

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

OA 1003/2019

Ex LME Ravi Kumar

.....Applicant

VERSUS

Union of India and Ors.

.....Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Mr. Sarvan Kumar, 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, the applicant has filed this application and the reliefs claimed in Para 8 read as under :

“(a) Quash and set aside the impugned letters dated 09 Jul 2018.

(b) Direct Respondents to grant disability Pension 30% and rounding off the same to 50% for life as recommended by RMB to the applicant with effect from 01 Aug 2018 i.e. the date of discharge from service with interest 12% p.a. till final payment is made.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 28.07.2003 and was discharged from service on 31.07.2018 on completion of his terms of engagement after rendering 14 years and 06 months of qualifying service. Prior to his discharge, he was subjected to a Release Medical Board (RMB) held on 01.08.2017. The RMB

placed the applicant in Low Medical Category S3A2(A) PMT on account of the disabilities (i) ACL Tear (RT) and (ii) Medial Meniscus Tear Posterior Horn (RT). The RMB assessed the disability of the applicant to be 30% for life with the percentage of composite disabilities assessed @ 30% for life. However, the net qualifying percentage for the disability pension was 'NIL' for life as both the disabilities were adjudged as neither attributable to nor aggravated by military service.

3. On adjudication, the applicant's claim for the grant of disability pension was rejected by the competent authority *vide* letter No. PEN/600/D/LRDO 1:07/2018/136355Z dated 09.07.2018 by stating that the disability of the applicant is found to be "neither attributable to nor aggravated by military service" and NIL % for life. The outcome was communicated to the applicant with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter. The applicant thereafter sent a first Appeal dated 31.10.2018 seeking the relief but no reply has been received from the respondents till date.

4. Aggrieved by the response from the respondents, the applicant has filed the instant O.A. and thus, in the interest of justice, in terms of Section 21(2) (b) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

5. Placing reliance on the judgements of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India & Ors* [2013 7 SCC 316], *Sukhvinder Singh Vs. Union of India & Ors*, dated 25.06.2014 reported in [2014 STPL (Web) 468 SC],

UOI & Ors. Vs. Rajbir Singh [(2015) 12 SCC 264], learned counsel for the applicant submitted that if there is no note of any disability recorded in the service documents of the applicant at the time of entry into the service, the subsequent release in low medical category shall be treated as a consequence of military service, resulting in entitlement of disability pension and for further broad banding in view of the decision in *Union of India Vs. Ram Avtar* [Civil Appeal No. 418/2012], decided on 10.12.2014. Reliance was also placed on the verdict of the Hon'ble Supreme Court in *Deokinandan Prasad Vs. State of Bihar* [AIR 1971 SC page 1409] wherein it was observed as under:

“that pension is not a bounty payable on the sweet and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting with a Government servant”.

6. Learned counsel further argued that the Right Knee of the applicant was twisted while playing football on 15.01.2013 at about 1730 hours during an organized game. The football was provided by the naval authorities and the injury occurred while playing inside unit. Therefore, it was urged that the same has a causal connection with service and his disabilities ought to be conceded as attributable to and aggravated by service and be granted disability pension. Learned counsel further submits that despite being in Low Medical Category, he continued to perform his official duties with utmost devotion, but his condition deteriorated due to difficult service conditions, extended working hours, the nature of duties,

and extreme military conditions. Reliance has been placed on following orders passed by the Principal Bench of this Tribunal :-

1. OA 791/2017 *Ex. Sgt Krishna Kumar Vs. Union of India & Ors.* decided on 20.02.2019.

2. OA 888/2018 *Ex. Sgt. Balbir Singh Khandelwal Vs. Union of India & Ors.* decided on 16.09.2019

7. *Per contra*, learned counsel for the respondents submitted that the RMB had categorically held that the disabilities were neither attributable to nor aggravated by military service. It was further submitted that the applicant was not invalided out of service, but was discharged on completion of his contractual engagement, and therefore he does not fulfil the conditions for grant of disability pension.

8. Learned counsel for the respondents further relied upon Regulation 101 of the Navy (Pension) Regulations, 1964, which stipulates that disability pension is admissible only when a service personnel is invalided out of service on account of a disability attributable to or aggravated by service and assessed at 20% or more. Since the applicant was not invalided out of service and the disability was assessed as NANA, he is not entitled to disability pension.

9. Learned Counsel further relied upon Para 5(g) of Part-V of the opinion of the RMB to submit that the Board had categorically opined that the applicant's refusal to undergo surgery was not reasonable, as the likelihood of improvement or cure of the symptoms would have significantly increased had he undergone the

recommended surgical procedure. However, the applicant declined to undergo the said surgery and accordingly furnished an unwillingness certificate to that effect.

ANALYSIS

10. Heard learned counsel for the parties and perused the record as well as the Release Medical Board (RMB) proceedings produced before us. As far as the disabilities are concerned, it has been assessed at 30% for life by the RMB which is more than the bare minimum for grant of disability element of pension. However, the principal question which arises for consideration is *whether the disability is attributable to or aggravated by military service.*

11. The record reveals that the applicant sustained a twisting injury to his right knee while playing football on 15.01.2013 at MO Visakhapatnam. He was thereafter treated at INHS Kalyani and was placed in Low Medical Category due to the disabilities ACL Tear (RT) and Medial Meniscus Tear Posterior Horn (RT).

