

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION NO. 12 OF 2016

Tuesday this the 28th day of August, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

1550842-A Ex-Havildar Tohid Ahmad,
Son of Mohammad Kasim,
Resident of Vilage - Angna Kol,
Post - Angna Kol,
District – Sultanpur.

..... Petitioner

Versus

1. Union of India through Secretary,
Ministry of Defence, Government of India,
New Delhi.
2. Deputy Director,
Addl. Dte. General Personnel Servies 4 (d),
Adjutant General's Branch, Army Headquarters,
D.H.Q. P.O. New Delhi.
3. Principal Controller of Defence Account
P.C.D.A. (P) Allahabad.
4. Commanding Officer,
Record Office, B.E.G. Kirkee, Pune.

..... Respondents

Ld. Counsel appeared - Shri Virat Anand Singh
for the Petitioner Advocate Holding Brief

Ld. Counsel appeared - Dr. S.N. Pandey,
for the Respondents Central Government Counsel

ORDER**“Per Hon. Mr. Justice S.V.S.Rathore, Member (J)”**

1. Initially Writ Petition No.50928 of 2008 was filed before the Hon’ble High Court of Judicature at Allahabad, which was transferred to this Tribunal vide order dated 17.05.2016 and registered as T.A.No.12 of 2016 in pursuance of the provisions contained in Section 34 of the Armed Forces Tribunal Act, 2007.
2. This T.A. has been filed by the petitioner being aggrieved by the order of rejection of the claim for grant of disability pension by the respondents.
3. In brief, the facts are that the petitioner was enrolled in the Army on 22.12.1978 as Sepoy. After completion of six years of service, he was promoted as Naik and after completion of 12 years of service, he was promoted as Havildar. After completing 18 years of service, his name was included in the category, who was to undergo Junior Commissioned Officer’s training, but in the mean time, the petitioner met with an accident on 13.05.1996. It is pertinent to mention here that the petitioner has not mentioned in the writ petition as to where the accident took place and whether he was on duty at the point of time or was on leave. It has been pleaded that he was treated at Command Hospital, Lucknow after the accident, where the disability developed. After completion of 24 years 09 days, the petitioner was discharged from service on 31.12.2002. The petitioner is getting regular pension, but the disability pension was not sanctioned to the petitioner.
4. In the counter affidavit, it is specifically pleaded that when the petitioner met with the accident, he was on annual leave and he was after the accident, shifted to Command Hospital, Lucknow on 15th May 1996 and on 24.11.1996 to Base Hospital, Lucknow and thereafter to Military Hospital, Bhopal on 2nd December 1996.

5. In the writ petition, the petitioner had concealed this fact that at the time when he met with the accident, he was on annual leave. However, a copy of the appeal for grant of disability pension has been filed alongwith the writ petition, which is paper no.42, wherein the petitioner had himself mentioned that met with an accident on 13th May 1996 and at that time he was on two months' leave. As per medical papers, the petitioner suffered fracture of pelvis ulna and stricture urethra.

6. Thus, the only point involved in this case is whether a person, who is on leave, can be granted disability pension for the injuries sustained. The submission of the learned counsel for the petitioner is that a person, who is on leave, is required to be treated as on duty, therefore any injury sustained during leave period would make the petitioner entitled for grant of disability pension.

7. The moot question which arises for consideration is, "whether a person who is on casual leave or annual leave, if he sustains injury in an accident while doing personal work, whether the injury so sustained can be treated to be attributable to or aggravated by Army service?" Admittedly, in the instant case, the applicant while on annual leave met with an accident and sustained injuries.

8. Hon'ble Apex Court has in the case of *Madan Singh Shekhawat*, AIR 1999 SC 3378 held that an Army personnel will be deemed to be on duty when he is on any type of authorized leave during travelling to or from home from place of posting. Since in the facts of the instant case, as stated earlier, the applicant had met with an accident while he was on annual leave and not while travelling from duty station to leave station. It is also nowhere pleaded that there was any casual connection with Army duty. So by no stretch of imagination, it can be treated to be an Army duty. The case of *Madan Singh Shekhawat* (supra) cannot be stretched to such an extent to entitle Army personnel to claim disability pension for the injuries sustained which has no connection with Army duty.

