

RESERVED
Court No.1

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

Original Application No. 703 of 2017

Friday, this the 29th day of March, 2019

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

Sohan Lal (Ex Gnr No. 14399078), S/O Sri Ram Saran, R/o Village Murgaon, Post- Gaisinghpur, Tehsil & District Farrukhabad, U.P.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Ashok Kumar, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011
2. Incharge, Records Artillery Records, Nasik Road Camp-422102, PIN- (Army)- 908802, C/O 56 APO
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad .

..... **Respondents**

Ld. Counsel for the Respondents : **Mohd Zafar Khan, Advocate**

ORDER

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

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant has made the following prayers:-

- “(i) This Hon’ble Court may graciously be pleased to quash the impugned order dated 15.10.2008 (Annexure No. A-3) passed by the respondents’ department.
- (ii) This Hon’ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 31.1.2003 towards his disability, “FRACTURE NECK HUMERUS (LT)”. mpugned order dated 15.10.2008 (Annexure No. A-3) passed by the respondents’ department.
- (iii) This Hon’ble Court may further be pleased to pass such other and/ or further order as deem fit, proper and necessary in the circumstances of this case.”

2. The admitted facts in this case are as under:

The applicant was enrolled in the Indian Army on 28.11.1987 and was invalided out from service on 01.02.2003 after rendering a service of 15 years, 02 months and 03 days. At present he is in receipt of his regular pension.

3. In the counter affidavit it has specifically been pleaded that the disability with which the applicant was suffering was an outcome of an accidental injury sustained by the applicant while he was on casual leave, which has no causal connection with the Army duty.

4. Admittedly as per the statement of the applicant himself he sustained injury while he was on casual leave at the leave station. Now the point to be considered is whether a person can claim disability pension for an injury sustained by him while he was on leave. The law on the point is certain that there must be causal connection between the Army duty and cause of the accident, which resulted into disability of the applicant. In the instant case

admittedly the applicant has sustained accidental injury while he was on casual leave at his leave station. Thus, the point to be considered is whether a person who sustained injury while he was on leave, which has no causal connection with the Army duty can claim disability pension ?

5. A 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.”

6. 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.”

7. 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.

8. 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.”

9. 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.”

10. In a recent 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 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.”

11. Since in this case the injury suffered by the applicant has no causal connection with the military service, the submission of the learned counsel that the applicant was coming back for duty after leave on motor-cycle is contrary to his own statement earlier given at the time of accident hence we agree with respondents that this change in statement is an afterthought. There is nothing on record

to indicate any causal connection of accident with the Army duty which is necessary to be established for claim to disability pension. Therefore, we are of the considered view that there was no causal connection between the official duty and the reason of the accident and therefore the applicant is not entitled to disability pension.

12. Accordingly, O.A. is devoid of merit, deserves to be dismissed and is hereby **dismissed**.

13. No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: 29th March, 2019
JPT