

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

O.A. No. 585/2017

Ex Hav Dina Nath Rana

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant

: Mr. Anish Roy, Advocate

For Respondents

: Mr. Prabodh Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under: -

“(a) Issue a direction to the Respondents to pay disability pension to the Applicant of 20% as the disability accrued is “Aggravated by Military Services”.

(b) Issue a direction to the Respondents that the disability be rounded off to 50% on the principle of Broad Banding.

(c) Issue a direction to the Respondents that the Disability Pension with Disability Element of 50% be granted to the Applicant with effect from the date of my retirement.

(d) To pass any other or further order(s) which this Hon'ble Tribunal considers appropriate in the facts and circumstances of this case."

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 22.12.1984 and discharged from service on 31 Dec 2008 (AN) on fulfilling the terms of engagement after rendering a total of 24 years 09 days of regular service.

3. The applicant seeks the disability of "**FRACTURE HUMERUS AND ULNA SHAFT (LT)**" assessed @ 20% be treated as being attributable to or aggravated by military service and that the applicant be thus granted the disability element of pension including benefit of broad banding/rounding off to 50% with effect from the date of his retirement.

4. Whilst the applicant was on annual leave *w.e.f.* 03.08.2008 to 07.09.2008, he suffered the above said injury in his home town. The RMB held on 13.08.2008 prior to his discharge assessed the disability as neither attributable to nor aggravated by military service.

5. The Applicant preferred First Appeal and the same was rejected by the Appellate Committee on First Appeals (ACFA) vide 14576549A/DP-6/PEN dated 03.12.2010 stating that the disability is *"neither attributable to nor aggravated by military service"*.

6. The Applicant preferred Second Appeal dated 30.03.2011 and the same was also rejected by the Second Appellate Committee of Pension (SACP) vide letter dated 13.12.2013 stating that it is *"not attributable to military service"*.

7. Aggrieved by the decision of the respondents, the applicant has filed the instant OA and in the interest of justice we take up the present OA.

CONTENTIONS OF THE PARTIES

8. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army, after being medically examined thoroughly, declared fit, free from any disease on 22.12.1984.

9. The learned counsel for the applicant in support of his claim has placed reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]*, it was held by the Hon'ble Supreme Court that *an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event*

of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions.

10. The learned counsel for the applicant also placed reliance on the *UOI and Other v. Ram Avatar (C.A. No. 418/2012 dated 10 December 2014)*, whereby the benefit of rounding off of the disability pension was granted.

11. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disabilities of the applicant as “Neither Attributable to Nor Aggravated by Military Service and assessed the same @ 20% for life.”

12. The learned counsel for the respondents submitted that as per Court of Inquiry, the applicant was on Annual Leave w.e.f. 03.08.2008 to 07.09.2008. On 15.08.2008 at 1400hrs, when he was going towards the fields for routine work, he slipped and fell over an acute slope and sustained the said injury.

13. The learned counsel for the respondent in support of his claim has placed reliance on the judgment dated 20.08.2009 of the Hon’ble Supreme Court in **Civil Appeal No 5678/2009 arising from SLP (C) No 23727/2008 filed by Secretary of Ministry of Defence & Others v. Late Sep Damodaran AV through Legal Representatives and others**, wherein it was held that the

medical board is an expert body and its opinion is to be given due weight, value and credence.

ANALYSIS

14. We have heard the learned counsel for the parties and have gone through the records produced before us. We find that the disabilities suffered by the applicant was assessed @ 20%. The issues which need to be considered here are two folds, i.e.;

- a) Whether the disability of the applicant is attributable to or aggravated by military service or not?
- b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

15. It is an undisputed fact that the applicant in this case suffered the injury during the period of his annual leave, *i.e., from 03.08.2008 to 07.09.2008*. The injury report (IAFY 2006) as annexed by the respondents as annexure R-1 states that the injury sustained by the applicant did not occur while he was in performance of military duty. The relevant portion of the IAFY 2006 is as follows: -

Was the individual in the courts or performance of on official task or a task he failed to do which would constitute an offence triable under the disciplinary code	NO
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applicable to him? (Indicate the nature of the task by whom it was ordered and when)	
Did the accident occur during the journey of transport by a reasonable route under organized arrangements from the individuals quarter to or back from an appointed place of duty?	NO
Was the individual participating in recreation organized or permitted by service authorities?	NO
Was the individual travelling either in a body or singly under organized arrangements?	NO
Was the individuals proceeding to his leave station or returning to duty from his leave station?	NO

16. Upon perusal of the injury report it is also seen that the injury is not attributable to military service and therefore there is no apparent causal link between the injury sustained by the applicant and service of the military.

17. From the aforesaid documentary evidence available on record we find that the injury of the applicant is neither attributable to the military service nor aggravated by military service. In the case of *Secretary, Government of India & Ors. v. Dharambir Singh*, Civil appeal No.4981/2012 decided by the Hon'ble Supreme Court of India on 20.09.2019 the issue of grant of disability pension or injury sustained have been considered by the Hon'ble Supreme Court in detail and in Para 36 of the said judgment, 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. and approved in Sukhvant 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 as 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 behavior.

(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."

18. The Hon'ble Supreme Court holds that there has to be a relevant and reasonable and 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.

19. Upon perusal of the documents placed on record we find that there is no causal connection whatsoever in the injury sustained by the applicant and the military services as the applicant sustained the injury in peace in the hometown of the applicant when he was going to the fields.

20. In view of the aforesaid consideration and parameters, applicant's claim for entitlement of the disability element for **FRACTURE HUMERUS AND ULNA SHAFT (LT)** stands rejected.

CONCLUSION

21. There is no error in the findings of the medical board and we find no infirmity in the proceedings, henceforth, the O.A. 585 of 2017 is dismissed being devoid of merit.

22. There is no order as to costs.

Pronounced in the open Court on this 22^{ed} day of August, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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