

RESERVED
Court No. 1

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

O.A. No. 630 of 2017

Friday, this the 26th day of October, 2018

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

Sunil Kumar Singh (No 4471030N Ex Havildar) S/o Shri Babu Ram Sharma, R/o Village Nougwan Cantt Post Fatehgarh, District Farrukhabad- 209601, State - Uttar Pradesh.

.... Applicant

Ld. Counsel for the: Shri Om Prakash, Advocate.
Applicant

Versus

1. Union of India through 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 Mahar Regiment, Pin – 900127, C/o 56 APO
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad – 14 (UP)

...Respondents

Ld. Counsel for the: Shri A.K. Gupta, Advocate.
Respondents.

ORDER

“(Per Hon’ble Mr Justice SVS 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) The Hon’ble Tribunal may be pleased to set aside the orders dated 10.01.2014 (Annexure No.1).

(II) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.01.2014 along with its arrears and interest thereon at the rate of 18% per annum.

(III) 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. In brief the facts necessary for the purpose of the instant O.A. may be summarised as under.

The applicant was enrolled in the Indian Army as Sepoy on 26.12.1989 and he was discharged from service on 31.12.2013. During the service period he was promoted to the rank of Naik and thereafter as Havildar. On 29.06.2012 he was granted 26 days casual leave for the year 2012 w.e.f. 29.06.2012. After availing 3 or 4 days of casual leave the applicant was recalled back to his unit. The applicant returned back to his unit by travelling in a hired truck with his family and luggage on 05.07.2012. While he was unloading his household goods (Almirah) from vehicle to go his house he got injury in his finger.

Due to this injury the applicant was placed in permanent low medical category of A-2 and could not be considered for further extension of service as Havildar and subsequent promotions. He was discharged from service in low medical category A-2(P) on 31.12.2013 on completion of his term of engagement as Havildar. The applicant is in receipt of his service pension. The Release Medical Board (RMB) has assessed his injury as finger tip injury (RT) middle & ring finger (OPTD). The disability has been assessed @ 14% and the RMB has opined that the disability is neither attributable to nor aggravated by military service (NANA). The applicant preferred an appeal against the denial of disability pension on 18.03.2014 but when the said appeal was not disposed of within six months, applicant has filed the present O.A. for grant of disability pension.

3. The learned counsel for the applicant has vehemently pleaded that travel while returning back from leave is considered as duty. In this case the applicant after travelling in a hired truck had suffered an injury while unloading his personal items therefore the injury has to be considered as attributable to service. He also pleaded for the benefit of rounding off and grant of disability pension to applicant.

4. The learned counsel for the respondents submitted that RMB has declared the disability @ 14% of applicant as NANA, hence he is not entitled for disability pension. He also submitted that the first appeal of the applicant has been rejected by the first

appellate committee vide order dated 20.05.2015. The applicant is already in receipt of service pension. He submitted that the disability pension can be granted only to persons whose disability is assessed to be 20% or more and it is held attributable to or aggravated by military service and must have some causal connection with the Army duty. It has also been pleaded that regarding the injury of the applicant a Court of Inquiry was conducted and the finding of Court of Inquiry was that it was not attributable to military service. It was submitted that during the inquiry regarding the incident it was stated by the applicant that “;wfuV esa xkM+h ls vyeKjh uhps mrkjrs oDr maxyh ncus ls dV x;hA” Hence the Court of Inquiry has considered his injury as not attributable. He pleaded for O.A. to be dismissed.

5. Having heard both the parties and after having perused the material on record the question which needed to be answered by us was whether the injury of the applicant is attributable to military service ? To understand this aspect we carried out a detailed examination of the Court of Inquiry.

6. In the Court of Inquiry the statement of the applicant was also recorded. The copy of Court of Inquiry has also been annexed with the counter affidavit, wherein certain questions were put to the applicant, which were replied by the applicant as under:-

“Question 1. Where were you unloading the almirah?

Answer. I was unloading the almirah at CBL md accn.
 Question 2. Whose almirah was it ?

Answer. It was my almirah. I was allotted govt married accn & I brought my luggage from my home in a civ veh.

Question 3. Was anyone else present there ?

Answer. Yes, No 4576949P LNK Chefmess Ramesh Kumar was present there & helping me to unload the luggage.

Question 4. Did you consume alcohol when the incident occurred ?

Answer. No, I did not consume alcohol.

Question 5. Was there any previous injury to your right hand fingers ?

Answer. No.

Question No.6 Who took you to CMIR ?

Answer. No 457694P LNK Chefcom Ramesh Kumar took me to CMIR.

Question 7. To whom did you report the incident ?

Answer. No 457694P LNK Chefcom Ramesh Kumar who took me to CMIR reported the matter telephonically to Coy Sr JCO.”

