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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TA 127 of 2010

WEDNESDAY, 11<sup>TH</sup> DAY OF MAY 2011

“Hon’ble Mr. Justice Janardan Sahai, Member (J)  
Hon’ble Lt. Gen. P R Gangadharan, Member (A)”

Ex. No.1240529 Ex. GNR Shri Kishan,  
son of Shri Tilak Singh, r/o Village:  
Ghauspur, P.O. Sahan, Tehsil: Karhal,  
District: Mainpuri, U.P.

.....Applicant

By Legal Practitioner Shri D K Pandey, Advocate.

Versus

1. Union of India through the Secretary  
Ministry of Defence, D.H.Q. Post  
Office, South Block, New Delhi.
2. Chief of the Army Staff, Army Head  
Quarters, South Block, D.H.Q. Post  
Office, New Delhi.
3. Chief Controller of Defence Accounts  
(Pensions) Draupadi Ghat, Allahabad.
4. Officer Incharge Artillery Records,  
Nasik Road Camp.  
.....Respondents

By Legal Practitioner Shri Sunil Sharma, L.d. Sr. Standing Counsel.

**ORDER**

“Hon’ble Mr. Justice Janardan Sahai”

1. The applicant was enrolled in the Indian Army on 12.02.1966.

It is stated that in ~~the~~<sup>X</sup> November, 1970 he sustained an accident

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which resulted in injury and his index finger had to be amputated and thus got shortened. His disability was assessed at 40%. He was discharged from service on 25.05.1976 on the recommendations of a Release Medical Board. His disability was described Traumatic Amputation Distal Phalanx Right Index Finger. In the opinion of the Medical Board the disability was neither attributable to nor aggravated by Military Service. His claim for disability pension was rejected by the C.D.A. on 10.07.1976. He filed a Writ petition 43139 of 2001 in the High Court of Allahabad, the papers of which have been transmitted to the Tribunal.

2. In Annexure CA-1, which is the copy of the injury report, the circumstances in which the accident occurred have been mentioned in para 3 <sup>§</sup> as follows : "while on annual leave my finger got caught in a grinding machine while I was putting the belt in wheel." The rejoinder affidavit has been filed today.

3. In the Writ Petition the applicant has averred in para 3 that in November, 1970 he was going to the Regiment i.e. 22 Mountain Regiment at Gaya, Bihar to join duty on completion of 15 days casual leave and while on journey he met with an accident in the running train. The averment made in para 3 of the petition have been denied in paragraph 8 of the counter affidavit in which it is stated that as per the service dossier of the petitioner no records about his accident in November, 1970 in running train while on journey are available. However, had the petitioner been a victim of accident and

treated at Military Hospital, Lucknow, question does not arise that occurrence of such nature would not be intimated to the Artillery Records/unit of the individual by Command Hospital, Lucknow. It has been further stated that as per the records the petitioner was never admitted in Command Hospital, Lucknow during the year 1970. However, he had sustained the injury on 15.06.1974 while he was on annual leave at home. True copy of the injury report bearing signature of the petitioner on his statement has been filed by the respondents as Annexure CA-1 of which reference has been made in the petition in which he has stated that while on annual leave his finger got caught in a grinding machine while he was putting the belt on wheel. The petitioner has not filed any material in support of his case that the accident occurred while he was on return journey after annual or casual leave. In the circumstances, the applicant's case does not appear to be borne out from the material filed on the record.

4. The Counsel for the applicant then submitted that any injury which has been sustained by the applicant during annual leave would be injury on duty and the applicant is entitled to disability pension. In support of his contention, Ld. Counsel for the applicant placed reliance upon the following decisions; <sup>86</sup> Khemraj Patel Vs. Union of India and Ors. in Transferred Application No. 311 of 2010 decided on 23.02.2011 by the Regional Bench, Lucknow, Ex-Naik Surendra Pandey Vs. Union of India and Ors, TA No 191 of 2009 decided on 10.05.2010 by the Regional Bench, Lucknow, the Allahabad High

Court decision in Shanker Lal Vs. Secretary, Govt. of India, Ministry of Defence Mil LJ 2007 All 138, and Union of India Vs. Sukhbir Singh and Others L.P.A. No. 304 of 2010 decided by Punjab and Haryana High Court on 27.04.2010.

