

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

81.

OA 1106/2019 WITH MA 1787/2019

Ex Sub Krishan Singh		Applicant
Versus		
Union of India & Ors.		Respondents

For Applicant	:	Mr. Ved Prakash, Advocate
For Respondents	:	Mr. Vijendra Singh, Advocate

CORAM

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

ORDER
15.02.2024

MA 1787/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors Vs Tarsem Singh 2009 (1) AISLJ 371 and the reasons mentioned, the delay in filing the OA is thus condoned. The MA is disposed of accordingly.

OA 1106/2019

2. The applicant, challenging the letter dated 24th December, 2018 rejecting his claim for grant of disability element of pension, has invoked the jurisdiction of this Tribunal under

Section 14 of the Armed Forces Tribunal Act 2007. The relief claimed in the OA reads thus:

- (a) *Quash the impugned order No. P/JC-373830L/DP-6/NER dated 24.12.2018 and impugned order No.P/JC-373850/Rej-055/DP-1/NER dated 06.05.2016.*
- (b) *Direct the respondents to grant 100% disability element of pension w.e.f. his date of discharge.*
- (c) *Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits.*

3. The factual details giving rise to the filing of this application are that the applicant was enrolled in the Indian Army on 21st March, 1988 and on completion of service was discharged from service in low medical category S1H1A1P3E1 (Permanent) on 4th December, 2013 for the disability "Compression Fracture LV1 and Traumatic Paraplegia (Optd)." Though, the Release Medical Board assessed the percentage of disablement @ 100% for life but composite assessment was made @ nil. It is the case of the applicant that at the time of his joining the military service, he was in a fit medical condition and there was no note of any disability recorded in his service record. The applicant, as contended, has served at various places in different environmental and service conditions during the period of his service. It is further averred that since the applicant, at the time of his enrolment, was medically fit and no note of any disability was recorded, any disability, if recorded, at the time of

discharge, has to be taken to have occurred during service period and is attributable to or aggravated by military service for which he is entitled to disability element of pension.

4. It is an admitted fact that the applicant was on casual leave from 25th November, 2013 to 07th December, 2013, and while climbing up a staircase at home, he slipped from it and sustained injury on his back resulting in "Compression Fracture LV1 and Traumatic Paraplegia (Optd)". A Court of Inquiry to investigate into the circumstances under which the applicant sustained the injury was constituted. After examining three witnesses, including the applicant, the Court of Inquiry came to the conclusion that the applicant was on casual leave when he sustained the injury and thus it was not attributable to military service. However, contention of the applicant is that as per Rule 10 of Leave Rules for the Services, Volume I Army casual leave is counted as duty, hence the injury sustained by him is attributable to military service and, therefore, he is entitled to disability element of pension. The representation of the applicant for grant of disability element of pension was also dismissed on the ground of disability not being attributable to military service.

5. To substantiate his claim, the applicant has placed reliance on the judgments in the cases of Smt Reena Vs. Union of India and Ors (OA 1149/2017) decided on 17th September, 2018 and Ex Nk Krapal Singh Vs. Union of India and Ors. (OA No.258/2014)

decided on 16th January, 2015 and also of the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and Ors. (Civil Appeal No.4949/2013) and vehemently contended that in view of the submissions made, he is entitled to disability element of pension.

6. The respondents have filed the counter affidavit and it is submitted that the claim of the applicant having been adjudicated upon and rejected by a competent authority on the ground that the disability of the applicant being neither attributable to nor aggravated by military service, the OA may be dismissed.

7. We have heard learned counsel for the parties and have also gone through the documents placed on record by them. The only issue that needs to be addressed and considered is as to whether the injury sustained by the applicant while on casual leave is attributable to or aggravated by military service.

8. Very recently, on similar facts and circumstances, we had the occasion to deliberate in detail and decide a similar issue in the case of Ex JWO Satyabeer Singh Vs. Union of India and Ors. (OA 556/2017) decided on 12th February, 2024 wherein dismissing the OA, it has been held that the injury sustained during the period of casual leave is neither attributable to nor aggravated by military service. We may also refer to a judgment of the Hon'ble Supreme Court in the case of The Secretary, Government of India and Ors. Vs. Dharambir Singh [(2020) 14

SCC 582], wherein the Hon'ble Supreme Court considered the issue with regard to grant of disability pension on account of the injuries sustained while on annual leave or any other form of leave at his native place and in para 36 crystallized the law 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 (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 neither be the legislative intention nor to our mind would it be the 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.

(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."

9. The reliance placed by the applicant on the cases of *Smt. Reema* (supra) and *Ex Nk Krapal Singh* (supra), is of no help to him as in both these cases the Court of Inquiry as well as the Release Medical Board had held that the injuries sustained were attributable to or aggravated by military service whereas in the instant case both the Court of Inquiry and the Release Medical Board have held it otherwise.

10. In view of the above it is clearly established that a man in uniform being on duty or otherwise at the place of posting or on leave cannot be the sole criteria for deciding attributability for disability, there has to be a reasonable causal connection, however remote, between the incident resulting in disability and

the military service. The act of commission or omission which results in the injury should be consequent to and related to military service and must flow as a matter of necessity arising out of military service.

11. In the case at hand on the facts and circumstances of the case; the report of the Court of Inquiry/the Release Medical Board and also the judgment of this Tribunal in the case of *JWO Satyabeer Singh* (supra) and the Hon'ble Supreme Court in the case of *Secretary Government of India and Ors.* (supra), we are of the considered view that the injury suffered by the applicant, while on leave at his native place, cannot in any manner whatsoever be said to be attributable to military service calling for any interference by this Tribunal in granting any relief, as claimed by the applicant.

12. The OA is accordingly dismissed.

13. Pending application(s) also stands closed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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