

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

OA 1709/2017

Ex Nk (TS) Pitamber Rout ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Amit Sachan, Advocate with
Mr. Romil Pathak, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

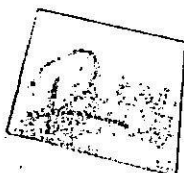
HON'BLE MR. JUSTICE RAJENDRA MENON, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following prayers:-

- (a) *Grant the disability pension to the applicant along with arrears @18% interest from the time the applicant was released from service i.e., 01.12.1999.*
- (b) *Direct the respondents to grant the benefit of rounding off disability of the applicant from 20% to 50% after rounding off in terms of a letter dated 31.01.2001.*
- (c) *Quash and set aside the letter No. 06115-221533/Extn 6545 dated 28.08.2015.*

2. The applicant was enrolled in the Indian Army on 29.11.1982. On 26.09.1997, while posted with the 6 Bihar



Regimental Center, Danapur, the applicant suffered injuries due to a fall from height. Following the incident, he was initially admitted to the 159 General Hospital and later transferred to the Research & Referral Hospital, New Delhi on 30.09.1997 for further evaluation and treatment.

3. The Release Medical Board prior to the discharge of the applicant assessed the applicant's medical condition and after evaluation the Release Medical Board dated 23.02.1999 has recommended the disability- Fracture C5 with PIVD C4-5 & C5-5 @20% for 5 years which was held to be attributable to military service.

4. The initial claim for grant of disability pension was re-submitted to the PCDA after duly rectifying the observations raised by the PCDA vide Records The Bihar Regiment letter No.4262202/DP/X/NE dated 21.03.2001, and the same was rejected by PCDA(P), Allahabad vide letter No G3/711/68/5-2001 dated 10.07.2001 on the ground that the disability Fracture PIVD of which the applicant was released /invalided out of Military service was neither attributable to, nor aggravated by Military service or constitutional in nature and not related to service The same was

informed to the applicant vide Records The Bihar Regiment letter No 4262202/DP/09/NE dated 03.08.2001.

5. The applicant filed a legal notice dated 25.05.2016 which was not replied to, in consequence of which the applicant had filed OA No. 366/2017 before this Tribunal, Principal Bench, New Delhi for grant of disability element which was disposed off vide order dated 10.03.2017 with directions to the respondents to decide the appeal dated 25.05.2016 in accordance with law within a period of two months from the date of receipt of order. The Appellate Committee on First Appeal considered the Appeal dated 25.05.2016 submitted by the applicant but the said appeal was rejected vide by the Respondents vide ADG (PS-IV), IHQ (MoD) letter No B/40502/139/2017/AG/PS-4(Imp-II) 26.10.2017 denying his claim to disability pension. Aggrieved by this aforesaid rejection the applicant filed the instant OA.

6. Learned counsel for the applicant submits that when he joined the Indian Army, he had been found medically fit and no note of any disability was made in respect of any disease including the present disabilities by the Medical Board and that

the Release Medical Board held his disability ID (i) PIVD C 4-5 and C5-6 (OPTD) @ 20% for life - aggravated by service.

7. Per Contra, learned counsel for the respondents submits through the counter affidavit that the PCDA has rejected the claim of disability pension on the ground that the injury sustained by the applicant was due to fall from roof while collecting his towel which had fallen on the roof top and thus, was not in performance of the military duty and as such not acceptable as attributable to service.

8. On a consideration of the submissions made on behalf of either side and on the perusal of Injury Report IAFY-2006 placed as Annexure R-1 dated 26.09.2007, as approved by Commanding Officer dated 21.07.2008 and subsequently approved by Brigade Commander dated 10.10.2008, we find that the declaration by the applicant is to the effect that he did not suffer the injury while in the performance of bonafide military duty.

9. Subsequently, we find that it is submitted by the applicant in the short statement vide Para 3 of the Injury Report to the effect that on 26.09.1997 in morning at 05:30 AM, a towel has fallen on the roof, and while collecting his towel, he fell down.



Not to lose sight of the opinion of the Commanding Officer vide Para 4(a)(i) wherein with respect to the question whether the applicant suffered injury in the course of performance of an official task, the answer of the Commanding Officer is 'NO'.

10. 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 organized 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."

11. 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'.

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*



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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:

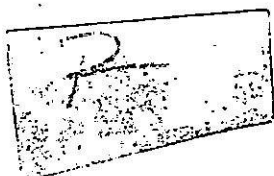
"520. Injury to a Person Subject to Army Act.-(a) When an officer, JCO, WO, OR or nurse, whether on or off duty, is injured (except by wounds received in action), a certificate on IAFY-2006 will be forwarded by the medical officer in charge of the case to the injured person's CO as soon as possible after 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'.

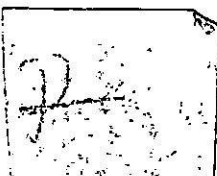
(b) *If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to 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.*

12. A cursory look at the aforesaid observations of the Hon'ble Supreme Court in *Dharambir Singh* (supra), make it clear that

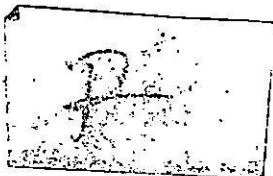


the attributability of the disability has to be decided by the fact as to whether there is some casual connection of the onset of the disability to the military service and the fact whether the individual is on duty or on leave, does not affect the reasoning of casual connection, which will attain primacy in such interpretations for deciding the attributability.

13. It would be pertinent to refer to the decision of the coordinate 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.”

14. We are conscious of the fact that the Release Medical Board has held the disability to be attributable to service, while providing a cryptic reasoning that the injury sustained during service, disregarding the injury report as well as the observations of the Commanding Officer therein. It is our well-considered observation and opinion that the RMB has clearly erred in not taking into cognizance the facts contained in the injury report and also the observations of the Commanding Officer of the applicant and therefore we are not inclined to endorse the attributability awarded by the RMB for the injury thus sustained as there is no causal connection to military service. In such situations, we are fortified and find it essential to refer to the observations of the Hon'ble Supreme Court in Veer Pal Singh Vs Secretary, Ministry of Defence [(2013) 8 SCC 83], wherein the Apex Court held that the opinion of the medical experts deserves respect and not worship. The relevant observations of the Apex Court in paragraph 11 of the judgment is reproduced as follows:



"11. Although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the experts deserves respect and not worship and the Courts and other judicial / quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release / discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable."

15. With respect to the disability of the applicant- Fracture C5 with PIVD C4-5 and C5-6, we are in full agreement with the views expressed by the Apex Court in Dharambir Singh (supra) and the Regional Bench, Chandigarh in the case of Baldev Singh (supra), which finds full support from several pronouncements of the Hon'ble Apex Court, and keeping in view the principle of law laid down in the aforesaid cases, we find that learned counsel for the applicant has not been able to make out a case in the present O.A. that the applicant's injury due to accident has any causal connection with military duty. The activity in which he sustained injury being not connected with his military duties in any manner, he is not entitled to the disability pension for the same as there is no causal connection between the injury/disabilities suffered by the applicant and military service.



16. In view of the aforesaid analysis, we are of the view that the present OA is devoid of merits and hence, liable to be dismissed.

17. Consequently, the OA 1709/2017 is dismissed.

18. No order as to costs.

19. Pending miscellaneous applications, if any, stand closed.

Pronounced in the open Court on 20th November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/Akcc/