

COURT NO 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 607 of 2017

Monday, this the 03rd day of September, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

Umesh Kumar (No. 3202952L Ex Rect), Son of Shri Sukhvir Singh, R/O Village & Post-Vaina, District-Aligarh, State-Uttar Pradesh.

...Applicant

Counsel for the applicant: **Shri R. Chandra**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office-New Delhi-110011.
3. The officer-in-Charge Records, The Jat Regiment, PIN-900496, C/O 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).

.... Respondents

Ld. Counsel for the Respondents :**Dr. Shesh Narain Pandey**,
Central Government Counsel.

ORDER**“Per Hon’ble Justice SVS Rathore, Member (J)”**

1. The present O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of disability pension.

The applicant has prayed for the following reliefs:-

(a) The Hon’ble Tribunal maybe pleased to set aside the orders dated 24.06.2008 (Annexure No 1).

(b) The Hon’ble Tribunal maybe pleased to direct the respondents to grant disability pension with effect from 20.12.2007 along with its arrears and interest thereon at the rate of 18% per annum.

(c) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army as Soldier General Duty on 12.08.2006. After completion of basic military training the applicant was granted 28 days’ of recruit leave with effect from 01.04.2007 to 28.04.2007. During leave period at home the applicant sustained injury “Communitted Fracture Upper 1/3 Tibia (Lt)” on 18.04.2007. The applicant was admitted to Military Hospital, Mathura on 18.04.2007. Applicant’s Invaliding Medical Board was held at Military Hospital, Bareilly on 28.11.2007 and he was invalided out from service on 19.12.2007 in low medical category S1H1A5P1E1. Claim for grant of disability pension was rejected by PCDA (P), Allahabad on the ground that the disability is neither attributable to nor aggravated by military service. On 13.10.2008 the applicant preferred first appeal to the Appellate Authority which is still pending.

3. Ld. Counsel for the applicant submitted that the applicant was on duly sanctioned leave after completion of basic military training and hence the injury sustained by the applicant is attributable to military service. Ld. Counsel also pleaded that the applicant has been recommended 30% disability for life by the duly constituted Invaliding Medical Board held on 28.11.2007 at MH, Bareilly and therefore under the settled propositions of law on the subject he is entitled to disability pension w.e.f. the date of discharge i.e. 20.12.2007.

4. On the other hand, Ld. Counsel for the respondents submitted that the Invaliding Medical Board has opined the injury 'not connected with military service' vide Injury Report (IAFY-2006) dated 14.08.2007 (not filed on record), hence the petitioner is not entitled to disability pension as the injury is not attributable to military service in terms of Rule 8 of Appendix-II to Entitlement of Casualty Pensionary Awards, 1982.

5. We have heard Ld. Counsel for the parties and perused the material on record.

6. We have given our anxious considerations to the arguments by learned counsels for the parties. We summarise the issue as under:-

(a) Firstly, the applicant sustained injury 'Comunitted Fracture Upper 1/3 Tibia (Lt)' while on recruit leave at home at village Vaina, Aligarh (UP) in the middle period of his leave. This information has been given by the applicant and

signed by him in Part I of IMB and according to Invaliding Medical Board the injury has no nexus with military duties hence it is not attributable to or aggravated by military service.

(b) Secondly, the observations made by Maj Ravindra Chauhan, MS Orthopaedics with regard to physical fitness of the applicant are significant which make it clear that the applicant is not fit for military duties and therefore the applicant was recommended to be invalided out of service.

For convenience sake, the same are excerpted below:-

“The individual is still symptomatic.

Clinico radiologically fracture has not consolidated and is unlikely in stipulated period of 180 days.

The individual is not fit for stress of recruitment trg and further combatant duties.

Hence the individual is recommended to be invalided out of service in LMC A5.”

7. Thus, admittedly the applicant received injury while he was on leave at his native place. Now the question that arises for consideration is whether a person who has sustained injury while on leave can be granted disability pension? In this case The Hon'ble Apex Court in the case of ***Union of India & Ors vs. Ex Naik Vijay Kumar***, Civil Appeal No 6583 of 2015 has held as under:-

“19. In the light of the above discussion, it is clear that the injury suffered by the respondent has no causal 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.”

8. 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 from 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)

9. In the case of **Union of India & Ors vs Jujhar Singh** reported in (2011) 7 SCC 735, the 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)

10. The views 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.

11. 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)

12. 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***.”

13. 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.

14. We are further of the view that the injury or disability must be incidental to military service. The Hon'ble Supreme Court in the case of ***Union of India and ors. v. Baljit Singh***, (1996) 11 SCC 315 while declining to interfere with the judgment of the High Court held as under:

“In each case, when 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 which contributed to invalidation for the military service.”

15. On proper analysis of the above discussion the position that emerges is that any disability caused due to an accident or injury suffered by a member of the Armed Forces must have some causal connection to the military service. The hazards of Army

service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. The fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service and the matters entirely alien to such service. What falls ex-facie in the domain of an entirely private act which may even extend to the sphere of undesirable and unlawful activity of such member cannot be treated as legitimate basis for claiming the relief under these provisions.

16. For grant of disability pension there must be a nexus between injury and military service. Evidently in the instant case no causal connection exists between disability and military service, therefore the injury of the applicant has been assessed as neither attributable to nor aggravated by military service by the Invaliding Medical Board. PCDA (P), Allahabad has therefore denied the disability pension based on the primary condition, laid down in Rule 173 of Pension Regulations, 1982, i.e. the disability should either be assessed as attributable to or aggravated by military service.

17. In sum and substance, the O.A. is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : September 2018
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