COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1648/2018

Ex LAC Sanjay Kumar ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. Vijendra Singh Mahndiyan, Advocate

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, 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 quash and set aside the impugned order issued by the respondents and accept the disability of the applicant as attributable to/aggravated by military service and grant disability element of pension with the benefit of broadbanding/rounding off along with all consequential benefits.

BRIEF FACTS

2. The facts of the case in brief are that the applicant was enrolled in the Indian Air Force on 28.10.1997 and

discharged on 31.10.2017 after serving for 20 years 04 days of qualifying service. He was on casual leave from 27.11.2013 to 02.12.2013 to visit his hometown. On 30.11.2013, the applicant met with an accident while travelling from Samastipur to Darbhanga with his family in his own car and sustained various injuries.

3. The Initial Medical Board held on 23.01.2014 placed him in LMC A4G4 (T24). During subsequent review on 05.08.2016 he was placed in LMC A4G4 (P) for disability **'MINIMALLY DISPLACED FRACTURE MEDIAL TIBIAL PLATEAU (RT) KNEE'**. Applicant's Release Medical Board not solely on medical grounds held on 02.02.2017 found him fit to be released in Low Medical Category A4G4(P) for the disability **'MINIMALLY DISPLACED FRACTURE MEDIAL TIBIAL PLATEAU (RT) KNEE'** assessed @ 15-19% for life while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

4. The applicant's claim filed vide legal notice dt. 17.06.2018, for grant of disability pension was rejected by the respondents vide impugned letter Air HQ/99798/1/785632/DAV/DP/CC dt.11.07.2018 stating

that applicant's disability was neither attributable to nor aggravated by Air Force service hence not entitled to grant of disability element as per Rule 153 of Pension Regulations of IAF, 1961 (Part-1). Aggrieved by the aforesaid, the applicant has filed this OA.

CONTENTIONS OF THE PARTIES

5. To contend that the applicant even while on Casual Leave, would deemed to be on "active service and any disability incurred during that period would be attributable to service. Learned counsel for the applicant has referred to Section 3(1) and Section 9 of the Army Act, 1950 and placed reliance on the judgment of Hon'ble Supreme Court in case of ***Nand Kishore Mishra*** v. ***UOI*** 2013 AIR (SCC) 1290, ***Balbir Singh and Anr*** v. ***State of Punjab*** (1995) 1 SCC 90 and ***UOI & another v. Ex. Naik Surendra Pandey*** (2015) 13 SCC 625.

6. Further placing reliance on various judgments of the Hon'ble Supreme Court including Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316], Union of India & Ors. Vs. Rajbir Singh [(2015) 12 SCC 264] and Sukhvinder Singh Vs UOI & Ors [2014 (14) SCC 364 it is argued that any

disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary, to be a consequence of military service and thereby, any disability at the time of his discharge is deemed to be attributable to military service.

7. It is thus the contention of the applicant that he met with an accident while he was on Casual Leave and as per Entitlement Rules 1982 (hereinafter referred to Entitlement Rules 2008) any injury sustained during Casual Leave is to be treated as attributable to military service.

8. Learned counsel for the applicant has further referred to AFT (PB) order dt. 10.05.2018 in OA No. 542/2017 Lt. Col. V D Sharma v. UOI & Ors. wherein it is observed in Para 18, that the general description of disability percentage "less than 20%" shows lack of application on behalf of the medical authorities in the case of the Medical Board, who appear to have made up their mind, in premeditated manner, to deny disability benefits to the applicant, to contend that the RMB committed an error in assessing the injury of the applicant at less than 20% (15-19% for life) and there is no such barometer to test the disability to the extent of correctness

upto 1% and it can be plus minus 2% and in such case the benefit of doubt should go to the applicant.

9. Per contra learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the RMB being an Expert Body, assessed the disability @ 15-19% for life. Furthermore, in the injury report dt. 17.06.2014. the Air Commanding Officer clearly mentioned that the injuries sustained by the applicant were not connected with Air Force service and hence, are not attributable or aggravated by service for the reasons mentioned therein. The learned counsel further submitted that as the applicant's disability does not fulfil any of the twin conditions in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I), the applicant is not entitled to disability pension and prays therefore, the OA to be dismissed.

Analysis

10. Heard the learned counsel for the parties and also perused the materials available on record.

11. It is undisputed that the applicant met with an accident on 30.11.2013, while he was on casual leave and travelling in his own car with his family. The RMB assessed his disability

@ 15-19% and opined as not attributable to or aggravated by service condition. Now, the questions that arise in the present case are:

> ***(i) Whether the disability suffered by the applicant while he was on Casual Leave was attributable to or aggravated by Army Service?***
>
> ***And***
>
> ***(ii) Whether the applicant is entitled to Disability Pension when degree of disablement assessed by RMB is less than 20%.***

12. Regulation 153 of the Pension Regulations for the Air Force, 1961, prescribes the following twin criteria for grant of disability pension:

