

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

OA 1808/2019

Ex Sgt A Dayal Pred (Retd) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Manoj Kr. Gupta, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

CORAM

HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON
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 applicant filed this OA praying to direct the respondents to accept the disability of the applicant as attributable to/aggravated by military service and grant disability element of pension @20% rounded of to 50% with effect from the date of discharge of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Air Force on 04.02.1999 and discharged on 28.02.2019 after serving for more than 20 years of qualifying service. The Release Medical Board dated 19.04.2018 held that the applicant was fit to be discharged from service in low medical category A4G4(P) for the disability - RECURRENT DISLOCATION (RT) SHOULDER

@20% for life while the qualifying element for disability pension was recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by military service (NANA).

3. The claim of the applicant for grant of disability pension was rejected vide letter No. Air HQ/99798/1/795859/02/19/DAV (DP/RMB) dated 08.10.2018 stating that the aforesaid disability was considered as neither attributable to nor aggravated by military service, being suffered on casual leave. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and though the injury suffered was on leave, yet he served in the Air Force at various places in different environmental and service conditions in his prolonged service post injury, thereby, any disability at the time of his service is deemed to be aggravated by Air Force service.

5. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Rule 153 of the Pension

Regulations for the Indian Air Force, 1961 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

6. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated" as vide RMB, it was clearly stated that he slipped and fell down in bathroom while on leave; thus, the injuries sustained were not attributable to service conditions as the applicant was not on a service related duty when he sustained the injury.

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). Now, the only question that arises in the above backdrop is whether the disability suffered by the applicant was attributable to or aggravated by military service.

8. On a perusal of the medical documents, we find that the disability has been sustained by the applicant due to an accident while on leave, and in a specific question has to whether he suffered the injury on leave, the answer by the applicant himself is, "YES", and therefore, in absence of any causal connection, attributability of injury cannot be conceded in such cases.

9. In the Full Bench decision of Hon'ble Delhi High Court in. the case of *Ex Nk Dilbag Singh vs Union of India & Ors* delivered on 22.08.2008 in Writ Petition No. (C) 6959 of 2004 and connected matters, their Lordships observed in para-19, 23 and 24 as under:-

"19. For similar reasons we are unable to subscribe to the views in Ex. Sepoy Hayat Mohammed -vs- Union of India, 138(2007) DL T 539(08) to the effect that the petitioner was eligible for the grant of Disability Pension owing to the fact that while on casual leave in his home he suffered several injuries owing to a steel girder and roof slabs falling on him. One of the reasons which appear to have persuaded the same Division Bench was that persons on annual leave are subject to the Army Act and can be recalled at any time as leave is at the discretion of the Authorities concerned. A rule of this nature is necessary to cover the eruption of insurgencies or the breakout of a war. They neither envisage nor attempt to deal with liability to pay Disability Pension. It is impermissible to extrapolate a rule catering for a particular situation to altogether different circumstances.

23. We have also perused the detailed Judgment of the Division Bench of this Court in Shri Bhagwan wherein Jarnail Singh also came to be discussed. The Bench observed that - "An individual may be "on duty" for all practical purposes such as receipt of wages etc. but that does not mean that he is "on duty" for the purpose of claiming disability pension under the 1982 Entitlement Rules..... A person to be on duty is required, under the 1982 Entitlement Rules, to be performing a task, the failure to do which would constitute an offence triable

under the disciplinary code applicable to him. A person operating a wheat thresher while on casual leave cannot, by any stretch of imagination, be said to be performing an official duty or a task the failure to perform which would lead to disciplinary action". We respectfully affirm these views of the Division Bench.

24. To sum up our analysis, the foremost feature, consistently highlighted by the Hon'ble Supreme Court, is that it requires to be established that the injury or fatality suffered by the concerned military personnel bears a causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the concerned personnel was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the causal connection which alone is relevant. Fourthly, since travel to and fro the place of posting may not appear to everyone as an incident of military service, a specific provision has been incorporated in the Pension Regulations to bring such travel within the entitlement for Disability Pension if an injury is sustained in this duration. Fifthly, the Hon'ble Supreme Court has simply given effect to this Rule and has not laid down in any decision that each and every injury sustained while availing of casual leave would entitle the victim to claim Disability Pension. Sixthly, provisions treating casual leave as on duty would be relevant for deciding questions pertaining to pay or to the right of the Authorities to curtail or cancel the leave. Such like provisions have been adverted to by the Supreme Court only to buttress their conclusion that travel to and fro the place of posting is an incident of military service. Lastly, injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death has occurred at the place of posting or during working hours. This is because attributability to military service is a factor which is required to be established."

10. The view expressed by the Full Bench of Hon'ble Delhi High Court, approved by Hon'ble Apex Court, clearly establishes that the requirement of law is that it has to be established that the activity resulting in injury suffered by the military personnel

bears a causal connection with military service. Whether injury was suffered during annual leave or casual leave or at the place of posting or during working hours is not relevant because attributability to military service is a factor which is required to be established in all such cases. A careful study of observations made in the case of ***Ex Nk Dilbagh Singh vs Union of India, 2008 (106)*** (DRJ 865) shows that it considered the word "duty" as given in Appendix II of Regulation 423 of Medical Services of Armed Forces Regulations, 1983 defining the attributability to service.

11. Hon'ble Apex Court in ***Union of India & ors vs. Baljit Singh, (1996) 11 SCC 315***, has observed that in each case where a disability pension is sought for and claim made, it must be affirmatively established as a fact as to whether the injury sustained was due to military service or was aggravated by military service.

12. Hon'ble Apex Court in the case of ***Sukhwant Singh vs Union of India & Ors, (2012) 12 SCC 228*** has again considered this point and held in para 6 as under:-

"6. In our view, the Tribunal has rightly summed up the legal position on the issue of entitlement of disability pension resulting from any injuries, etc. and it has correctly held that in both cases there was no causal connection between the injuries suffered by the appellants and their service in the military and their cases were, therefore, clearly not covered by Regulation 173 of the Regulations. The view taken by the

Tribunal is also supported by a recent decision of this Court in Union of India vs Jujhar Singh."

13. 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 I international sports tournaments as member of service teams, or,

(ii) Mountaineering expeditions I 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."

14. The co-ordinate Bench of the Armed Forces Tribunal, Regional Bench, Chandigarh in the case of **Baldev Singh vs Union of India O.A. No. 3690 of 2013 decided on 02.03.2016** has considered this question in great detail. It would be fruitful to reproduce Para-21:-

"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. Ta/winder 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.

15. As far as attributability of the disability is concerned, we are in full agreement with the views expressed by the co-ordinate Bench of Armed Forces Tribunal, 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 that case, 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 during leave has any causal connection with Air Force duty.

16. Analyzing the factors that could have led to aggravation, on an analysis of the medical documents, we find that while the service profile of the applicant shows no aggravation factor, his trade duties of Clerk General Duty do not specify any aggravation. In view of the fact that the activity in which he

sustained injury being not connected with his military duties in any manner, and in absence of any aggravation factor, he is not entitled to the disability pension for the same as there is neither a causal connection between the injury/disabilities suffered by the applicant and military service, nor the aggravation due to military service.

17. 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.

18. Consequently, the O.A. 1808/2019 is dismissed.

19. No order as to costs.

20. Miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on 18 day of March, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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