

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA 1074/2018

Ex Nk (GD) Shokat Kathat Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
06.02.2024

Vide our detailed order of even date we have dismissed the OA 1074/2018. Learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the applicant and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

^{1074.}
O.A. 1458/2018

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this O.A and the reliefs claimed in Para 8 - read as under:

“

- a) To quash and set aside impugned letter dated 27.03.2017 and 08.05.2018 as Annexure A-1 (colly) Impugned order.***
- b) Direct respondents to grant disability element of disability pension @60% and thereafter rounding off @60% to 75%***

wef 01.03.2014 to for life in terms of Govt. of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C)dated 31.01.2001, Addl. Dte Gen of AG/PS-4(LEGAL) letter No. B/39022/Misc/AG/PS-4(L)/BC dated 25.04.2011 and law settled by the Hon'ble Supreme Court in the case of Ex Sapper Mohinder Singh Vs. UoI Appeal No. 164 of 1993, decided on 14.01.1993, in Civil Appeal No. 418/2012 titled UoI & Ors. Vs. Ram avtar decided on 10.12.2014 alongwith interest @12 p.a. wef 01.03.2002 to till final payment is made.

- c) Any other relief which the Hon'ble Tribunal may deem fir and proper in the facts and circumstances of the case."*

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 28.12.1994 and was discharged from service on 28.02.2014 in low medical category S1H1A2P1E3 (permanent) under Army Rule 13 (3) item III (iii)(a)(i) read in conjunction with Army Rule 13 (2A). The applicant sustained injuries viz. (i) **'ACL Tear (Lt) Knee Optd (old) @20% for life and (ii) Perforating injury (Rt) eye (optd) @50% for life'**. the composite assessment for both the injuries was assessed @60 % for life. The RMB dated

01.10.2013 assessed both the injuries of the applicant as attributable to military service.

3. The applicant's claim for the grant of disability element of pension was forwarded to the PCDA (P), Allahabad for adjudication which was accepted @20% for life for the disability of ACL tear Left knee wef 01.03.2014 vide PPO No. D/Corr/13166/2014 dated 04.08.2014 and further rounded off to 50% for life in terms of letter dated 31.01.2001.

4. However, the claim for the grant of disability pension for the injury of "perforating injury right eye (Optd)" was rejected by the competent authority on being assessed as NANA since the applicant sustained the said injury whilst on casual leave. The aforesaid fact was communicated to the applicant vide letter dated 27.05.2014 with an advice to prefer an appeal against the decision of the competent authority within 6 months from the date of receipt of the letter. However, the applicant did not prefer any appeal.

5. The applicant, thereafter, sent a legal notice cum representation for the grant of disability element of disability pension @60% for life which was replied to by the respondents vide Artillery Records letter No. 14413274/LC/61/NE-5(C)

dated 08.05.2018 stating that the applicant is not entitled for the grant of the disability element of pension for the injury 'perforating injury right eye (Optd), aggrieved of which, the applicant has filed the instant O.A. and thus, in the interest of justice, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the respondents issued rejection letter No.14413274N/ LC/ 61/NE-5(C) dated 08.05.2018 stating that the IMB considered the injuries of the applicant viz. (i) ACL Tear Left Knee (Optd) as attributable to military service and assessed it @20% for life and (ii) perforating injury right eye (Optd) as attributable to military service and assessed it as 50% for life, compositely assessed both the disabilities as 60% for life.

7. The learned counsel for the applicant submitted that whilst the applicant was cleaning his trouser on 21.10.2003, one of its hook hit his right eye due to which the applicant sustained the injury whilst on casual leave from 06.10.2003 to 25.10.2003.

8. The learned counsel for the applicant submitted the injury report dated 27.07.2004 considered the injury of perforating injury right eye as grievous injury. The learned counsel on behalf of the applicant further submitted that the Court of Inquiry dated 17.07.2004 assessed the injury as attributable to military service.

