

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

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TA 135 of 2011 (arising out of CS 636 of 2008)

Davinder Singh **Petitioner(s)**

Vs

Union of India and others **Respondent(s)**

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For the Petitioner (s) : Mr. Manish Prabhakar, Advocate

For the Respondent(s) : Mr. Ram Chander, Sr. PC.

Coram: Justice Prakash Krishna, Judicial Member.

Lt Gen (Retd) NS Brar, Administrative Member.

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**ORDER
28.02.2014**

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The petitioner herein has instituted original suit No. 636 of 2008 for declaration to the effect that he is entitled to disability pension which arose during Naval service and the same is attributable to Naval service with consequential reliefs as also a decree for mandatory injunction directing the defendants to disburse the same with retrospective effect and benefits, be passed.

The suit was instituted on the pleas, *inter alia* that the plaintiff was enrolled in the Navy on 15.12.1961 and was discharged on 14.4.1973 in low medical category CEE Permanent. The disability pension was denied by the respondents while holding that the same is not attributable to Naval service, however, the degree of disablement was accepted at 20% for life. Further allegation in Para 2 is that the plaintiff suffered '(i) Fracture Talus Rt and (ii) Fracture 12 DORSAL VERTEBRA' during Naval service. The first 'Fracture Talus Rt' has restricted the movement of joint and the plaintiff in terms of Para 173 of the Pension Regulations, is entitled to disability pension. The appeal preferred by the plaintiff against the refusal order was rejected

on 31.7.2006 after condoning the delay in its filing. The suit has been filed after serving a notice under Section 80 CPC.

On notice, the defendants (respondents herein) filed a joint written statement on the pleas *inter alia* that the suit is barred in view of Section 4 of the Pension Act, the plaintiff has not come with clean hands and misrepresented the true facts and concealed material facts, the suit is barred by time, the suit is not maintainable and that the suit is not properly valued for the purpose of court fee and jurisdiction. Besides the above preliminary objections, on merits, the defendants have come out that the plaintiff had rendered only 11 years 3 months 29 days of qualifying service. The Release Medical Board held on 14.4.1973 assessed the disability at 30% for one year. The disability pension was rejected by M.A. (Pension) being competent authority attached to PCDA(P), Allahabad. The decision was informed vide letter dated 11.4.1974 and was challenged after a long time i.e. after a lapse of 33 years by filing appeal on 19.4.2006 and the appeal was rejected vide communication to the plaintiff dated 3.7.2006. Thereafter, a second appeal was filed which was considered by the Defence Minister's Appellate Committee on Pension and was rejected vide letter dated 12.11.2007 giving finality to the claim of the petitioner. It was denied that the disability suffered by the petitioner arose during Naval service. The entitlement of the plaintiff to receive disability pension was denied. It is further pleaded that as per injury report, the plaintiff suffered the aforesaid injury on 6.11.1972 at about 2200 hours when he was coming back after attending a private drink party from Vasco to Mangoore Hill Quarters. On the way, he slipped

and fell down in ditch in Mangoore Hill area and sustained injuries to his right leg and back. In other words, the injuries received by the petitioner were not caused 'on duty'. The Civil Court at Amritsar lacks territorial jurisdiction has also been set up in Para 5 of the written statement.

The trial court on the basis of pleadings of the parties framed the following issues, vide order dated 20.10.2009 :-

1. Whether plaintiff is entitled for declaration as prayed for ?
2. Whether plaintiff is entitled for mandatory injunction as prayed for ?
3. Whether the jurisdiction of this court barred under section 4 of Pension Act ?
4. Whether plaintiff has not approached the court with clean hands ?
5. Whether suit of the plaintiff is time barred ?
6. Whether suit of the plaintiff is not maintainable ?
7. Whether suit of the plaintiff has not properly valued ?
8. Whether plaintiff has no cause of action ?
9. Relief.”

