

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

OA 566 of 2018

Lt Cdr Bikash R Nayak (Retd.) **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. A.S Puar, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has made the following prayers:-

(a) Grant of disability pension in accordance with the applicable rules and as held by the Hon'ble Supreme Court vide Annexure A-1 to A-5, and The Entitlement Rules, 1982, by setting aside that part of the medical board (Impugned Order 1) which deems his disabilities to be not attributable and not aggravated by the service due without assigning any reason, and the consequent rejection (Impugned Order 2 Colly) wherein the disability has been appointed to be neither attributable to nor aggravated by military service again without assigning any reason, being not only in conflict with the rules but also in direct contravention of a series of decisions of the Hon'ble Supreme Court;

(b) That the respondents may be directed to grant the benefit of broad banding of the percentage of disability element applicable to the applicant;

(c) That the respondents may be directed to release the disability pension, and its arrears with heavy cost and compensation and interest with the time within a time bound manner

(d) Any other relief which the Hon'ble Tribunal may deem fit in the interest of justice and in favour of the petitioner.

Brief Facts of the Case

2. The applicant was commissioned in the Executive Branch of the Indian Navy on 09.01.2006 as a SSCO and was released from the service on 04.04.2016 vide IHQ of MoD (Navy) letter dated 04.12.2015.

3. The applicant while on annual leave, fell down while riding a two wheeler to the local market on 02.04.2010. The injury report dated 29.12.2010 held that the injury had been sustained while on leave and was held as not attributable to military service. The applicant was placed in a permanent low medical category S2A2 from 30.11.2010.

4. At the time of release from service, the applicant was brought before the Release Medical Board (RMB) on 25.02.2016 [Impugned Order-1] and, the RMB assessed his disability (i) Osteo Chondral

Defect (GD II) Medical Femoral Condyle (RT) Femur (OPTD) ICD No.S72.9 @ 20% for life, and net assessment qualifying for disability pension as 'nil' for life and held that the disability was neither attributable to nor aggravated by service.

5. The applicant then filed the first appeal for grant of disability pension on 15.12.2016 and the same was rejected by the Appellate Committee and was communicated to the applicant vide Letter No. PN/7371/DP/16 dated 10.11.2017 [Impugned Order-2 (Colly)]. Aggrieved by the rejection of his First Appeal, the applicant has filed the present OA.

Arguments by the Counsel for the Applicant

6. The Ld. counsel contended that the applicant had been unjustly denied disability pension despite being posted in many active and operational areas immediately after surgery of his disability, clearly leading to aggravation. It was further stated that the RMB without taking into account the applicable rules and the posting profile of the petitioner or the service conditions declared his disability as neither attributable to, nor aggravated by service.

7. The Ld. counsel placed reliance on Rules 5, 14(b), 15, 18, 19, 20(a), and Annexure III Entitlement Rules for Casualty Pensionary Awards, 1982 (Appendix II to the Pension Regulations) and further

stated that the disability in question, as per the list provided in the Entitlement Rules, was one affected by the 'stress and strain' of service. Additional reliance was placed on the General Rules of Guide to Medical Officers (Military Pensions) 2008 and Regulation 423 of the Regulations of Medical Services for the Armed Forces (RMSAF) and it was asserted that, as per the rules, the benefit of attributability/aggravation should be granted to the claimant without requiring him to prove his entitlement. The counsel further asserted that reasons must be recorded to rebut claims of attributability/aggravation, and service in peace or the field should not have any linkage with the grant of disability pension.

8. The learned counsel placed reliance on the following judgements of the Hon'ble Supreme Court in:

- (i) **Dharamvir Singh** Vs. **Union of India & Ors.** (C.A. No.4949/2013);
- (ii) **Union of India** Vs. **Chander Pal** (C.A. No.2337/2009);
- (iii) **Sukhvinder Singh** Vs. **Union of India & Ors.** (C.A. No.5605/2010);
- (iv) **Union of India** Vs. **Rajbir Singh** (C.A. No.2904/2011);
- (v) **Union of India** Vs. **Angad Singh Titaria** (C.A. No.11208/2011) and;

(vi) **Union of India** Vs. **Manjeet Singh** (C.A. Nos.4357-4358/2015).

Arguments by the Counsel for the Respondents

9. Per contra the counsel for the respondents vehemently asserted that it was due to the applicant's fall from a two-wheeler that he had been afflicted with Disability ID (i) Osteo Chondral Defect (GD II) Medical Femoral Condyl (RT) Femur (OPTD) ICD No.S72.9, V28. The counsel also highlighted that the injury report, approved by the Commanding Officer, clearly indicated that the injury occurred during the officer's annual leave, hence the same was "Not Attributable Nor Aggravated by Naval Service". The counsel further stated that the RMB held on 25.02.2016 has considered the said disability as NANA and the net assessment qualifying for disability pension as 'nil' for life and the same was also approved by DMS(H).

