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

OA 537/2019

Ex WO Narendra Singh Dengri ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Arvind Patel, Advocate

Dated: February 28 ,2024

CORAM

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

ORDER

Aggrieved with the dismissal of his appeal for grant of disability pension, the applicant has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, and the reliefs claimed are:

(a) *To direct the respondents to produce all service and medical records of the applicant relating to his disease.*

(b) *To direct the respondent to grant disability pension to the applicant from the date of discharge, i.e., 01.02.2015.*

(c) *To direct the respondent to grant the benefit of rounding off the disability pension to 50% from the date of discharge.*

(d) *To direct the respondents to issue a corrigendum PPO with the necessary changes pertaining to the disability and broad banding of the disability pension.*

(e) *To direct the respondents to pay arrears of disability pension and broad banded disability pension along with interest @ 12%.*

2. Before we proceed further, it would be apposite to have a glimpse of the facts that have come on record to find out whether the applicant is entitled to the reliefs prayed for in the application.

3. After clearing all medical and physical tests, the applicant was enrolled in the Indian Air Force on 28th May, 1979 in SHAPE I. It is the case of the applicant that before his discharge on 31st May, 2005, he served the force with utmost sincerity and dedication during his posting at different places. While posted at 42 Wing, Mohan Bari, Assam, the applicant took annual leave for the period from 5th November, 2001 to 13th November, 2001. It is his case that on 9th November, 2001 while travelling on his scooter with his wife to see his ailing father, he met with an accident as a result of which he suffered severe injuries diagnosed as (i) compound fracture shaft femur (RT) (OPTD), (ii) compound fracture shaft tibia fibula (RT) (OPTD); (iii) compound fracture both bones forearm (RT) (OPTD) and (iv) fracture patella (RT) (OPTD and was operated upon for nine times during his hospitalization for eighteen months. The composite assessment for the above disabilities was assessed by the Release Medical Board at 40% for life, though not aggravated or attributable to military service. The applicant, as contended, was placed in low medical category CEE (T-24). It is further contended that because of the disabilities, the applicant is leading a restricted life and for all his movements is dependent upon his son. The

grievance of the applicant is that in spite of his being discharged in low medical category; he was not granted the disability pension. The first appeal of the applicant made after about twelve years of his discharge was also dismissed on the ground of delay.

4. In support of his claim the applicant has relied upon the judgment of AFT, Regional Bench, Guwahati in the case of ***Ex Sub Dhaneswar Saikia*** Vs. ***Union of India and Ors*** (OA 10/2018) and of the Hon'ble Supreme Court in the case of ***Union of India and Ors.*** Vs. ***Ram Avtar*** (CA 418/2014).

5. The respondents have filed the counter affidavit and seek dismissal of the OA on the sole ground that the disabilities sustained as a result of accident are neither attributable to nor aggravated by military service.

6. On going through the records and having heard learned counsel for the parties, the only questions that need to be answered are (i) as to whether the injuries sustained by the applicant resulting in the disabilities can be said to have been attributable to and aggravated by military service; and (ii) is there any reasonable causal connection between the incident resulting in the disabilities?

7. The Hon'ble Supreme Court on identical issues in the case of ***The Secretary, Government of India and Ors.*** Vs. ***Dharambir Singh*** [(2020) 14 SCC 582], after considering various aspects canvassed before it, formulated three questions, namely, (1) whether, when

armed forces personnel proceeds on casual leave, annual leave or leave of any other kind, he is to be treated on duty; (2) 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 and (3) what is the effect and purpose of COI into an injury suffered by armed forces personnel; and considered the issues in para 24 to 36 onwards in the following manner:

> *"24) Having considered the provisions of the statutes, rules and regulations, we now refer to the judgments referred to by learned counsel for the parties.*
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> *25) The judgments in Pension Sanctioning Authority v. M.L. George, [(2015) 15 SCC 399], Nand Kishore Mishra v. Union of India [(2020) 14 SCC 603]) and Union of India v. Surendra Pandey [(2015) 13 SCC 625], are the cases where the Armed Forces personnel have suffered injuries while returning from or going on leave. In terms of Rule 12 Note 2 (d) of 1982 Rules read with Regulation 423(a), any injury or death while returning from or going to duty has a causal connection with the military service and, thus, such injury or death is considered attributable to or aggravated by military service.*
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> *26) The Full Bench judgment of Punjab and Haryana High Court in Union of India v. Khushbash Singh (2010 SCC Online P&H 4294) has devised a new expression 'unmilitary activity'. Since the rules and regulations framed under the Act provide for disability pension only if there is causal connection of injuries with the military service, thus warranting a positive finding. The 'unmilitary activity' is not an expression used in the rules or regulations and is based on negative proof. What is unmilitary activity is vague, indefinite and is based upon surmises and conjectures. Therefore, we find that in terms of the provisions of the Act, Rules and instructions keeping in view the policy decisions of the appellants, the disability pension is admissible only if injury is either attributable to or aggravated by military service and not that any activity which is unmilitary activity.*
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> *27) Mr. Sehgal has relied upon Division Bench judgment of Delhi High Court in Vardip Singh v. Union of India (2004 (3) SLR 500). It was a case where a Captain saved 150-160 lives in a tragic*

fire incident in Uphaar Cinema, New Delhi. The High Court has considered it appropriate to grant disability pension to the family of the deceased Major. Said judgment is in the peculiar facts of that case.