9. The learned counsel of the applicant placed reliance on ***Dharamvir singh Vs. Union of India, Civil Appeal No. 4949 of 2013, (2013) 7 SCC 316***, whilst making submission as to that whether the disability is attributable to or aggravated by military service is to be determined by the Entitlement Rules for Casualty Pensionary Awards, 1982 as shown in Appendix-II , the Government of India letter No. 1(1)/81/d(Pen-C) dated 20.06.1996 and GMO, 2002.

10. The learned counsel for the applicant submitted that the case in hand with regard to the injury is squarely covered by the decision of the Hon'ble Supreme Court in the case of ***Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993]*** decided on 14.01.1993, wherein the Hon'ble Supreme Court has observed that without physical medical examination of the patient, the administrative

authority cannot sit over the opinion of a medical board. The relevant observations in the judgment in the case of *Ex Sapper Mohinder Singh (supra)* are quoted below :

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

11. Per Contra, the learned counsel for the respondents submitted that applicant's injury of 'perforating injury right eye' was held to be NANA as the applicant was not performing any official task when the injury occurred.

12. The learned counsel for the respondents submitted that there was no causal connection between the injury sustained by the applicant and the military duty.

13. The learned counsel for the respondents further relied upon Rule 173 of the Pension Regulation for Army, 1961

(Part-I) which stipulates that, the primary condition for the grant of disability pension is granted when the personnel is invalidated out from service on account of the disability being attributable to or aggravated by military service and is assessed at 20% or more. The learned counsel submitted that since the injury is neither attributable to nor aggravated by service, hence the injury 'perforated injury right eye' was rightly assessed as NANA.

ANALYSIS

14. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of injury assessed by the IMB is 50% and the minimum qualifying criteria for the grant of disability pension is 20% for grant of disability pension in terms of Para 173 of the Pension Regulation for the Army, 1961. In the instant case, it is not in dispute that the IMB has assessed the injury at 50% for life and considered it to be attributable to military service. However, the competent authority considered the injury 'perforated injury right eye' as NANA and denied the claim of the applicant for the grant of disability pension.

15. It is not in dispute that the applicant is in receipt of the disability pension in relation to the injury (i) ACL tear Left Knee @20% for life rounded off to 50% for life vide PPO dated 04.08.2014. It is also not in dispute that the applicant sustained the injury 'perforating injury right eye' whilst cleaning his trouser on 21.10.2003, when one of its hook hit the right eye due to which the applicant sustained the injury whilst on casual leave from 06.10.2003 to 25.10.2003. It is also not in dispute that the competent authority considered the injury 'perforating injury right eye' as NANA whilst denying the claim for the disability by stating that the applicant sustained the said injury where he was not performing any official duty.

The question herein to be answered remains as to the whether the injury is attributable to military service or not.

16. In the instant case the applicant sustained the said injury whilst cleaning his trouser on 21.10.2003, one of its hook hit the right eye due to which the applicant sustained the injury whilst on casual leave from 06.10.2003 to 25.10.2003 which does not come under the ambit of performance of any official duty. Thus, there is no causal connection whatsoever between sustaining the injury and performance of military duty.

In relation thereto it is essential to advert to the observations of the Hon'ble Supreme Court in **Secretary, Union Of India Vs. Dharambir Singh, Civil Appeal No. 4981/2012** , which lay down as under :-

"

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

(i)....

(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)....

Answer to Question No.1

(11)....

(12)....

(13)....

(14)....

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 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)

19)....

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

21. ...

22. ...

23. ...

24. ...

25. *The judgments in Madan Singh Shekhawat, Pension Sanctioning Authority, PCDA(P), Allahabad & Ors. v. M.L. George, Ex. SGT10, Nand Kishore Mishra v. Union of India & Ors. and Union of India & Anr. v. Surendra Pandey, 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.*

.....”

CONCLUSION

17. Applying the above parameters as laid down in **Secretary, Union of India Vs. Dharambir (supra)** to the case in hand, we hold that the injury ‘perforating injury right eye’ has no causal connection with military duty and therefore, there is no merit in the case, the OA 1074/2018 is thus dismissed.

Pronounced in the open Court on this day of 6 February,
2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER(J)

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