7. The submission of the learned counsel for the applicant is that the casual leave of the applicant was cancelled and he was recalled therefore the applicant was coming back to his unit by hiring a private truck alongwith his family and household goods and while unloading the same from the truck near his family accommodation allotted to him he suffered injury. The argument of the learned counsel for the applicant is that unless all the household goods are not unloaded and kept in the allotted house, the applicant has to be treated as on duty under the Rules and the

Regulations covering the field. Thus the point which needs to be considered in this case is whether the injury suffered by him was while he was on duty.

8. This point has been considered by Hon'ble the Apex Court in the case of **Madan Singh Shekhawat vs. Union of India** reported in AIR 1999 Supreme Court 3378, wherein Hon'ble Apex Court held that the Army personnel may be deemed on duty when he is on any type of authorised leave during travel to and fro from the place of posting. It is admitted fact that the applicant was granted leave and his leave was cancelled and he was required to report to unit and therefore he was coming back on a civilian truck alongwith his household goods and family.

9. Thus in the peculiar facts of this case when the leave of the applicant was cancelled, he was asked to join, he was travelling for the purpose to join the duty and while unloading his household goods from the truck by which he travelled, he sustained the said injury. Therefore, the applicant is absolutely right in claiming that he was on Army duty in view of the settled position of law on duty and leave. The applicant came back from his native place in compliance of the orders of the competent authority to report back to his unit and therefore his journey has to be considered to be on duty as in compliance of order of the competent authority he was performing the journey.

10. In this connection we will like to quote Rule -10 of Defence Services Regulations Leave Rules For the Services Volume-1 Army, which reads as under:-

“10. Casual leave counts as duty except as provided for in “ Rule 11(a).

It cannot be utilised to supplement any other form of leave or absence, except as provided for in clause (A) of Rule 72 for personnel participating in sporting events and tournaments.

Casual leave due in a year can only be taken within that year. If, however, an individual is granted casual leave at the end of the year extending to the next year, the period falling in the latter year will be debited against the casual leave entitlement of that year.”

11. 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.

(Underlined by us)

(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.”

Thus, it is clear from the facts of this case that the applicant was performing an authorised journey to comply with the orders of the competent authority. Hon'ble Apex Court in the case of **Madan Singh Shekhawat vs. Union of India** (supra) has considered this aspect and has opined in Para-17 as under :-

“We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even an army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorised to avail the leave for leaving the station of posting, an army personnel uses what is known as "travel warrant" which is issued at public expense, same will not be issued if person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly. Meaning thereby if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to

the benefit of the disability pension since his act of undertaking the journey would be unauthorised.”

In the facts of this case applicant was performing an authorised journey under the command of competent authority.

12. In view of the discussions made above, the applicant has sustained injury during journey which was an authorised duty, therefore, the finding of the Court of Inquiry and the report of the Medical Board that his disability was not attributable nor aggravated by military service is incorrect and cannot be sustained. It is held that the applicant sustained injury while performing an authorised journey to join Army duty and his injury is to be considered as attributable to military service.

13. The orders passed in the first appeal show that the applicant was denied the disability pension as his disability was assessed as 14% and was considered neither attributable to nor aggravated by military service. Since we have already held that the applicant has sustained injury while performing authorised journey to join Army duty, it has to be considered to be attributable to military service so the next point to be considered is as to whether a person who has been invalided out from service in low medical category with 14% disability is entitled to disability pension or not. This point has been considered by Hon'ble Apex Court in the case of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

14. In **Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th December 2014**) in which Hon'ble the Apex Court nodded in disapproval at the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalidated out of service. The judgment is very clear that the benefit of rounding off is also required to be extended to personnel with low medical category whose disability is attributable to military service and who has retired on attaining the age of superannuation or completion of his tenure of engagement. The relevant portion of the decision being relevant is excerpted below:

"4. By the present set of appeals, the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

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6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. *The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

15. In view of the discussions made above, this O.A. deserves to be allowed and is hereby **allowed**. The impugned order dated 10.01.2014 rejecting the claim of the applicant for grant of disability pension is hereby set aside. The respondents are directed to grant disability element of the pension @ 14% for life to the applicant, which shall stand rounded off to 50% for life. Payment of arrears as aforesaid shall be restricted to three years prior to filing of this O.A. The date of filing of this O.A. is 08.08.2017. The respondents are further directed to comply with this order within a period of four months from the date a copy of this order is produced before them, failing which the applicant shall be entitled to interest @ 9% from the date it became due till the date of actual payment.

No order as to costs.

16. Registry is directed to provide a copy of this order free of cost to the learned counsel for the respondents for onwards transmission to ensure compliance of the order.

(Air Marshal BBP Sinha)
Member (A)

Dated: October 26, 2018

JPT

(Justice SVS Rathore)
Member (J)

