

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

CORAM :

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN GOPAL R, MEMBER (A)**

OA 74/2019

**No 15108897L Nk(TS) Anil Kumar Singh (Retd),
S/o Shri Basudev Singh,
R/o Gate No. 3, Gandhi Nagar,
District - Bhind (M.P)**

.....Applicant

Versus

- 1. Union of India,**
Through the Secretary, MoD
Government of India, New Delhi.
- 2. COAS,**
IHQ of MoD(Army), DHQ PO,
New Delhi.
- 3. OIC,**
ARTILLERY Records,
C/o 56 APO
- 4. PCDA (P),**
Draupadi Ghat,
Allahabad (U.P).

.....Respondents

For Applicant	:	Mr KC Ghildiyal, Sr Advocate with Mr HC Singh and Mr Pradeep Dwivedi, Advocates
For Respondents	:	Mr Vikram Singh, CGSC

ORDER

1. The individual was enrolled in ARTILLERY on 31.03.1986 and discharged from service w.e.f. 31.03.2003 after completion of 17 years of service. The Release Medical Board had assessed the disability, GUN SHOT WOUND RT SHOULDER @ 20% for life. The RMB, however, held that the disability was neither attributable to nor aggravated by military service.
2. The applicant was on 22 days balance of Annual Leave from 06.06.1992 to 27.06.1992. During his leave period, he sustained bullet injury on 22.06.1992 fired by unidentified miscreant and his right shoulder was injured. A Court of Enquiry was held after his return to Unit and the injury sustained by the soldier was held as neither attributable to nor aggravated by military service. Subsequently, the individual was placed in Low Medical Category (CEE Permanent) till his discharge.
3. The Release Medical Board held on 26.11.2002 before the discharge of the applicant, held the injury as neither attributable to nor aggravated by military service being not connected with military service as the injury was sustained on 22.06.1992. The degree of disability was assessed @ 20% for life.
4. The claim of the individual for grant of disability pension was denied by PCDA(P) Allahabad on the ground that disability being neither attributable to nor aggravated by military service vide letter dated 26.08.2003. This fact was further communicated to the individual by ARTILLERY Records letter dated 06.10.2003. The individual is in receipt of Service Pension w.e.f. 01.04.2003 i.e. the date of SOS from Army.

5. On denial of the disability pension claim in the year 2003, the individual has preferred this application under Section 14 of Armed Forces Tribunal Act, 2007 through his Counsel, seeking following reliefs:-

- (a) To direct Respondents to grant disability pension w.e.f. 01.04.2003 @ 50% for life along with its arrears with interest @ 24% per annum.
- (b) Any other appropriate writ, order or direction which the Hon'ble Court may deem just and proper in the nature and circumstances of the case.

6. Counsel for the applicant has put reliance on the decisions rendered by the Hon'ble Apex Court in the case of *Dharamvir Singh Vs. UOI & Ors.*, (2013) 7 SCC 316, *Sukhvinder Singh Vs. UOI & Ors.*, (2014) 4 SCC 364 and *UOI & Ors Vs. Rajbir Singh*, (2015) 12 SCC 264 while contending that the injury was attributable as well as aggravated due to service conditions in terms of Para 173 of the Pension Regulations.

7. On the other hand, Counsel for the Respondents stated that as per Para 173 of the Pension Regulations for the Army 1961, Part I, disability pension is granted to an individual who is invalided out of service provided the disability from which he suffered during his service is viewed as either attributable to or aggravated by military service with degree of disability above 20% or above. In the *ibid* case, RMB had held disability as neither attributable to nor aggravated by military service, hence not eligible for grant of disability pension with broadbanning benefits. Hence, the OA is liable to be dismissed being devoid of merit and substance.

8. On hearing both the parties and perusal of documents placed on record, the only question needs to be decided as to whether the injury sustained by the individual while on leave was connected with military service, to be treated as attributable to/aggravated by military service.

9. In para 4.7 of OA, Counsel for the applicant stated, *“In the instant case, the applicant has been discharged from service with the disability on account of the disease incurred by him. The disability of the applicant was covered under both the clauses of Para 173 of the Pension Regulations i.e. it was attributable as well as aggravated due to service conditions. Even otherwise as per Rules 7(b) and 7(c) the disability ought to have been treated as attributable to and aggravated by the service conditions as it was nowhere mentioned in the medical documents of the applicant that the disease could have existed in him prior to his acceptance for the service and same could not have been detected at the time of his enrolment for the reason recorded by the medical authorities. In absence of the above material the disease is point to be accepted as attributable to as well aggravated by the service conditions.”*

10. The above referred statement made by the Counsel for the applicant is misleading as the individual after joining the service in the year 1986, sustained injury on 22.06.1992 while on leave. *Under the circumstance, the question of detection of disease (per se injury) does not arise prior to his acceptance for the service.*

11. The undisputed fact is that the individual had sustained injury, “GUN SHOT WOUND RT SHOULDER” while he was on Annual leave due to bullet fired by unidentified miscreant on 22.06.1992. The issue has been settled by the *Hon’ble Supreme Court in Civil Appeal 4981 of 2012 Union of India & Ors Vs Dharambir Singh decided on 20.09.2019* where it has been laid down that there has to be a causative connection with military duty in cases related to injury during leave as well as large number of judgments have been pronounced by Coordinate Benches of the Tribunal vide which it has been made clear that for granting disability pension, the cause of injury suffered by the military personnel on leave should bear a casual

connection with military service. In the instant case, we find that the Release Medical Board and the competent authority has rightfully denied attributability/aggravation on the ground of no nexus of injury with military service.

12. Hence, we hold that the claim of applicant's disability pension has rightly been rejected by the respondents which needs no interference. Resultantly, Original Application is dismissed. No order as to costs.

Pronounced in Open Court on 18th July 2023

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN GOPAL R)
MEMBER (A)