9. In the case relied upon by the learned counsel for the respondents in the case of ***Ex Naik Vijay Kumar (supra)***, Hon'ble Apex Court in para-19 has held, to quote:-

“19. In the light of above discussion, it is clear that the injury suffered by the respondent has no casual connection with the military service. The tribunal failed to appreciate that the accident resulting in injury to the respondent was not even remotely connected to his military duty and it falls in the domain of an entirely private act and therefore the impugned orders cannot be sustained.”

10. In the facts of the above mentioned case, the respondent was on annual leave for 30 days. While in the house of his sister, on second floor he fell down from the stairs due to darkness and sustained injuries. In that factual background, it was held that the incident resulting in the injury had no casual connection with Army service. Accordingly, the judgment passed by the Armed Forces Tribunal granting disability pension to the respondent was set aside and the appeal of the Union of India was allowed.

11. In the Full Bench decision of Hon'ble Delhi High Court in the case of ***Ex Nk Dilbag Singh vs Union of India & Ors*** delivered on 22.08.2008 in Writ Petition No. (C) 6959 of 2004 and connected matters is very relevant here. In that case their Lordships observed in para-19, 23 and 24 as under:-

“19. For similar reasons we are unable to subscribe to the views in Ex. Sepoy Hayat Mohammed -vs- Union of India, 138(2007) DLT 539(DB) to the effect that the petitioner was eligible for the grant of Disability Pension owing to the fact that while on casual leave in his home he suffered several injuries owing to a steel girder and roof slabs falling on him. One of the reasons which appear to have persuaded the same Division Bench was that persons on annual leave are subject to the Army Act and can be recalled at any time as leave is at the discretion of the Authorities concerned. A rule of this nature is necessary to cover the eruption of insurgencies or the breakout of a war. They neither envisage nor attempt to deal with liability to pay Disability Pension. It is impermissible to extrapolate a rule catering for a particular situation to altogether different circumstances.

23. We have also perused the detailed Judgment of the Division Bench of this Court in *Shri Bhagwan* wherein Jarnail Singh also came to be discussed. The Bench observed that - "An individual may be "on duty" for all practical purposes such as receipt of wages etc. but that does not mean that he is "on duty" for the purpose of claiming disability pension under the 1982 Entitlement Rules. A person to be on duty is required, under the 1982 Entitlement Rules, to be performing a task, the failure to do which would constitute an offence triable under the disciplinary code applicable to him. A person operating a wheat thresher while on casual leave cannot, by any stretch of imagination, be said to be performing an official duty or a task the failure to perform which would lead to disciplinary action". We respectfully affirm these views of the Division Bench.

24. To sum up our analysis, the foremost feature, consistently highlighted by the Hon^{ble} Apex 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} Apex 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 Apex 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 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."

(Underlined by me)

12. The aforesaid view expressed by Full Bench of Hon'ble Delhi High Court was considered by Hon'ble Apex Court in the case of *Union of India & ors vs. Jujhar Singh*, reported in (2011) 7 SCC 735. Hon'ble Apex Court has also considered the case of *Regional Director, E.S.I. Corporation & anr vs. Francis De Costa and another*, (1996) 6 SCC 1. Though the case of *Francis De Costa* (supra) was not a case relating to Army, but the question involved in that case was whether the injury sustained by respondent in the said case amounted to "employment injury" within the meaning of Employees' State Insurance Act, 1948 and he is entitled to claim disablement benefit. This question was replied by Hon'ble Apex Court in negative. Hon'ble Apex Court observed as under:-

"A road accident may happen anywhere at any time. But such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something incidental to his employment."

