

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

ORIGINAL APPLICATION No. 13 of 2018

Wednesday, this the 13th day of October, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Nb Sub Shri Pal Singh (JC-211032M) S/o Ram Adhar Singh, A-2112 Awas Vikas, Hanspuram, Naubasta, Kanpur Nagar (UP).

..... Applicant

Ld. Counsel for the : **None**
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, DHQ, PO, New Delhi-11.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ, PO, New Delhi-11.
3. Commandant & OIC Records, Rajput Regimental Centre and Records, Fatehgarh (U.P.).
4. Commanding, 14 Rajput Regiment Officer, C/O 56 APO.
5. PCDA (Pension), Draupadighat, Allahabad (U.P.).

.....Respondents

Ld. Counsel for the
Respondents.

Shri RC Shukla, Advocate
Central Govt. Counsel

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(a) Be pleased to quash and set aside the Annexure No A1 and Annexure No A2 and direct the respondents to pay the disability pension Low Medical Category CEE (Permanent) i.e. 40% for Head Injury and 30% for Keratopathy corneal ulcer and service element by rounding off to 75% with effect from 01 Jul 1994 with appropriate interest till the date of its payment.

(b) Be pleased to award befitting compensation for loss of his service resulting from non compliance of procedures prescribed by law, in discharging the applicant from service and set aside Annexure No A-3 and its consequential action emanating there from, and grant all the consequential service benefits, which was affected due to impugned Annexure No A-3.

(c) Be pleased to grant any other relief as deemed just and expedient, in the light of the facts and circumstances of the instant case.

(d) Be pleased to grant cost in favour of applicant.

2. Brief facts giving rise to the present application is that applicant was enrolled in the Army on 26.07.1994 as a Sepoy and during the course of service he was promoted to the rank of Nb Sub. On 01.09.1992 when he was in family quarter he fell from the roof and sustained injuries viz. (i) Head Injury and (ii) Keratopathy (Lt Eye) with Resultant Perforation Corneal

Ulcer. He was evacuated to Military Hospital, Amritsar where after providing necessary treatment, he was placed in temporary low medical category CEE (temp) for six months which was reviewed on 13.10.1993 and his medical category was converted from temporary to CEE (Permanent) for a period of two years. He was accordingly discharged from service by following due process under the authority of policy letter dated 10.05.1977 which was issued for disposal of low medical category personnel. Prior to discharge, Release Medical Board (RMB) conducted and approved on 30.04.1994 had assessed his disabilities (i) Head Injury @ 40% for two years and (ii) Keratopathy (Lt Eye) with Resultant Perforation of Corneal Ulcer @ 30% for two years, aggregate disability @ 50% for two years neither attributable to nor aggravated by military service (NANA). He was discharged from service w.e.f. 01.07.1994 (FN). Disability pension claim was rejected vide order dated 22.03.1995. Thereafter, appeal dated 08.07.1995 preferred against rejection of disability pension claim was also rejected by PCDA (P), Allahabad vide order dated 26.12.1996. It is in this perspective that this O.A. has been filed for grant of disability element of pension.

3. Learned counsel for the applicant has pleaded in the O.A. that applicant had sustained injuries while on duty therefore, the injuries should be attributable to military service. His further submission is that applicant was a duty JCO on the

intervening night of 31.08.1992/01.09.1992 and while he was getting ready in dark, as there was no light on that night, he fell down from the roof and sustained injuries resulting in his going to coma initially. Further submission of learned counsel for the applicant is that the medical authorities ought to have conducted Invaliding Medical Board (IMB) but an RMB was conducted on applicant which is wrong as per Army Rule 13 (3) I (ii) because his services were cut short and he was discharged from service prior to completion of terms of engagement. In support of his contention, on a previous date, learned counsel for the applicant referred many citations saying that a JCO cannot be discharged from service on medical grounds prior to completion of terms of engagement by conducting RMB. He pleaded for grant of disability element of pension to applicant.

4. Per contra, learned counsel for the respondents submitted that on 31.08.1992 at about 2100 hrs applicant took drinks with Subedar Major. His wife called him to family quarters but he did not come despite calling by his wife. Later, with the help of Subedar Major he went inside the family quarter. On reaching home, he went to the roof-top alongwith his wife to sleep as there was no light on that day. The applicant sat on the parapet and suddenly he lost his balance and fell on balcony below and sustained injuries which resulted in his being placed in low medical category and ultimately discharge from service. He further submitted that applicant was not on duty

when the injuries occurred and that is why the pension sanctioning authority has rejected his claim for grant of disability element of pension. His further submission is that the medical authorities have also opined that the disabilities sustained by applicant were neither attributable to nor aggravated by military service. His submission is that since claim for disability element of pension has been rejected by the competent authority on the ground of NANA, he is not entitled to disability element of pension. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the respondents as learned counsel for the applicant is not present. The matter was argued at length on 06.10.2021 in presence of both the parties but on the request of Maj RD Singh (Retd), learned counsel for the applicant, it was fixed on 13.10.2021 for final hearing. On that date it was also clarified that the case shall not be adjourned on the next date on any reason, despite that Maj RD Singh (Retd) is not present today. We have perused the records including Court of Inquiry proceedings dated 10.09.1992 and RMB proceedings dated 30.04.1994.

6. It is undisputed that applicant sustained injuries on 01.09.1992 by falling from roof top at about 2100 hrs. He was admitted to Military Hospital, Amritsar and was downgraded to low medical category CEE (Temporary) for a period of 06

months and after review, it was made CEE (Permanent) for a period of two years. The applicant was discharged from service w.e.f. 01.07.1994 (FN) under Rule 13 (3) I (ii) (a) (i) read in conjunction with Army Rule 13 (2) and Integrated Headquarters of Ministry of Defence Policy letter dated 10.05.1977 which stipulates that permanent low medical category personnel should be discharged from service if sheltered appointment is not available.