12. Learned counsel for the respondents has raised the contention that the applicant had refused to undergo the surgical intervention recommended by the Medical Authorities and had furnished an unwillingness certificate in this regard. It is, however, noted that the RMB had itself stated that even if the surgery had been performed, it could have probably reduced the disability percentage by 50%, notwithstanding the applicant's refusal to undergo surgery, the RMB assessed his disability at 30% for life, thereby establishing the existence of medical disability. Nevertheless, the mere assessment of disability percentage

does not by itself entitle an individual to disability pension unless the disability is found to be attributable to or aggravated by military service.

13. The applicant has placed reliance on the decisions of this Tribunal in OA No. 791/2017, *Ex Sgt Krishna Kumar vs Union of India & Ors.* decided on 20.02.2019, and OA No. 888/2018, *Ex Sgt Balbir Singh Khandelwal vs Union of India & Ors.* decided on 16.09.2019. In *Krishna Kumar (supra)*, the injury was sustained by the applicant while he was stationed at his duty station and involved in routine personal activity within the unit lines. The Tribunal held that military personnel stationed at their place of duty remain on call for service exigencies and injuries sustained during such circumstances may be considered attributable to service. Similarly, in *Balbir Singh Khandelwal (supra)*, the injury occurred while the applicant was participating in organized games, which form part of mandatory physical training and recreational activities in the Armed Forces. The Tribunal accordingly extended the benefit of attributability.

14. However, the facts of the present case are clearly distinguishable. In the instant case, the **Report on Accident and Self-Inflicted Injuries** forms an important piece of evidence. A perusal of the said report reveals that, as recorded in paragraph 4(a)(i), (iii) and (iv), at the time of the incident the applicant was not performing any official duty, nor was he participating in any recreation organized or permitted by the service authorities. It has further been recorded that the applicant was neither proceeding to nor returning from his leave station at the relevant time. The relevant extract of the report is reproduced hereunder:

3. Short statement of the circumstances of the case
(See RAI Instruction 446)

I Ravi Kumar write on statement I playing a football in B.V. ground on 15 JAN 13. Two was playing and I fell down in ground.

(Signed statements of witness giving a detailed account of the circumstances of the accident must be attached to this form. Place or sketch of place of accident and how it occurred in case of lorry, motor car or cycle accident-see Instruction 5 and 7 on reverse)

4. Commanding Officer's Opinion-

(a) (i) Was the individual in the course of performance of an official task or a task he failed to do which would constitute an offence triable under the disciplinary code applicable to him? (indicate the nature of the task by whom it was ordered and when)

(NA)
निष्कर्ष
निष्कर्ष

NA
(SK Singh)
Lieutenant
Staff Officer
for Material Superintendent



(iii) Was the individual participating in recreation organised or permitted by Service authorities? (with reference to RAI Rule 312 indicate the nature of the recreation, e.g., P.T. Exercises including games. In case of games and sports out of Parade hour attach copy of official orders to indicate that it was organised or permitted by competent authority)

NO

or

(iv) Was the individual travelling either in a body or singly under organised arrangements? (attach copy of official orders to indicate that the arrangements were organised by competent authority)

NA

or

In view of the above findings recorded in the accident report, it becomes evident that the injury sustained by the applicant occurred during a personal activity which was not connected with the discharge of military duties nor part of any officially organized activity. Therefore, it becomes clear that the injury sustained by the applicant cannot be said to have any causal connection with military service, and therefore the judgments relied upon by the applicant are clearly distinguishable on facts and are not applicable to the present case.

15. It is well settled that, for the grant of disability pension, the essential requirement is the existence of a causal connection between the disability and military service. In this regard, the Hon'ble Supreme Court in its judgement in the case of *Union of India & Anr vs Rajbir Singh* in JT 2015 (2) SC 392 summarized the guiding principles emerging from the Entitlement Rules as follows:

"11. From a conjoint and harmonious reading of Rules 5, 9 and 14 of the Entitlement Rules (Supra) the following guiding principles emerge :-

(i) A member is presume to have been in sound physical and mental condition upon entering service except as to physical disabilities noticed or recorded at the time of entrance;

(ii) In the event of being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health

which has taken place is due to such military service;

(iii) The disease which has led to any individual's discharge or death will ordinarily be deemed to have arisen in service, no note of it was made at the time of the individual's acceptance for military service; and

(iv) If medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated".

16. The Hon'ble Supreme Court has also consistently held that mere occurrence of an injury during the period of service does not automatically establish attributability. There must exist a reasonable causal connection, howsoever remote, between the injury and military service. If the injury

results from an act alien to military duty or arising out of risks common to ordinary civil life, such disability cannot be held to be attributable to or aggravated by military service. In the case at hand, the injury resulted from a voluntary sporting activity that was neither a mandatory service requirement nor a sanctioned unit event. Although the Applicant served in a Low Medical Category thereafter, the initial injury was sustained during a private act unrelated to his naval duties. The material on record does not establish any nexus between the injury and military service. Therefore, the essential requirement of causal connection between the injury and military service is not satisfied.

17. In view of the aforesaid, we find no merit in the Original Application. The applicant has failed to establish that the disability suffered by him is attributable to or aggravated by military service.

18. Accordingly, the Original Application is dismissed. There shall be no order as to costs.

19. Pending miscellaneous application(s), if any, stand closed.

Pronounced in open Court on 17th day of March, 2026.


(RASIKA CHAUBE)
MEMBER (A)


(JUSTICE NANDITA DUBEY)
MEMBER (J)

/s/