10. The learned counsel additionally submitted that the case of **Dharamvir Singh** Vs. **Union of India & Ors.** (C.A. No.4949/2013) could not be relied upon, because it pertains to disability cases resulting from disease or disability occurring during service, whereas the present case was related to the disability stemming from an injury sustained while on leave and had the

injury been sustained during the travel period, the situation would have been different.

Consideration of the Case

11. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability had been assessed for Disability ID (i) Osteo Chondral Defect (GD II) Medical Femoral Condyl (RT) Femur (OPTD) ICD No.S72.9, V28 @ 20% for life and net assessment qualifying for disability pension @ nil for life. Further it is an undisputed fact that the aforesaid disabilities as per the RMB report were assessed as neither attributable nor aggravated by service. The question which arises for our consideration is:

(i) Whether, when armed forces personnel proceeds on casual leave, annual leave or leave of any other kind, be treated on duty?

(ii) Whether the disability in an accident suffered by the applicant during his annual leave while doing his personal work would amount to the disability attributable to or aggravated by military service?

12. As for issue (i), it is important to consider Rule 9 of the Entitlement Rules 2008 and the verdict given by the Hon'ble Supreme Court in the case of **The Secretary, Government of India & Ors.** Vs. **Dharambir Singh** (C.A. No.4981/2012) order dated 20.09.2019, it is settled that when Armed Forces personnel are availing casual leave or annual leave, they are to be treated on duty.

13. Now, before we come to issue (ii), the relevant rules and regulation applicable to the grant of disability pension need to be extracted hereunder:

(a) Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' provides as under: -

"423. (a). For the purpose of determining whether the cause of a disability or death resulting from disease is or 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 Area/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. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(b). *Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.*

(c). *The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.*

(d). *The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.*

(e). *To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :*

- (i) AFMSF – 16 (Version – 2002) in all cases
 - (ii) IAFY – 2006 in all cases of injuries.
- (f). XXX "

(b) Since the applicant was released from service on 04.04.2016, Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 is applicable as against the earlier Entitlement Rules for Casualty Pensionary Awards to

Armed Forces Personnel, 1982. The relevant Paras of latest Entitlement Rules, 2008 reads as under:

"6. *Causal connection:*

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

7. *Onus of proof:*

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. *Attributability:*

(a) *Injuries:*

In respect of accidents or injuries, the following rules shall be observed:

(i) *Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*

(ii) *In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) *XXX*

11. *Aggravation:*

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitude etc."

14. With regard to deciding the causal connection between the injury and the military service, we may refer to the judgment of Hon'ble Supreme Court in **Union of India & Ors. Vs. Baljit Singh** [(1996) 11 SCC 315], wherein it was 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.

15. It would be pertinent to refer to the judgment passed on somewhat similar issue by the Hon'ble Supreme Court in the case of **Secretary, Govt. of India Vs. Dharambir Singh** (C.A. No.4981/2012) decided on 20.09.2019, which lays down as under:

"....(10)In view of the provisions reproduced above, we find that the following questions arise for consideration:

(i) xxx

(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) xxx

Answer to Question No.1

(11) to (14) xxx xxx

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 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) and (19) xxx xxx

(20) In view of Regulation 423 clauses (a), (b) and (d), there has to be 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 intervention of armed service and not an accident which could be attributed to risk common to human beings. When a person is going on a scooter to purchase house hold articles, such activity, even remotely has no causal connection with the military service."

[Emphasis supplied]

16. Further, the Hon'ble Supreme Court in the case of **Union of India & others** Vs. **Ex Naik Ram Singh** [2022 SCC OnLine SC

889], held that there has to be a reasonable causal connection between the injuries resulting in disability and the military service.

17. As far as assessment made by the RMB in respect of the disability in question with regard to attributability is concerned, the Hon'ble Supreme Court in the case of **Ex Cfn Narsingh Yadav Vs. Union of India & Ors.** [(2019) 13 SCR 260] observed that though the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board.

18. Furthermore, the facts of the instant case are in *pari materia* with the facts of the case before the Hon'ble Supreme Court in **Dharambir Singh** (supra) (C.A. No.4981/2012) and **Sukhwant Singh** Vs. **Union of India & Ors.** (C.A. No.1987/2011), dated 13.03.2012 and thus it is held that the disability with which the applicant is afflicted with does not have any relevance nor any casual connection of any kind with military service.

19. Since the accident has occurred when the Respondent was on leave and was going to the market, it cannot be said that there is any causal connection between the injury and the military service.

We therefore are of the opinion of Medical Board is final in terms of Rule 12 of 2008 Rules and Regulation 423 (d) of the Medical Regulations and the percentage of disability as well as whether the disability is attributed to or aggravated by military service has to be assessed by the Medical Board.

Conclusion

20. In view of the above, the OA is dismissed. The disability ID (i) Osteo Chondral Defect (GD II) Medical Femoral Condyle (RT) Femur (OPTD) ICD No.S72.9, V28 of the applicant is held as neither attributable to and nor aggravated by military service in conformity with the opinion of the Medical Board dated 25.02.2016.

21. No order as to costs.

22. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 27th day of February, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN P.M. HARIZ)
MEMBER (A)

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