28) However, the reliance of Mr. Sehgal upon Division Bench judgment in Barkat Masih v. Union of India (2014 SCC Online P&H 10564) is not tenable. We find that the judgment is correct to the limited extent that personnel of Armed Forces when on leave are also on duty. However, the subsequent question, whether an injury or death suffered by a personnel has some causal connection with military service, was not examined except referring to Full Bench judgment of that Court wherein, it was held that unmilitary service activity alone will be excluded from the expression 'death' or 'injury' caused by military service or aggravated to military service. We find that such conclusion is not sustainable as per the applicable rules and regulations.

29) In Barkat Masih, such Armed Forces person was riding a scooter which was hit by army truck in the cantonment area. Such accident with the army truck has no causal connection with the military service as the deceased was on casual leave. Even a civilian could meet with an accident with the army truck within or outside the cantonment area. Such accident has no causal connection with the military service of an injured or the deceased. Therefore, the Full Bench judgment of Punjab & Haryana High Court in Khushbash Singh and that of the Division Bench of that Court in Barkat Masih are not the good law. It may be noticed that special leave petition in the Barkat Masih order was dismissed but it was dismissed on the ground of delay, therefore, in view of the judgment of this Court in Khoday Distilleries Limited v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal [(2019) 4 SCC 376], it does not amount to merger of the order passed by the High Court with that of this Court.

30) Another order referred by the respondent is Lance Dafedar Joginder Singh v. Union of India & Ors. (1995 Supp (3) SCC 232). In that case, this Court granted disability pension when no rules or regulations were produced that the appellant was not entitled to disability pension.

31) The judgments in Union of India v. Keshar Singh [(2007) 12 SCC 675], Union of India v. Baljit Singh [(1996) 11 SCC 315], Union of India v. Dhir Singh China, Colonel (Retd.) [(2003) 2 SCC 382] and Controller of Defence Accounts v. S. Balachandran Nair [(2005) 13 SCC 128] are the cases arising out of disability on account of some disease which, in the opinion of the Medical Board, was said to be paramount. Such judgments are not applicable in the cases of injuries.

32) In Union of India v. Ajit Singh [(2009) 7 SCC 328], the personnel had suffered disability on account of electric shock in his house, when on leave. It was held that such disability is not attributable to or aggravated by military service.

33) In Sukhwant Singh v. Union of India [(2012) 12 SCC 228], the Armed Forces personnel suffered injury in a scooter accident which rendered him unsuitable for any further military service. It was held that there was no causal connection between the injuries suffered and the services in the army referring to judgment of this Court in Union of India v. Jujhar Singh [(2011) 7 SCC 735].

34) In Union of India v. Vijay Kumar [(2015) 10 SCC 460], the person was climbing stairs of the house of his sister. He accidentally slipped on account of darkness on account of failure of electricity supply. This Court held that the injuries sustained were accidental in nature and nobody can be blamed for the same. Thus, the order of the Tribunal granting disability pension was set aside.

35) Another judgment referred to by the learned counsel for the appellants is Renu Devi v. Union of India [(2020) 14 SCC 600]. It is a case of special family pension on account of death of the Armed Forces personnel during casual leave in a road accident. The principles laid down are in tune with the judgments where the causal connection of the injury with the military service was not found and, therefore, the disability pension cannot be granted.

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'.*
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> *(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.*
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> *(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."

The annunciation of principles culled out in Para 36 above clearly shows that there has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in the disability or death and the military service for its attributability. Even when the person is present and posted in his unit, this causal connection has to be established. The injury suffered by the member of the Armed Forces has to be the result of his duty sphere in the

military service. It has been held by the Hon'ble Supreme Court that the act of omission or commission, which results in the injury, should be consequent to and related to the military service in some manner or the other and must flow as a matter of necessity arising out of military service. A perusal of the principles culled out in Para 36(d) goes to show that an act which even remotely does not fall within the scope of duties and function of an armed forces personnel 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 Forces must have some causal connection with the military service. If we analyze the facts of the present case and the manner in which the injury was sustained by the applicant, it is an admitted position that the applicant was on annual leave and while travelling by a scooter to see his ailing father met with an accident and sustained the injuries.

9. In the matter before us, we find no such causal connection between the incident and the disabilities and the military service.

9. In view of the above, we are of the considered view that the injury suffered by the applicant cannot in any manner be said to be one attributable to or connected with military service and therefore we see no reason to interfere in the matter and grant any relief to the applicant.

10. The OA, being devoid of any merit, is, therefore, dismissed with no order as to costs.

11. Any pending application(s) also stands closed.

Pronounced in open Court on this 28th day of February, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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