5. The present case pertains to an injury in an accident which occurred in the year 1974. Appendix II to the Pension Regulations for the Army 1961 specifies the conditions in which the disability incurred in an accident is regarded as attributable to or aggravated by military service. Rule 6 of Appendix II reads as follows :

*“6. In respect of accidents the following rules will be observed :-*

*(a) Injuries sustained when the man is on duty will be deemed to have arisen in or resulted from Army/Naval/Air Force Service unless they were selfinflicted or due to serious negligence or misconduct in which case the question of withholding the pension in full or in part will be considered.*

*(b) A person subject to the Disciplinary Code of the Armed Forces is 'on duty' during the period of time when he is in the course of performance of an official task or a task the failure to do which would constitute an offence triable under the Disciplinary Code applicable to him. The course of performance of a task includes the journey or transport by a reasonable route from one's quarters to and back from the appointed place of duty under organized arrangements.*

(c) A person is also deemed to be 'on duty' during the period of participation in recreation, organized or permitted by Service Authorities and of travelling in a body or singly under organized arrangements. A person is also considered to be 'on duty' when proceeding to his leave station or returning to duty from his leave station at public expense.

(d) An accident which occurs when a man is not strictly 'on duty' as defined may also be attributable to Service, provided that it is not an accident which can be attributed to risk common to human existence in modern conditions in India, unless such risk is definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of the person's service. 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/Air Force Act.

Note 1. - (a) Personnel of the Armed Forces participating in -

- (i) Local/national/international sports tournaments as members of Service teams, or
- (ii) Mountaineering expeditions/gliding organized by the Service authorities, with the approval of Government.

Will be deemed to be "on duty" for purposes of the post-March 1948 entitlement rules for disability and family pensions;

(b) personnel of the Armed Forces participating in the above-mentioned 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 those 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 organized by, or with the approval of the local Service authority, and deaths arising from such injuries, will continue to be regarded as having occurred while "on duty" for purposes of these entitlement 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 authorized professional courses or exercises for the Defence Services for the purpose of the grant of disability/family pensions on account of disability/death sustained during the courses."

Subsequently the Rules were amended and Entitlement Rules of 1982 were framed. The circumstances in which the Military Personnel would be treated on duty have been defined in Rule 12 of

the Entitlement Rules <sup>of the</sup> ~~of the~~ Casualty Pensionary Awards, 1982. The

said Rule is as follows :

*"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 constituted 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 or permitted by service Authorities and during the period of travelling in 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 teams, or ii) mountaineering expeditions/gliding organized by service authorities, with the approval of service Hqrs.*
- 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 important games and sports outside parade hours which are organized 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 authorized professional courses or exercises for the Defence services for the purpose of the grant of disability/family pensions on account of disability/death sustained during the courses."

d) When proceeding from his duty station to 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 organized arrangements or by 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 is 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."



6. Para 13 of the Entitlement Rules is also relevant, <sup>T.S.</sup> that is also being quoted below :-

*"13. In respect of accidents or injuries the following rules shall be observed.*

*(a) Injuries sustained when the man is 'On duty' as defined, shall be deemed to have resulted from military service but in case of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.*

*(b) In cases of self inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action, in cases where attributability is conceded the question of grant of disability pension at full or at reduced rate will be considered."*

7. The injury sustained in an accident suffered in any of the situations covered under the definition of <sup>duty</sup> ~~delay~~-by Rule 6 of the Pension Regulations or Rule 12 of the Entitlement Rules would be treated as injury in an accident sustained on duty. The applicant's case is not covered under any of the circumstances mentioned in Rule 6 of the Appendix which is applicable to this case as the matter <sup>S.S.</sup> pertaining to 1970 or even under the Amended Rules (Rule 12 of the Entitlement Rules). Even if the accident has not occurred in any <sup>S.S.</sup> of the circumstances directly covered under the definition of duty a <sup>S.S. causal</sup> serviceman could still be entitled to disability pension if a causal connection between the accident and military service is established.