7. The respondents have denied disability element of pension to applicant on the reason that for getting disability pension, in respect of injury sustained during the course of employment, there must be some causal connection between the disability and military service, and this being lacking in applicant's case, as there was no causal connection between the disability and military service, he is not entitled for the same.

8. We have observed that following the incident, a C of I was conducted by the Commanding Officer to investigate cause of injury, blameworthiness and attributability factor of the injury/disability. According to opinion of the Court of Inquiry, injury suffered by applicant was attributable to military service but this opinion was not final. The RMB dated 30.04.1994 has regarded applicant's disability as neither attributable to nor aggravated by military service which may be accepted as final being the opinion of a medical expert board.

9. On perusal of Court of Inquiry dated 10.09.1992, we find that witness No. 4 (applicant's wife Smt Malti Devi) admitted that prior to incidence applicant had consumed liquor along with Sub Maj on 31.08.1992. For convenience sake, extract of statement of witness No. 4 is reproduced as under:-

"1. Shrimati Malti Devi wife of JC-211032M Nb Sub Sripal Singh, having been duly warned states:-

2. On 31 Aug 92 my husband went to the house of Sub Maj (Hony Lt) Gokal Singh after coming back from the unit lines at about 2100h. There he had few drinks with the Sub Maj and instead of coming into the house he lay down on the grass in front of our block. Since he did not come up despite my calling him many times, I went to call the SM and requested him to tell my husband to come inside the house. Sub Maj and his wife came to our block and made my husband go into the house at about 2230h.

3. As it was a very hot and humid night and there was no electricity in the block, I alongwith my children went to the roof-top to sleep. My husband also followed us to the roof-top. He sat on the parapet talking to me. Suddenly he lost his balance and fell down on the balcony below. Seeing him fall I shouted for help and rushed down. I found my husband lying in the balcony on his back. I saw blood coming out from the side of his head. I being in a dazed state did not know what to do. I just kept screaming and sat there taking my husband's head to stop the bleeding. After some time my husband was evacuated to MH Amritsar. I, with my children, was then taken to the house of the Sub Maj by his wife where he stayed till morning."

10. The aforesaid statement clearly depicts that applicant had consumed alcohol in residence of Sub Maj on the night of 31.08.1992. After drink he went to his family quarter but instead of going inside the house, he laid on lawn in front of block. On insistence of Sub Maj and his wife he went inside the

house. Since there was no light in the block on that day, they chose to sleep at roof-top and while sitting at parapet chatting with his wife, he lost his control and fell down to balcony resulting in the injuries. Therefore, it may be inferred that the incident occurred after consuming liquor and the injury sustained thereafter cannot be related to military service as it has no causal connection with military duty. Thus injury seems to be not attributable to military service.

11. The question with regard to attributability has been considered time and again not only by the various Benches of AFT, but by the Hon'ble High Courts and the Hon'ble Apex Court also. In a more or less similar matter, **Secretary Govt of India & Others vs Dharamveer Singh**, decided on 20th September 2019 in Civil Appeal No. 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with 'Faciomaxillary and compound fracture 1/3 Femur (Lt)'. A Court of Inquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave report dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under column 3(c) was that 'No one was to be blamed for the accident. In fact respondent lost control of his own scooter'. In this case the

respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personal Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of **Madan Singh Shekhawat vs Union of India & Ors**, decided on 17.08.1999 was allowed holding that respondent was entitled to disability pension. Aggrieved by the same, a Civil Appeal was filed in which the Hon'ble Apex Court framed following three points for consideration:-

(a) Whether, when armed forces personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(c) What is the effect and purpose of court of inquiry into an injury suffered by armed forces personnel?

12. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

13. While deciding the second question, the Hon'ble Apex Court in para 20 of judgment in **Madan Singh** (supra) held that keeping in view of Regulation 423 clause (a) and (b), there must be some causal connection between the injury or death and military service. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributable to risk common to human being. It was further held that when a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service. In the present case since applicant fell down from roof-top after consuming liquor, there seems to be no causal connection of accident with military duty.

14. Regarding question number 3, the Hon'ble Apex Court held that if any causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well

as the various Benches of the Armed Forces Tribunal and Hon'ble High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and for such injury, resulting in disability, the injury would be considered as attributable to or aggravated by military service.

15. The Hon'ble Apex Court while summing up has also taken note of the guiding factors of the Armed Forces Tribunal, in the case of **Jagtar Singh vs Union of India & Ors**, decided on November 02, 2010 in T.A. No. 60 of 2010, approved in the case of **Sukhwant Singh and Vijay Kumar case**, and held that they do not warrant any modification and the claim of disability is to be required to be dealt accordingly. Those guiding factors are reproduced below for the ready reference:-

"(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.

(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor

to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or 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.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) 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. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

16. We have considered the applicant's case in view of the above guiding factors and we find that the opinion of the Medical Board, which is a specialized authority composed of expert medical doctors, has to be given due credence and value and its opinion has not to be brushed aside lightly.

17. Additionally, we also take note of rejection of disability pension claim and opinion of RMB dated 30.04.1994 wherein it is clearly mentioned that the injury sustained by applicant is not attributable to military service. Since the disability has no causal connection with military duty, applicant is not entitled to disability pension.

18. Considering the entire facts and circumstances of the case, we are satisfied that the disability of the applicant is neither attributable to nor aggravated by Military Service. The injury/disability has no causal connection with military duty, therefore, he is not entitled to any disability element of pension.

19. The O.A. being devoid of merit, is **dismissed**.

20. No order as to costs.

21. Pending applications, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 13.10.2021

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