

RESERVED

Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 414 of 2018

Tuesday, this the 29th day of January, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 14585561H Ex Nk, Devendra Kumar Verma, Son of Sri Rameshwar Prasad Verma, Resident of Village & Post Dumaria, Tehsil Banchde, District- Ballia, State of Uttar Pradesh.

..... **Applicant**

Ld. Counsel for the Applicant : **Ms Kavita Singh,**
Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), New Delhi – 110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), Army HQ, South Block, New Delhi- 110011.
3. Officer-In-Charge Records, EME Records, Secunderabad- 500021.
4. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad.

..... **Respondents**

Ld. Counsel for the Respondents : **Shri R.K.S. Chauhan, Advocate**

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

1. By means of this O.A. the applicant has made the following prayers:-

- “A. To issue/pass an order to set-aside/ quash the rejection of disability pension claim vide letter dated 15.12.2017.*
- B. To issue/pass an order or directions to the respondents to decide the Representation/ Appeal dated 30.10.2017 for Grant of Disability Pension from date of discharge.*
- C. To issue/pass an order or directions to the respondents to rounding off the disability element of the disability pension of the applicant @20% to 50% alongwith 9% interest of the arrear from the date of discharge.*
- D. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.”*

2. The admitted facts for the purpose of present O.A. are that the applicant was enrolled in the Army on 30.09.1985. He was discharged after 16 years, 11 months and 19 days of service on 31.08.2002. The applicant while availing his annual leave fell down when he was going to his bathroom on 12.03.2001 and suffered a fracture on his back. He was treated by Civil Doctor and thereafter he was admitted in Military Hospital Devlali with pain in low back, where his disability was diagnosed as ‘Compression Fracture LV-3’. He was brought before the Medical Board and he was placed in low medical category w.e.f.

26.05.2001 and was discharged from service with 20% disability for life but the claim for disability element was rejected by the respondent no.4 on the ground that the disability was neither attributable to nor aggravated by military service.

3. Learned counsel for the applicant has submitted that even if a person was on annual leave and has suffered an injury, his disability has to be presumed to have been caused while on duty and such a disability must be held to be attributable to and aggravated by military service. In support of his submission the learned counsel for the applicant has placed reliance on CWP No. 9821 **Pooja vs. Union of India**, decided by Hon'ble Punjab and Haryana High Court on 12.01.2009. In the facts of that case the applicant during annual leave was white washing his house and at that time he sustained a contusion on his lower back which ultimately led to his low medical category. Relying upon some previous pronouncements, Hon'ble Punjab and Haryana High Court held that even if a person was on annual leave the injury sustained during that period in an accident would be deemed to have been received while on duty.

4. Learned counsel for the respondents has argued that for grant of disability pension for an injury sustained in an accident, the necessary condition precedent is that there must be a causal connection with the Army duty of the injury sustained by the applicant and in the instant case since the applicant while availing his annual leave at his home slipped in his bath room and

sustained injury, therefore, by no stretch of imagination, it can be said to be an injury which has any causal connection with the Army duty.

5. By lapse of time the law on this point has been settled and the Hon'ble Apex Court has held that for the grant of disability pension due to an accidental injury there must be causal connection between the injury sustained and the Army duty. Thus, the moot question for our consideration is whether an Army personnel who is on annual leave, if he sustains injury for reasons not having even the remotest connection with army duty; whether the injury so sustained can be treated to be attributable to or aggravated by Army service? This issue was examined by the Full Bench 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 reported in (2008) 106 DRJ 865 (Del), 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} 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 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.”

6. The aforesaid view expressed by Full Bench of Hon'ble Delhi High Court was considered by Hon'ble Supreme Court in the case of ***Union of India & ors vs. Jujhar Singh***, reported in (2011) 7 SCC 735. In ***Jujhar Singh's*** case (supra) Hon'ble Apex Court has concluded in Para 18 as under:-

“18. In N.K. Dilbagh v. Union of India, a Full Bench of Delhi High Court had an occasion to consider a similar issue and eligibility of disability pension by the armed forces personnel. After adverting to various decisions of this Court as well as of the High Courts, it concluded thus: (DRJ pp 880-81, para 24)

*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 from 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 us)

7. Thus the view expressed by the Full Bench of Hon'ble Delhi High Court in the case of ***Ex Nk Dilbag Singh*** (Supra) has been duly approved by Hon'ble Apex Court.

