-medical officers and Medical Dte in other cases, a copy being retained at command or other headquarters. In the case of a JCO, WO or OR a record will be made in the primary medical examination report (AFMSF-2A) by the CO that a court of inquiry has been held, and also as to whether the man was on duty and whether he was to blame. The primary medical examination report will then be passed to the medical officer who will record his opinion as to the effect of the injury on the man's service. The proceedings of the court of inquiry will then be forwarded to the officer*

*i/c records for enclosure with the injured person's original attestation (see sub-para (b) above), except in the case of a court of inquiry under sub-para (c)(v) above, in which case the proceedings, together with a copy of the medical opinion as to the effect of the injury on the man's service, will be forwarded without delay to Army Headquarters.*

*(e) When an officer, JCO, WO, OR or nurse, not on duty, is injured in any way by or through the fault of a civilian or civilians, and receives compensation from such civilian or civilians, in lieu of any further claim, this will be recorded in the proceedings of the court of inquiry.*

*(f) A Court of inquiry need not necessarily be held to investigate deaths or injuries sustained through taking part in organized games, sports and other physical recreations as defined in para 271.*

*In all cases where a court of enquiry is not held, IAFY- 2006 will be completed with the statements of witnesses as required by item 4 thereon and when applicable, the CO will certify that the games, sports, or physical recreations were organized ones.*

*(g) The injury report will be submitted to the brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander only if the injury is severe or moderately severe or if a court of inquiry to enquire into the causes of injury has been held. The brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander will record on the form his decision whether or not the injury was attributable to military service, and whether it occurred on field service. In all other cases, the CO will record his opinion."*

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*36) We find that summing up of the following guiding factors by the Tribunal in Jagtar Singh v. Union of India & Ors 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 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 un-connected 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*

14. A cursory look at the aforesaid observations of the Hon'ble Supreme Court in *Dharambir Singh (supra)*, make it clear that the attributability of the disability has to be decided by the fact as to whether there is some casual connection of the onset of the disability to the military service and the fact whether the individual is on duty or on leave, does not affect the reasoning of



casual connection, which will attain primacy in such interpretations for deciding the attributability.

15. It would be pertinent to refer to the decision of the co-ordinate Bench of this Tribunal, Regional Bench, Chandigarh in the case of Baldev Singh Vs. Union of India [O.A. No. 3690 of 2013; Date of decision:-02.03.2016], wherein it has considered this question in great detail vide its observations in Para 21, and the same is reproduced herein as under:-

*"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."*

16. Similarly the 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."*

17. A perusal of the aforesaid principles laid down by the Hon'ble Supreme Court and this Tribunal clearly indicate that if the injury sustained by a member of the armed forces is a result of an act alien to the sphere of Military Service or in no way connected to his being on duty, as understood in the sense contemplated under the Rules, is beyond the legislative intent of the rule making authority. There has to be some causal connection with the Military Duty to be performed by the applicant and in case the disability is the result of an accident which could be attributable to risk common to human existence in modern conditions in India and is not connected with Military Service, it has been held in the aforesaid judgment that 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.

18. In view of the aforesaid analysis, the present OA is devoid of merits and hence, liable to be dismissed.

19. Consequently, the OA 930/ 2018 is dismissed.

20. No order as to costs.

21. Miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on <sup>H</sup>18 day of November, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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