

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

OA 1333/2019

WITH

MA 2073/2019

Ex LEM (P) N Kumar Tirumalasetty ..... Applicant  
VERSUS  
Union of India and Ors ..... Respondents

For Applicant : Mr. Ved Prakash, Advocate  
For Respondents : Mr. D.K. Sabat, Advocate

Reportable/Not Reportable

Dated October, 2024

CORAM

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

ORDER

OA 1333/2019 WITH MA 2073/2019

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant calls in question the tenability of orders dated 3<sup>rd</sup> July, 2017 and 20<sup>th</sup> August, 2018 passed by the Competent Authority and the Appellate Authority rejecting the claim of the applicant for grant of disability pension.

2. It is the case of the applicant that in view of the disability contacted by the applicant while in service, he is entitled to disability element of pension @50% from the date of his discharge along with 12% interest per annum. As there is a delay

of 585 days in filing of this OA, an application MA 2073/2019 for condonation of delay has been filed. Having considered the reasons given in the application for condonation of Delay filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 and taking note of the fact that grant of disability pension is a continuous right and the cause of action accrues every time when the pension due is denied, the delay in filing the OA is condoned.

3. Facts in brief indicate that the applicant was enrolled in the Indian Navy on 05.08.2002. He was LEM Electrician (Power) and was discharged after completing 15 years of service on 31.07.2017. It is the case of the applicant that while in active service, he sustained an injury, namely, 'Compound Comminuted Fracture 2,3,4,5 Metatarsal Rt Foot (Optd) ICD No.S 92.7' on 7<sup>th</sup> July, 2012 and because of this injury he was placed in the low medical category. The applicant suffered the injury on account of a road accident when he was on duty ashore and was going for purchasing gift for an official party by normal liberty. Annexure A-3 has been filed in support of the aforesaid contention. He further says that after withdrawing certain amount of money from the ICICI Bank ATM at Mairipalam and while he was returning back to the Unit, his motorcycle collided with another motorcycle and he sustained the injury. Even though, the injury was sustained on 7<sup>th</sup> July, 2012, the applicant continued to work and was discharged after completing the term

of engagement and at the time of discharge in the year 2017 when he was subjected to Release Medical Board, his disability was assessed at 20% for life. However, he was not given any disability element of pension as the disability assessed was neither attributable to nor aggravated by Military Service. The claim for grant of disability element of pension was rejected by the Competent Authority vide orders impugned herein and based on the medical report and the documents filed, applicant claims the benefit of disability pension after exhausting the remedy of first appeal which was rejected by the Competent Authority by the impugned order on 21<sup>st</sup> January, 2017.

4. Learned counsel for the applicant argued that as the applicant had suffered the disability while performing duties for the organization, he is entitled for disability pension and placing reliance on a judgment rendered by a Coordinate Bench of this Tribunal in the case of Ex PO Com (EW) Munnalal Vs. Union of India and Ors. (OA No. 590/2020) decided on 16<sup>th</sup> May, 2023, the relief is claimed for. Learned counsel for the applicant invited out attention to the facts and circumstances of the case and tried to argue that as the applicant had met with the accident while performing his duties under normal liberty granted to the applicant as is evident from Annexure A-3, therefore, he is entitled to the aforesaid benefit and claim made by him in this OA.

5. Respondents have refuted the aforesaid and argued that the applicant sustained the injury is not attributable to Military Service and according to the statement made by the applicant himself with regard to report of the accident and declaration dated 9<sup>th</sup> July, 2012 available at page 29 of the Annexure filed by the applicant, it is stated that the applicant makes a statement to the effect *“I state that I withdrew the amount from ICICI ATM near Mairipalam and return back in motor cycle which collided off near the ATM.”* It is stated the applicant sustained the injury as per the medical documents and the report of the accident at page 29 and 30 of the paper book the injury was due to a road accident while riding a motorcycle. The Commanding Officer of INS Circars has also indicated in his report that the accident did not occur due to anything attributable to Military Service and, therefore, the individual was not entitled to any benefit. The applicant was on duty ashore and it is the case of the respondents that the injury has got nothing to do with the official duty of the applicant and they rely upon the approved copy of the injury report dated 4<sup>th</sup> October, 2012 in support of their contention. Further they rely upon the principles of law laid by the Hon<sup>ble</sup> Supreme Court in the case of Secretary, Government of India and Ors. Vs. Dharambir Singh [(2020) 14 SCC 582] in support of their contention. As far as reliance on the judgment in the case of Munnalal (supra) is concerned, it is argued that the judgment in

the case of Munnalal (supra) is based upon the interpretation of Leave Regulations; Orders and Instructions pertaining to leave of Navy persons and the provisions of short liberty, as detailed in Navy Order (Special) 02/2018 where the short liberty is described. It is their contention that the judgment in the case of Munnalal (supra) is distinguishable and is not applicable in the facts and circumstances of the present case.