8. Adverting to the facts of the case in hand, it may be observed that the first and foremost criteria to hold whether the injury is attributable to military service or not, is whether its performance or its non-performance would make such an Army personnel liable to any disciplinary punishment or it would amount

to an offence under the Army Act, Air Force Act or Navy Act. Admittedly, the applicant when was on annual leave while going to his bathroom on 12.03.2001 suffered a fracture on his back. This factum of receiving injury by the applicant by no stretch of imagination, can be said to have any causal connection with military duty because its non performance was neither an offence under Army Act nor would have made the applicant liable to any disciplinary action.

9. In a latest decision on this point, in the case of ***Union of India & ors vs. Ex Naik Vijay Kumar***, in Civil Appeal No. 6583 of 2015 (arising out of CAD No. 13923 of 2014), decided on 26.08.2015 Hon'ble the Apex Court has observed that there should be some nexus between the Military duty and the incident resulting in the injury to a person subject to Military Act, and if there is no causal connection between the Military duty and the accident which resulted into injury, then the injury sustained cannot be treated to be result of Army duty. In para-19 of the case of ***Ex Naik Vijay Kumar (supra)***, Hon'ble Apex Court 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. Hon'ble Apex Court in the case of **Sukhwant Singh vs Union of India & Ors**, (2012) 12 SCC 228 had an opportunity to consider this point and it was held by their Lordships 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.”

11. Thus, Hon'ble Apex Court has confirmed the view taken by the Armed Forces Tribunal. By the said judgment, Hon'ble Apex Court had 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.

12. 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.”

13. 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.”

14. Thus, from the aforementioned legal position propounded by Hon'ble High Court and approved by Hon'ble Apex Court, the settled law on the point is that if during leave period any injury is sustained by Army personnel which led to his disability but has no causal connection with military duty, then in such circumstances, such Army personnel will not be entitled for disability pension.

15. Similar view was taken by the Bench of this Tribunal in O.A. No. 426 of 2017 **Surendra Singh Negi vs. Union of India and ors**, decided on 03.07.2018. In said case, applicant Surendra Singh Negi during continuance of casual leave had met with an accident at his home while driving a motorcycle. Considering the facts and circumstances of said case and in view of pronouncements of Hon'ble Apex Court, it was held that the applicant could not make out a good ground to the effect that the applicant's injury due to accident during casual leave had any causal connection with Army duty.

16. In view of aforesaid legal position, it is clear that the case law relied upon by learned counsel for the applicant is no more a good law in view of the pronouncements of Hon'ble Apex Court

referred above. Apart from it, the Armed Forces Tribunal, Regional Bench Chandigarh in O.A. No. 3690 of 2013 **Baldeo Singh vs. Union of India & ors** has considered this issue in detail and vide order dated 02.03.2016 has concluded as under :-

“20. The legal position thus follows is that mere fact of a person being on duty or otherwise at the place of posting or on leave is not sole criteria for deciding attributability of disability/death. The act, omission or commission which results in injury to the member of the force and consequent disability/fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service. What ex facie seen in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions.”

17. In view of the discussions made above, while expressing our respect towards the decision of Hon'ble Punjab and Haryana High Court, on which the learned counsel for the applicant has placed reliance it is clear that the said view now loses its binding effect in view of the fact that a contrary view has been taken by the Hon'ble Apex Court. Therefore, we hold that the claim of the applicant for grant of disability pension was rightly rejected by the respondents and this O.A. lacks merit and deserves to be dismissed.

18. In view of the above, the O.A. is **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: January 29, 2019
JPT

(Justice SVS Rathore)
Member (J)