13. In the case of *Jujhar Singh* (supra) Hon'ble Apex Court has concluded in Para 23 as under:-

"23. As rightly pointed by the counsel for the Union of India, the High Court failed to appreciate that even though the respondent sustained injuries while he was on annual leave in 1987, he was kept in service till superannuation and he was superannuated from service w.e.f. 01.07.1998. It is relevant to point out that he was also granted full normal pension as admissible under the Regulations. In the case on hand, inasmuch as the injury which had no connection with the military service even though suffered during annual leave cannot be termed as attributable to or aggravated by military service. The member of the Armed Forces who is claiming disability pension must be able to show a normal 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 member of such forces. Inasmuch as the respondent sustained disability when he was on annual leave that too at his home town in a road accident, the conclusion of the learned Single Judge that he is entitled to disability pension under Regulation 179 is not based on any material whatsoever. Unfortunately, the Division Bench, without assigning any reason, by way of a cryptic order, confirmed the order of the learned Single Judge."

(Underlined by me)

14. The view expressed by the Full Bench of Hon'ble Delhi High Court, approved by Hon'ble Apex Court, clearly establishes that the

requirement of law is that it has to be established that the cause of injury suffered by the Military personnel bears a causal connection with military service. Whether injury was suffered during annual leave or casual leave or at the place of posting or during working hours is not relevant because attributability to military service is a factor which is required to be established in all such cases. A careful study of observations made in the case of *Ex Nk Dilbagh Singh vs Union of India*, 2008 (106) Delhi Reported Judgments 865 shows that it considered the word “duty” as given in Appendix II of Regulation 423 of Medical Services of Armed Forces Regulations, 1983 defining the attributability to service. In order to determine whether there was causal connection with the Army duty, the first and important test is whether failure to do such act would have entailed any disciplinary action or such failure constitute any offence under the Army Act, 1950. In the facts of the instant case, for want of any specific pleading as to how the accident occurred, we cannot presume that there was any casual connection with the Army duty.

15. Hon’ble Apex Court in *Union of India & ors vs. Baljit Singh*, reported in (1996) 11 SCC 315 wherein their Lordships observed that in each case where a disability pension is sought for and made a claim, it must be affirmatively established as a fact as to whether the injury sustained was due to military service or was aggravated by military service.

16. The consequence of the principle of law laid down by Hon’ble Full Bench in the case of *Ex Nk Dilbag Singh* (supra) is that there should be a causal connection between the commission or omission of the act of the Army personnel with discharge of his military duty which is sine qua non for the claim of disability pension. This principle of law laid down in the case of *Ex Nk Dilbag Singh* (Supra) was nodded with approval by the Hon’ble Apex Court in the case of *Jujhar Singh* (Supra).

17. It may be noticed that in the case of *Union of India and another vs Talwinder Singh*, (2012) 5 SCC 480, Hon’ble the Apex

Court has also considered the same point of grant of disability pension for injury sustained while on annual leave. The Apex Court in Paras 11, 12 and 14 of the judgment has held as follows:-

“11. This Court recently decided an identical case in Union of India & Ors. v. Jujhar Singh, AIR 2011 SC 2598, and after reconsidering a large number of earlier judgments including Secretary, Ministry of Defence & Ors. v. A.V. Damodaran (dead) through L.Rs. & Ors., (2009) 9 SCC 140; Baljit Singh’s (supra); Regional Director, ESI Corporation & Anr. v. Francis De Costa & Anr., AIR 1997 SC 432, came to the conclusion that in view of Regulation 179, a discharged person can be granted disability pension only if the disability is attributable to or aggravated by military service and such a finding has been recorded by Service Medical Authorities. In case the Medical Authorities records the specific finding to the effect that disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that Medical Board is specialised authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual.

“12. 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 road 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. This view stands fully fortified by the earlier judgment of this Court in Ministry of Defence v. Ajit Singh.”

14. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service. In the instant case, as the injury suffered by the respondent could not be attributable to or aggravated by the military service he is not entitled for disability pension.”

(Underlined by me)

18. Hon’ble Apex Court in the case of *Sukhwant Singh vs Union of India & Ors*, (2012) 12 SCC 228 has again considered this point and held in para 6 as under:-

“6. In our view, the Tribunal has rightly summed up the legal position on the issue of entitlement of disability pension resulting from any injuries, etc. and it has correctly held that in both cases there was no casual connection between the injuries suffered by the appellants and their service in the military and their cases were, therefore, clearly not covered by Regulation 173 of the Regulations. The view taken by the Tribunal is also supported by a recent decision of this Court in *Union of India vs Jujhar Singh*.”