6. We have heard learned counsel for the parties at length and perused the record. From the records it is clear that the applicant sustained the aforesaid injury on 7<sup>th</sup> July, 2012 and in the injury report and the statements 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 para 4 of the Injury Report it has been clearly stated that the disabilities are not connected with Military Service. Further we find that the applicant except for saying that he had gone to purchase some gifts for an official party, does not indicate what was the party where he had gone to purchase the gifts and what was the normal liberty based on which a right accrues to him and who detailed him for this duty. No documents or orders have been filed in support of the aforesaid duty. Even in the injury report and the statement made by the applicant to the medical authorities, he only says that he sustained the injury on account of a road accident while he was returning back on his motorcycle

after withdrawing money from the ATM. There is no evidence or material available on record which indicates that the applicant was on authorized duty when the accident occurred. On the contrary the evidence available on record indicates that the applicant was posted as a Store Assistant in the Technical Store and was staying in the government accommodation provided to him by the Department.

7. 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? The findings recorded in the Injury Report dated 14<sup>th</sup> September, 2012 only indicate that the injury was sustained due to road accident while riding a vehicle and there is nothing in the Injury Report to indicate that the disability as sustained by the applicant and has got any connection with his service. Even in the statement made by the applicant there is nothing to indicate that the applicant was on duty or performing any function in connection with his Military Service when the accident occurred. The law with regard to grant of disability and the test to be applied for determining the question as to whether the injury has any causal connection with Military Service has been subjected to judicial scrutiny in series of judgments by the

Armed Forces Tribunal, High Courts and the Hon'ble Supreme Court and the legal principle is laid down in detail in the case of Dharambir Singh (Supra). After analyzing various judgments, the Entitlement Rules and all other statutory provisions, the Hon'ble Supreme Court in para 10 of the judgment carved out three questions which were to be decided in the said case which read as under:

*10.1 (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?*

*10.2 (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?*

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

8. After analyzing in detail the rule position, reference to various Rules and Regulations applicable to the armed forces and series of judgments the Hon'ble Supreme Court sums up the legal issues and lays down the guiding principles in detail in para 36 of its judgment in the following manner:

*“ We find that summing up of the following guiding factors by the Tribunal in Jagtar Singh v. Union of India (TA No.61 of 2010) order dated 2.11.2010 (Tri) and approved in Sukhwant Singh [(2012) 12 SCC 228 : [(2013) 3 SCC (L&S) 438 and in Vijay Kumar Union of India v. Vijay Kumar [(2015) 10 SCC 460: [(2016) 1 SCC (L&S) 105 do not warrant any change or modification and the claim of disability pension is required to be dealt with accordingly (Sukhwant Singh case SCC pp 230-31, para 5) India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service.”*

9. A perusal of the aforesaid principles laid down by the Hon'ble Supreme Court 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. It is emphasized by the Supreme Court that there has to be a relevant and reasonable causal connection, however, remote between the incident resulting in disability and Military Service for it to be attributable. That being so if we analyse the facts of the case in hand in the backdrop of the aforesaid legal principle, it would be clearly seen that the injury sustained by the applicant does not show any connection with the Military Duty and, therefore, we have no hesitation in holding that the injury sustained by the applicant is neither attributable to nor aggravated by Military Service. The law laid down in the case of Munnalal (supra) is clearly distinguishable on facts based on the posting and the Regulations applied by the Hon'ble Bench based on the Navy

Order referred to in para 12 wherein the meaning of the word short liberty has been analysed in the backdrop of the Navy Order and Regulations and held to be on duty. In our considered view the said principle will not apply in the facts and circumstances of the present case as no evidence or material has been produced before us to indicate that the applicant was in any way performing any Military Duty when the accident took place. Accordingly, finding no case made out for any interference, the OA is dismissed.

Pronounced in open Court on this <sup>18</sup> day of October, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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