The record further shows that examination of chief of petitioner was recorded on 1.2.2010 but he could not be cross-examined and thereafter the case was fixed for recording the plaintiff's evidence on various dates such as 21.4.10, 2.6.10, 28.8.10, 28.11.10, 7.1.11, 7.2.11 and 25.2.11 but the plaintiff failed to appear on any of these dates for cross-examination. The Civil Judge (Junior Division) vide its order

dated 5.3.2011, in view of the letter dated 8.12.2009, ordered that the file of the suit be transferred to Armed Forces Tribunal. The Armed Forces Tribunal, on transfer, registered the case as TA 135 of 2011.

Learned counsel for the petitioner on the date of hearing filed Replication which has been taken on record, wherein the stand as taken in the plaint has been reiterated.

The learned counsel for the petitioner proceeded to advance the arguments on the merits of the case. The total length and breadth of the argument of the learned counsel for the petitioner is that the petitioner received the injuries while he was not on leave and therefore, he shall be deemed to be 'on duty' and as such is entitled to receive disability pension. He further submits that that the delay in filing the first appeal before the authority under the Navy Act was condoned and as such the suit is within time. The further submission is that the plaintiff is resident of Amritsar and is residing at Amritsar, therefore, the Civil Court at Amritsar has got territorial jurisdiction to adjudicate upon the dispute. Further submission is that the plaintiff is also entitled to get the Invalid Pension. In reply, the learned counsel for the respondents submits that the petitioner has no case as he was not 'on duty' when he suffered the injuries. It is to be proved as a fact by a person claiming the disability pension that he received the injuries while 'on duty'. The petitioner having not completed 15 years of qualifying service, is not entitled to get any pension. So far as Invalid Pension is concerned, there is no such provision in the Naval Pension Regulations though such a provision

exists for Army personnel as provided for in Pension Regulations for the Army 1961.

Considered the respective submissions of the learned counsel for the parties and perused the record.

The learned counsel for the parties pressed the petition on merits. Therefore, the case was examined by us on merits of the case. So far as questions of limitation, territorial jurisdiction etc. are concerned, it is not necessary for us to adjudicate the reasons recorded herein.

The first and foremost question arises for determination is as to whether the plaintiff is entitled to get disability pension or not. To get disability pension, sine-qua-non in the case of injury is that the person concerned should have received the injury while on duty. The word 'on duty' is defined in Para 12 of Entitlement Rules 1982 which is reproduced below:-

“Duty:-

12. A person subject to the disciplinary code of the Armed Forces is 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 activities organized for permitted by service authorities and during the period travelling in a body or singly by a prescribed or organized route.

Note:- 1

- (a) Personnel of the Armed Forces participating in
 - (i) Local/National/International sports tournaments as member of service terms, or

- (ii) Mountaineering expeditions/gliding organised by service authorities, with the approval of service Hqrs., will be deemed to be 'on duty' for purposes of these rules.
- (b) Personnel of the Armed Forces participating in the above named sports tournaments or in privately organized mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be 'on duty' for purposes of these rules, even though prior permission of the competent service authorities may have been obtained by them.
- (c) Injuries sustained by personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, or with the approval of the local service authority, and death or disability arising from such injuries, will continue to be regarded as having occurred while 'on duty' for purposes of these rules.

Note: 2.

The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional courses or exercises for the Defence Services for the purpose of the Grant of disability/family pension on account of disability/death sustained during the courses.

(d) When proceeding from his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for the journey.

(e) When journeying by a reasonable route from one's quarter to and back from the appointed place of duty, under organised arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available.

(f) An accident which occurs when a man is not strictly on duty' as defined may also be attributable to service, 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. Thus for instance, where a person is

killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed 'on duty' at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act.”

The total length and breadth of the petitioner's argument that the petitioner was 'on duty' is that since petitioner was not on leave on the date when he received the injury, he shall be deemed to be on duty. We are not at all impressed by the said argument. The petitioner has to establish as a fact that when he received injury, he was on duty as defined in the aforesaid quoted Entitlement Rule 1982. The case of the respondents is that the petitioner consumed alcohol in a private party and while returning from that party, he fell down due to influence of alcohol and suffered injuries. By no stretch of imagination, consumption of alcohol in a party organised privately, by a Navy personnel can be said to be consumption of alcohol 'on duty'. The petitioner was present in the party on his own accord and consumed the alcohol voluntarily. This being so, the injury caused to the petitioner, has no causal connection with the performance of his duty.