> ***(i) Disability must be either attributable to or aggravated by service.***
>
> ***(ii) Degree of disablement should be assessed at 20% or more.***

13. Rule 10 of the Entitlement Rules, 2008 provides for the criteria for considering the attributability of an injury while on leave:

> ***"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.***

(emphasis supplied)

14. As regards the first issue, it is necessary to consider what acts are covered by the term 'duty'. Clause 9 of the Entitlement Rules for Casulty Pensionary Awards to the Armed Forces Personnel, 2008, defines the word duty, which for convenience sake is reproduced as under:

> ***9. Duty: For the purpose of these Rules, a person subject to the disciplinary code of the Armed Forces shall be treated 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/sports activities organized or approved by service authorities and during the period of traveling in relation thereto.***
>
> ***Notel: Personnel of the Armed Forces participating in local/national/international sports tournaments as members of service teams; or mountaineering expeditions/gliding organized by service authorities, with the approval of Service HQs, shall be deemed to be 'on duty for the purpose of these Rules.***
>
> ***Note 2: Personnel of Armed Forces participating in sports tournaments or in privately organized mountaineering expeditions of indulging in gliding as a hobby in their***

individual capacity, shall not be deerned to be 'on duty for the purpose of these Rules, even though prior permission of the competent service authorities may have been obtained by them.

Note 3: Injuries sustained by personnel of the Armed Forces in impromptu games and sports which are organized by or with the approval of the local service authority and death or disability arising from such injuries, will be regarded as having occurred 'on duty for the purpose of these Rules

Note 4: The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling and other similar institutes shall be treated at par with personnel attending other authorized professional courses or exercise for the Defence Services for the purpose of grant of disability/family pension on account of disability/death sustained during the courses.

(d) When proceeding on leave/valid out pass from his duty station to his leave station or returning to duty from his leave station on leave/valid out pass

Note 1: An Armed Forces personnel while traveling between his place of duty to leave station and vice-versa is to be treated on duty irrespective of whether he has availed railway warrant/concession vouchers/cash TA ete of not for the journey. This would also include journey performed from leave station to duty station in case the individual returns early.

Note 2: The occurrence of injury should have taken place in reaching the leave station from duty station or vice versa using the commonly available/adopted route and mode of transport.

(e) When traveling by a reasonable route from one's official residence to and back from the appointed place of duty, irrespective of the mode of conveyance (whether private or provided by the Government)

(f) Death or injury which occurs when an individual is not strictly 'on duty' e.g. on leave, including cases of death/disability as a result of attack by or action against extremists or anti social elements may also be considered attributable to service, provided that it involved risk which was due to his belonging to the Armed Forces and that the same was not a risk faced by

a civilian. Death and disability due to personal enmity is not admissible.

Note: For the purpose of these Rules, leave shall include casual leave. Leave/casual leave shall not be treated as 'duty' except in situations mentioned above.

15. A perusal of the aforesaid clause signifies clearly that where an individual of armed forces is moving from one place to another within the duty area or when he is performing an official task or participating in recreation or other unit activities organised or authorised by serving authority and travelling in relation thereto, it shall be construed as 'duty' within the ambit of Entitlement Rules, 1982. Now, to decide the limited question of attributability, with respect to an accident where the applicant was on casual leave and travelling in his own car and subsequent, causal connection, we find that the said issue has been settled by the judgement of Hon'ble Supreme Court in ***Secretary, Ministry of Defence v. Dharambir Singh [Civil Appeal No. 4981/2012; Date of decision: 20.9.2019]*** which observed as under:

> ***"10) In view of the provisions reproduced above, we find that the following questions arise for consideration:***
>
> ***(i) Whether, when armed forces personnel proceeds on casual leave, annual leave or leave of any other kind, he is to be treated on duty?***

(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) What is the effect and purpose of COI into an injury suffered by armed forces personnel?

Answer to Question No.1

11) In terms of Section 3(i) of the Act, the active service means time during which a person who is subject to the Act, is attached to, or forms part of, a Force which is engaged in operations against an enemy engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is attached to or forms part of a Force which is in military occupation of a foreign country. The present is not the case covered by the definition of Section 3(i) of the Act.

12) Section 9 of the Act empowers the Central Government to declare that any person or class of persons subject to the Act, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, will be deemed to be on active service within the meaning of the Act. In pursuance of such provision, the Central Government has notified that all persons who are subject to the Act shall, wherever they may be serving, be deemed to be in active service within the meaning of the Act and of any other law for the time being in force.

13) Still further, in terms of leave rules, the casual leave and annual leave count as duty. However, in terms of Rule 11(a) of the Leave Rules for the Services, Volume-I (Army), an individual on casual leave is not deemed to actually perform duty during such leave. 1982 Rules provide that a person is on duty when he is proceeding from his leave station or returning to duty from his leave station. Still further, in terms of clause (f) of Rule 12 of the 1982 Rules, an accident can be said to be attributable to service when a man is not strictly 'on duty' as defined, 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. Therefore, a person if killed or injured by another person for the reason he belongs to the Armed Forces, he shall be deemed to be 'on duty'.