This would be so in view of the clause 'f' of Rule 12 of the Entitlement Rules and by virtue of Regulation 173 of itself whereunder

it has to be established that the disability was attributable to or aggravated by Military Service. A causal connection between the disability and the Military duty is also not established. <sup>It is this case.</sup> The applicant had sustained the injury as his finger was cut in a grinding machine while he was putting the belt on wheel. Therefore there is no causal connection between the injury and conditions of Military Service.

The decision<sup>s</sup> of the Tribunal in Ex-Naik Surinder Pandey is distinguishable as that was a case where the applicant was proceeding to his home station on annual leave and he sustained injury while boarding a bus and the submission was that such injury would be treated as on duty within the meaning of Rule 12 of the Entitlement Rules.

8. In Khemraj Patel Case the Regional Bench of the Tribunal Lucknow placed reliance upon the decision of the Punjab and Haryana High Court in Union of India & Ors Vs. Khushbash Singh, Ex-Naib Subedar decided on 31.03.2010 and Union of India Vs. Sukhbir Singh & Ors. decided by a Division Bench of the Punjab and Haryana High Court on 27.04.2010. The decision of the Punjab & Haryana High Court in Sukhbir Singh case has been placed before us by the Ld. Counsel for the applicant. Reliance has been placed in that case upon the decision of the Apex Court in Secretary, Ministry of Defence and Ors. Vs. Ajit Singh (2009) 7 SCC 328. In Ajit Singh

case the individual had suffered disability on account of electric shock while he was on casual leave. The High Court had held that he was entitled to disability pension. However, the Apex Court relying upon its previous decision in Union of India Vs. Keshar Singh 2007 5SCR 408 and Union of India Vs Surinder Singh Rathore MillJ 2008 SC 122 held that the judgment of the High Court was unsustainable. The said decision of the Apex Court in Ajit Singh's case therefore does not advance the contention that the injury sustained on annual leave would be attributable to Military Service irrespective causal connection between the disability and Military Service and even though the accident was not incurred in any of the circumstances falling under the definition of duty under the Entitlement Rules. In Shanker Lal's case the injury was sustained in a road accident while on annual leave and it was held that the man would be treated to be on duty. The circumstances in which the road accident occurred are not quite clear from the judgment. In Lance Dafadar Joginder Singh Vs. Union of India and Ors 1995 (Sup) (3) SC 232 the facts were different. The appellant therein was proceeding on casual leave from his duty station. The accident took place while boarding a train when he fell down from the train and suffered severe injury. Such a circumstance falls under Rule 12 of the Entitlement Rules . Therefore the said decision is also distinguishable. Reverting back to Khemraj Patel's case it appears from the facts stated in para 4 of the order that

on account of tough conditions and rigorous participation in operation ~~Parakram~~ the injury was aggravated. That decision is therefore also distinguishable. For what we have already held the applicant was not entitled to disability pension. Moreover, the petition has been filed after lapse of more than 25 years. However it has been held by the Apex Court that the claim of the disability pension is recurring cause of action and the same can be considered for the period within the period of limitation. We have therefore considered the case on merits.

9. In the result we do not find any merit in this petition. Lastly the Ld. Counsel for the applicant Shri R Chandra submitted that the applicant had completed 9 years 355 days of service and at the relevant point of time the qualifying service for grant of pension was 10 years and this period is short by 10 days which is condonable. The issue in this case does not relate to grant of service pension. The controversy is regarding disability pension and as such the said issue cannot be adjudicated. However, as we are expressing no opinion upon the question this order will not come in the way of the applicant in case he applies before the competent authority seeking the grant of service pension.

(Lt. Gen. P R Gangadharan)  
Member (A)

(Justice Janardan Sahai)  
Member (J)