We find that the controversy is no longer res integra. Learned counsel for the respondents has placed strong reliance upon the Apex Court judgment in the case of Union of India and others Vs Jhujhar Singh, (2011) 7 SCC 735. It is a case of road accident met by an Army personnel at his native place sustaining grievous injuries resulting in permanent disability. In this very case, the Apex Court has referred its earlier judgment given in the case Regional Director, ESI Corporation. The Apex Court has approved the Full Bench decision of

Delhi High Court in Ex. Nk Dilbag Vs Union of India, (2008) 106 DRJ 865.

The conclusion of the High Court is recorded in para 24 of the judgment which has been reproduced by the Apex Court in its judgment of Jujhar Singh(Supra), the same is again reproduced here for the sake of convenience:-

“24. To sum up our analysis, the foremost feature consistently highlighted by the Hon’ble Supreme Court, is that it requires to be established that the injury or fatality suffered by the concerned military personnel bears a causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the concerned personnel was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the causal connection which alone is relevant. Fourthly, since travel to and fro the place of posting may not appear to everyone as an incident of military service, a specific provision has been incorporated in the Pension Regulations to bring such travel within the entitlement for Disability Pension if an injury is sustained in this duration. Fifthly, the Hon’ble Supreme Court has simply given effect to this Rule and has not laid down in any decision that each and every injury sustained while availing of casual leave would entitle the victim to claim Disability Pension. Sixthly, provisions treating casual leave as on duty would be relevant for deciding questions pertaining to pay or to the right of the Authorities to curtail or cancel the leave. Such like provisions have been adverted to by the Supreme Court only to buttress their conclusion that travel to and fro the place of posting is an incident of military service. Lastly, injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death has occurred at the place of posting or during working hours. This is because attributability to military service is a factor which is required to be established.”

In the light of above, we find no merit in the petitioner's case that the petitioner received the injuries while on duty. Our view finds support by a subsequent decision of the Apex Court in case **Union of India Vs Talwinder Singh, (2012) 5 SCC 480**. In this case, the person received injury in his eyes when he was on two months leave. He was hit by small wooden piece (Gulli) in the play of children and thus his left eye was seriously damaged. On these facts, the Apex Court held that the individual sustained injuries when he was on annual leave that too at his home town in a accident, it cannot be held that the injuries could be attributable to or aggravated by military service.

A person claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from such person. As the military personnel sustained disability when he was on an annual leave that too at his home town in a accident, it could not be held that the injuries could be attributable to or aggravated by military service. Such a person would not be entitled to disability pension.

The above decisions, all by the Apex Court, have held that test is the causal connection which alone is relevant.

The other argument that the petitioner is entitled for Invalid Pension has no legs to stand. Regulation 3 of the Pension Regulations for the Navy 1964 provides the kinds of pensionary benefits etc. admissible to Navy personnel. They are:-

- (a) Service pension,
- (b) Service gratuity,
- (c) Disability pension,
- (d) Constant attendant allowance,
- (e) Family pension which may be either ordinary or special,
- (f) Family gratuity,
- (g) Children allowance, and
- (h) Education allowance to children.

Unfortunately for the petitioner, provision for Invalid Pension was introduced for the first time in view of Fourth Central Pay Commission for the persons retiring on or after 1.1.1986, vide letter No. 1(5)87/D(Pensions/Services), dated 30.10.1987 of Government of India. That is the reason the plaint lacks the necessary pleading and relief in this regard.

The petitioner is not entitled for the pension as he has not completed the qualifying period of service.

In view of above, we do not find any merit in the petition. The petition is dismissed. No order as to costs.

(Justice Prakash Krishna)

(Lt Gen (Retd) NS Brar)

28.02.2014

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Whether the judgment for reference to be put up on website – Yes/No