

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

O.A. 2065 of 2018

Ex LAM Sunil Kumar

... **Applicant**

Versus

Union of India and Ors.

... **Respondents**

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Mr. R. S. Chhillar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE, REAR ADMIRAL DHIREN VIG 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 pension with effect from the date of retirement of the applicant; along with all consequential benefits.

BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 30.01.2003

and was discharged on 31.01.2018 after completion of 15 years and 02 days of qualifying service. The Release Medical Board dated 18.11.2017 found that the applicant was fit to be released from service in the composite low medical category (LMC) S2A2 (PMT) for the disability "BLUNT INJURY (RT) EYE EFFECTS OFF ICO-459 W-20" @ 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) on account of injury sustained by the applicant on 13.05.2006

3. The claim of the applicant for grant of disability pension was rejected on 12.01.2018 vide letter no. PEN/600/D/LRDO/1:01/2018/135422-B stating that the aforesaid disability was Neither Attributable to Nor Aggravated by Military Service.

4. After rejection of the initial claim, an application for the first Appeal as per prescribed format was submitted by the applicant vide letter dated 28.02.2018 which was again rejected by the competent authority vide letter dated 10.05.2018. Aggrieved by the

inaction of the authority, the applicant filed this OA in the interest of justice, we take up the present OA.

CONTENTIONS OF THE PARTIES

5. It is the case of the applicant that the applicant on 13.05.2006 while playing an organised cricket at INS Hansa, was injured and diagnosed with disability of Blunt Injury (Right Eye) Effects of ICD H 59.8 W 21 which was assessed to be 20% for life and was declared to be neither attributable nor aggravated by service.

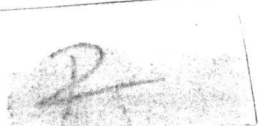
6. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*** and ***UOI & Ors. v. Rajbir Singh [(2015) 12 SCC 264]***, Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Navy at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.



Further reliance was placed on Rule 14 (b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 to contend that 'no note of any disability or disease was made at the time of individual's acceptance into military service, a disease which has led to the individual's discharge or death will be deemed to have arisen in service', therefore the claim of the applicant for disability pension has been wrongfully denied by the respondent.

7. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 101 of the Navy Pension Regulations, 1964, the primary condition for the grant of disability pension is that the disability should be attributable to or aggravated by Naval service and the minimum assessment for disability required is @ 20% or more.

8. Relying on the aforesaid provision, Learned Counsel for the respondents further submits that the disability of the applicant, namely - BLUNT INJURY (RT) EYE EFFECTS OFF ICO-459 W-20 was assessed @20% and held as neither attributable to nor aggravated by Naval service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension. Further there



were no available records to support the contention of the applicant that the injury sustained by him was caused in an organised cricket match and therefore, the claim of the applicant was liable to be dismissed.

ANALYSIS

9. We have heard the learned counsel for the parties at length and perused the records produced before us including medical records produced by the respondents for us only.

10. On a detailed analysis of the medical records, we find that the applicant suffered from a disability namely BLUNT INJURY (RT) EYE EFFECTS OFF ICO-459 W-20" @ 20% for life being NANA. which the applicant sustained on 13.05.2006 at INS Hansa.

11. In light of the above the only question that remains pending for our consideration is whether the applicant's injury has a causal connection with the military service or not?

12. From the medical documents available on records particularly the Specialist Opinion (Annexure A-3 Colly) it is evident from the injury report of the applicant that the applicant had sustained the said injury while playing cricket in INS Hansa on 13.05.2006. The

injury report also answers the specific question as to the causal connection of injury with military service which is produced as under:

Was the individual participating in recreation organised or permitted by service authorities?(with reference to RAI Rule312 indicate the nature of the recreation, EG. PT exercise, including games. In case of games and sports out of parade hours, attach a copy of official orders to indicate that it was organised or permitted by competent authority.)

- **NO**

A perusal of the aforementioned injury report clearly answers in negation the question, that whether the injury suffered by the applicant was caused in an organised sport match and further denies any causal connection of the injury of the applicant with military service. Further the injury report dated 06.06.2006 has not attributed the said injury to military service by the Commanding Officer of the applicant. The issue of grant of disability pension and injury sustained have been considered by the Hon'ble Supreme Court in the case of the ***Secretary, Govt. Of India & Ors. v. Dharambir Singh***, Civil Appeal NO. 4981/2012 decided by Hon'ble Supreme Court of India on 20.09.2019 and in Para 36 of the said

judgement the final conclusion have been culled out 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 & Ors 23 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.

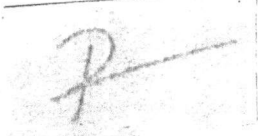


(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(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

13. The Hon'ble Supreme Court holds that there has to be a relevant and reasonable causal connection, however remote between the incident resulting in such disability, death and military service for its attributability. The injury sustained or the consequent disability must relate to Military Service in some manner or the other or the act must fall as a matter of necessity from Military Service.

14. In view of the aforesaid analysis, we do not find any infirmity in the opinion of the RMB and hold that the aforesaid disability is neither attributable to nor aggravated by the Military Service. Therefore, the applicant is not entitled for disability pension. The OA is thus devoid of merits and the claim of the applicant for disability pension is



unsustainable.

15. Consequently, the O.A. 2065 of 2018 is dismissed.

16. No order as to costs.

Pronounced in the open Court on 17th day of October, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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