

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

79.

OA 1035/2018

Ex Hav Yudhvir Singh	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. V S Kadian, Advocate
For Respondents	:	Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
14.03.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, petitioner calls in question tenability of an order dated 2nd February, 2015 whereby the second appeal filed by the applicant rejecting his claim for disability pension has been challenged. Prior to that the first appeal filed by the applicant was also challenged therefore prayer made in the application is to treat the disability suffered by the applicant as attributable to and aggravated by military service and grant him disability pension.

2. In this case, the applicant joined the Indian Army on 12th December, 1986 and after completing 21 years, 10 months and 19 days was discharged with effect

from 31st December, 2007 having been found in low medical category with diagnosis of 'Crush Injury LT Leg (OPTD) BK Amputation'. It is a case of the applicant that he was on casual leave of 16 days with effect from 16th February, 2005 to 01st March, 2005 and had gone to his native place. On 26th February, 2005 while he was going to his maternal uncle's house, he was surrounded by two/three miscreants. One of them struck him with a sharp weapon causing severe injury to his left foot. The applicant's injury was diagnosed as 'Reshaping of Traumatically Amputated B/K Stump (LT)'. The applicant was treated in Base Hospital, Delhi Cantt from 26th February, 2005 to 21st June, 2005. An FIR was launched in the matter in Police Station Sadar Narnaul (Haryana) on 28th February, 2005. On account of discharge on medical ground applicant has filed the application for grant of disability pension, the same having been dismissed on account of it neither being attributable to nor aggravated by military service, learned counsel prays for grant of benefit placing reliance on various provisions of law, particularly, the Entitlement Rules and the fact even while on casual leave, the employee is entitled to be treated as on duty and further relying upon the judgment rendered by this Tribunal in the case of Ex HMT Rajinder Singh Vs. Union of India and Ors.

(OA 218/2014) decided on 18th march, 2015 and the Hon'ble Supreme Court in the case of Nand Kishore Mishra Vs. Union of India and Ors. (Civil Appeal 377-378/2013) decided on 8th January, 2013. Further, our attention is invited to the findings of the Court of Inquiry, wherein it is said that the Court of Inquiry has found the injury attributable to military service and therefore it is argued that the disability pension be granted.

3. Respondents have refuted the aforesaid and pointed out that the applicant sustained the injury while on casual leave in his home town in an incident which is nothing to do with his military service as there is no causal connection between the incident and injury sustained and military service, therefore, his claim was rejected. Respondents refuted each and every contention of the applicant and further raised preliminary objection with regard to maintainability of this application after an inordinate delay. They placed reliance on a judgment rendered by Hon'ble Supreme Court in the case of The Secretary, Government of India and Ors. Vs. Dharambir Singh (Civil Appeal No. 4981 of 2012) decided on 20th September, 2019 to say that even when the employee is on casual leave or annual leave, he has to show causal connection of the incident or injury with military service to

claim disability pension and without the same, disability pension cannot be granted.

4. We have heard learned counsel for the parties at length and perused the record. In the records of the Court of Inquiry referred to there is no positive finding recorded. In a very cursive and casual manner, a tick mark is put over the word 'attributable' and it is the contention of the applicant to say that the incident was attributable to military service, however, we need not dwell much into the issue in question for the simple reason that the issue for grant of disability benefit or injury sustained while on casual leave or annual leave or any other kind of leave is already stipulated by the Hon'ble Supreme Court in the recent judgment rendered in the case of Dharambir Singh (supra). In the case of Dharambir Singh, various issues pertaining to grant of disability pension for injury sustained on leave was a subject matter of the consideration and after referring to Army Act, Army Rules, Military Regulations and the Entitlement Rules, the Hon'ble Supreme Court framed 3 questions for consideration. The 3 questions framed for consideration as detailed in Para 10 read as under:-

"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?"

5. The issue was considered in detail and after taking note of the various judgments on the issue not only by the Hon'ble Supreme Court but also by this Tribunal and various High Courts finally in Para 36, the issue has been summed up 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* 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 conditionally 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 behavior.

- (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."

6. And the claim filed by an employee was dismissed. As far as the present case is concerned and perusal of Para 36

(a) indicates that principle enunciated by the Hon'ble Supreme

Court is to the effect that mere fact of an employee being on 'duty' or otherwise at his 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 it may be, between incident resulting in such disability/death and military service for it to be attributable. This condition according to Supreme Court applies even when a person is posted or present in unit and there it would equally apply in cases where he is on leave notwithstanding the fact that even when on leave he is considered on duty. A complete reading of the aforementioned Para 36, clearly indicates that even when the employee is on leave or on duty, to claim disability pension or other disability benefit, the employee has to demonstrate causal connection between incident which resulted disability and military service. In the absence of a connection or link, benefit of the disability pension or disability compensation cannot be granted.

7. If we analyse the case in hand in the backdrop of the aforesaid principle, we find that the applicant was on leave, was not on military duty and on the date of the incident he was driving his private motor cycle to his uncle's house when the incident happened and the incident is no way nor in any

manner connected with the military service. There is no iota of evidence or any other material to show that the incident is connected or attributable to military service. Merely because in the Court of Inquiry in a very cursive and casual manner a tick mark was put on the word 'attributable', we are not inclined to say that when there is no finding in the Court of Inquiry after discussion of the evidence that came in inquiry to say that the incident has any causal connection with the military service of the applicant.

8. Accordingly, in the facts and circumstances of the case, we find no reason to grant any relief to the applicant, therefore, the application stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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