19. Thus, Hon’ble Apex Court has confirmed the view taken by the Armed Forces Tribunal. By the said judgment, Hon’ble Apex Court has decided two Appeals by a common judgment. First Appeal was of *Sukhwant Singh vs. Union of India*, (Civil Appeal No. 1987/2011) and the other was *Jagtar Singh vs. Union of India* (Civil Appeal No. 1988 of 2011).

20. Facts of Civil Appeal No. 1987 of 2011, as they appear from the judgment of Hon’ble Apex Court, were as under:-

“Appellant Sukhwant Singh, enrolled in the Army, while he was on nine days’ casual leave, sustained an injury in a scooter accident that rendered him unsuitable for any further military service. Therefore, he was discharged from service and his claim for the disability pension was rejected by the authorities concerned on the ground that the injury sustained by the appellant was not attributable to military service as stipulated in Regulation 173 of the Army Pension Regulations, 1961.”

21. Facts of Civil Appeal No. 1988 of 2011, as noticed by Hon’ble Apex Court in aforesaid Civil Appeal, were as under:-

“Appellant Jagtar Singh was on two months’ annual leave. He met with an accident in which his brother died and he himself received serious injuries that led to the amputation of his left leg above the knee. In his petition appellant did not disclose the circumstances in which the accident took place.”

22. In the above mentioned factual background the Tribunal rejected the claim of the Army personnel for grant of disability pension for the reasons mentioned in detail in its judgment. The reasons given by the Tribunal were considered by Hon’ble Apex Court in its judgment and the same were confirmed. We feel it

pertinent to mention that facts of above mentioned both the cases are to a large extent similar to the present case before us the petitioner was on annual leave.

23. To consider as to what acts are covered by the term 'duty' we may like to make reference to Entitlement Rules Appendix II of Clause 12 which defines the word duty, which for convenience sake may be reproduced as under:

"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 organised or permitted by Service Authorities and during the period of travelling in a body or singly by a prescribed or organised 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 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 organised 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 the personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, 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."

24. The co-ordinate Bench of the Armed Forces Tribunal, Regional Bench, Chandigarh in the case of ***Baldev Singh vs Union of India O.A. No. 3690 of 2013 decided on 02.03.2016*** has considered this question in great detail. It would be fruitful to reproduce para-21 as follows:-

"21. Recently, the Apex Court in Civil Appeal No.6583 of 2015 Union of India & others Versus Ex Naik Vijay Kumar, vide its judgment dated 26th August, 2015 has held that if the injury suffered or death caused to an individual, has no causal connection with the military service, it cannot be said that the said disability or death is attributable to military service. In the said judgment, the apex court has considered para 12 of the judgment given in another case Union of India and Another Vs. Talwinder Singh (2012) 5 SCC 480 which is reproduced as below :

"12. 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 annual leave that too at his home town in a road 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. This view stands fully fortified by the earlier judgment of this court in Ministry of Defence V. Ajit Singh, (2009) 7 SCC 328.

25. This Tribunal also in O.A.No. 426 of 2017 Surendra Singh Negi vs. Union of India and others, as decided on 03.07.2018, has also expressed the same view and dismissed the O.A. claiming disability pension for injury sustained in the accident while on leave.

26. In view of the discussions, made above in the forgoing paragraphs, we are of the considered view that the petitioner sustained injuries, while he was availing his annual leave, had absolutely no nexus with the Army duty, therefore, the injuries sustained by him, while availing leave, cannot be treated to have been suffered while on duty. The Hon'ble Apex Court has repeatedly held that there must be some nexus with the Army duty and the accident, which resulted into the injuries to the soldier. Thus, the claim for disability pension has no legs to stand.

27. Accordingly, this T.A. is devoid of merits and is hereby **dismissed**.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: August , 2018.
PKG