14) Thus, it is held that when Armed Forces personnel is availing casual leave or annual leave, is to be treated on duty.

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) The question whether a disability or death is attributable to or aggravated by military service or not, is to be decided by the Medical Board. The opinion of Medical Board with regard to actual cause of disability or death and the circumstances under which it originated will be regarded as final in terms of Rule 17 of 1982 Rules which is to the effect that at initial claim stage, medical views on entitlement and assessment shall prevail for decisions in accepting or rejecting the claim.

19) Regulation 423(d) provides that the question whether a disability or death is attributable to or aggravated by service or not, will be decided as regards to its medical aspects by a Medical Board/ medical officers. Such opinion of the Medical Board insofar as it relates to the actual cause of disability or death and the circumstances in which originality will be regarded as final. The Commanding Officer has to record his opinion as to whether injured person was on duty and whether he or she was to blame in a COI.

Therefore, the scope of COI is to examine the conduct of the injured person to determine whether the person has made himself liable to be proceeded against departmentally. In respect of the injury, causal connection of injury to the army service is not final in the COI proceedings.

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.

16. With regard to the issue relating to entitlement of disability pension when the assessment of a disability by the RMB is less than 20% (*15-19% for life*), we may refer to the judgment dated 11.12.2019 of the Hon'ble Supreme Court in ***Union of India & Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018]***, wherein it was held that the disability element is not admissible if the disability is less than 20%, and that the question of rounding-off would not apply if, the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off. Relevant paras of the said judgment read as under :

"1. The short question involved in this appeal filed by the Union of India is whether disability pension is at all payable in case of an Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%.

xxx xxx xxx

8. This Court in Ram Avtar (supra), while approving the judgment of the Armed Forces Tribunal only held that the principle of rounding off as envisaged in Para 7.2 referred to herein above would be applicable even to those who superannuated under Para 8.2. The Court did not deal with the issue of entitlement to disability pension under the Regulations of Para 8.2.

9. As pointed out above, both Regulation 37(a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.

10. The Armed Forces Tribunal ('AFT'), in our opinion, put the cart before the horse. It applied the principles of rounding off without determining whether the petitioner/ applicant before it would be entitled to disability pension at all.

11. In view of the provisions referred to above, we are clearly of the view that the original petitioner/applicant before the AFT is not entitled to disability pension. Therefore, the question of applying the provisions of Para 7.2 would not arise in his case. In this view of the matter, we set aside the order of the AFT and consequently, the original application filed by the Respondent before the AFT shall stand dismissed.

17. Further, Hon'ble Supreme Court in its judgment dated 04.09.2019 rendered in the case of ***Bachchan Prasad Vs. Union of India & Ors. [Civil Appeal No. 2259 of 2012]*** also held that an individual is not entitled to the disability

element if the disability is less than 20%. Relevant portions of the said judgment read as under :

> ***"After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%. The appellant is not entitled for disability element, as his disability is less than 20%."***

18. 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.

19. The reliance by the applicant upon the Hon'ble Supreme Court judgment in case of ***Nand Kishore Mishra*** (Supra), ***Balbir Singh*** (Supra) and ***Ex Naik Surendra Pandey*** (Supra) is not tenable. These judgments are correct to the

extent that personnel of Armed Forces when on leave are deemed to be on duty. However, the question, whether injury or death suffered by the personnel while on leave has some causal connection with military service was not examined therein.

20. The judgment in Dharamvir Singh (supra), Rajbir Singh (supra) and Sukhvinder Singh (Supra) are also distinguishable as the issue with regard to causal connection and accidental injury or death suffered by the personnel while on leave has not been examined therein.

21. Further the reliance of the applicant upon the case of V.D Sharma (Supra) is also misplaced. The issue before the court was whether the assessment of medical disability of the applicant who had taken voluntary retirement after developing a heart condition after about 25 years of military service at "less than 20% can be taken as binding for denying disability element of pension to the applicant, when the Medical Board had accepted that the heart condition was "aggravated by stress & strain of service", and after considering various case law, the Court opined that in such cases where the medical authorites appear to be in doubt

with regard to exact disablement of an individual, the benefit of doubt must go to the individual.

22. In the case in hand, it is undisputed that the applicant had met with a road accident while travelling with his family in his own car and sustained injuries, but the applicant was not performing any duty or any act which, by any stretch of imagination, could be connected with the service. Therefore, we are of the considered view that the injury sustained by the applicant does not have any causal connection, even remotely, with the service and thus, the disability cannot be held attributable to or aggravated by military service.

23. In the instant case, the disability of the applicant has rightly been opined by the medical board as 'neither attributable to nor aggravated by service' as there is no causal connection established between the injury sustained/disability and the Air Force service. Accordingly, we find no infirmity in the opinion of the RMB. The OA is dismissed.

24. Consequently, the OA 1648/2018 is dismissed.

25. No order as to costs.

26. Pending miscellaneous applications, if any, stand closed.

Pronounced in the open Court on 12th day of August, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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