

AFR
RESERVED
Court No.1
(List 'B')

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO 201 of 2011

Thursday, this the 30th day of March 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Sep Govind Singh (retired) No. 4176353F S/o Late Sri Neim Chand R/o Vill-Bhakuna, Post-Baret, Tehsil-Thal, District-Pithoragarh, State-Uttra Khand Hall R/o Alok Nagar, Air Force Gate, Kaneja Road, Post-Ijjat Nagar, District-Bareilly-243002.

....Applicant

Ld. Counsel for the: **Shri Lal Chand Sahu**, Advocate
Applicant

Verses

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. The Directorate General Medical Services, Army Headquarter, New Delhi.
3. Officer-in-Charge Records D.S.C., Pin-901277 C/o 56 A.P.O.
4. Director, P.S.-4, AG's Branch, Integrated H.Q. of M.O.D. (Army) D.H.Q. P.O.-New Delhi-110011.

...Respondents

Ld. Counsel for the : **Shri A.K. Sahu**, Central
Respondents. Govt Counsel assisted by
Maj Salen Xaxa, OIC, Legal Cell.

ORDER**“Per Hon’ble Mr. Justice Devi Prasad Singh, Member ‘J’”**

1. Present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred for payment of disability pension on account of injury suffered by the applicant while going to leave-station during sanctioned casual leave.
2. We have heard Shri Lal Chandra Sahu, Ld. Counsel for the applicant and Shri A.K. Sahu, Ld. Counsel for the respondents assisted by OIC Legal Cell and perused the records.
3. The applicant was enrolled in the Indian Army on the rank of soldier on 13.03.1981 in medical category ‘AYE’ i.e. S1H1A1P1E1. He was released from Army service on 31.03.1998 in medical category ‘AYE’ and was fit to serve in Defence Security Corps (DSC)/civil employment. Applicant was enrolled in DSC on 13.09.1999 in medical category ‘AYE’ under prescribed medical standards. After completion of required training, the applicant was posted to Air Force Station Bareilly and later on transferred from Bareilly to Leh Supply Depot. After serving for more than 18 months at Leh, the applicant was transferred to 351 DSC Platoon at Bharatpur.

4. With effect from 25.04.2004 the applicant was granted 06 days casual leave to join his family at leave-station where the applicant's family was residing. On 25.04.2004 the applicant, on his motor cycle, left Bharatpur to Haldwani and while returning to Bareilly from there, near Police Chowki Ijjat Nagar, Nainital road Bareilly, the applicant met with an accident with Truck No U.P.-25 7722. The Truck TATA 407 was being driven carelessly by the driver causing the accident. In consequence thereto, the applicant sustained grievous injury on his right leg. FIR was lodged against the truck driver on 26.04.2004 (**Annexure 1**). Charge sheet was filed by police on 22.05.2004 (**Annexure 2**).

5. On account of injury, the applicant was admitted in Military Hospital, Bareilly where his Comminuted Fracture Femur (RT) and Fracture Tibiol Condylar (RT) was operated. He remained admitted for four days. For further treatment, the applicant was referred to Command Hospital, Lucknow on account of compound fracture. Applicant underwent treatment for about 10 days at Command Hospital, Lucknow where his medical category downgraded from 'AYE' to CEE (Temporary) Surgical for 24 months. The applicant's Medical Board was carried out at Military Hospital, Agra and his medical category was laid down to category CEE (Permanent) for three years with recommendation of 30% disability. Later on the

applicant was discharged on 31.03.2009 from DSC service on account of medical category CEE (Permanent) in pursuance to power conferred under Rule 13 (3) iii (i) of Army Rules, 1954. Subject to aforesaid backdrop the applicant claimed disability pension which was rejected by authorities vide order dated 11.05.2009 (**Annexure 4**). Appeal preferred by the applicant to First Appellate authority was rejected by the authorities on 05.06.2009 (**Annexure 5**). The applicant's Appeal Medical Board was carried out by Base Hospital, Delhi Cantt on 29.11.2010 (**Annexure 6**). The First Appeal of the applicant was rejected by the respondents vide order dated 31.12.2009 (**Annexure 7**) followed by rejection of Second Appeal by the respondents (**Annexure 8**).

6. While assailing the impugned order claiming the disability pension, it has been argued by Ld. Counsel for the applicant that injury suffered by the applicant was on account of the accident caused while going to leave-station and before arriving to leave station i.e. residence at Bareilly. It is submitted that the disability suffered by the applicant is linked with Army service attributable and aggravated to military service and thus the applicant is entitled to disability pension. Injury suffered by the applicant may reasonably be attributable to military service and has got nexus between the injury and the military service. The applicant has rendered 10 years

and 19 days qualifying service in DSC. The opinion of Release Medical Board filed as **Annexure CA-3** followed by rejection of disability pension claim vide order dated 11.05.2009 is based on unfounded facts. Having nexus with military service, the applicant is entitled to disability pension.

7. On the other hand, Ld. Counsel for the respondents submitted that for the purpose of granting Casualty Pensionary Awards, it is necessary that the person claiming disability pension must have been performing duties at the time the injury was suffered. Ld. Counsel for the respondents relied upon Rule 12 of the Entitlement Rules for Casualty Pension Awards read with Rule 10 (a) of the said Rule. It is also submitted that after Bharatpur the applicant had gone to Haldwani to meet his brother and from there he was going to leave-station at Bareilly; hence the applicant shall not be entitled for disability pension. Attention has been invited to Regulations 179 of the Pension Regulations for the Army-1961 (Part I) which stipulates that disability pension can be granted to individuals who have retired/discharged on completion of terms of engagement. Having no nexus with the injury and military service, applicant is not entitled to disability pension. On perusal of the records it appears that the applicant had gone on 6 days casual leave. While leaving Bharatpur he did not go straightway to the leave-station but went to Haldwani to

meet his brother and thereafter moved to leave-station. For convenience sake, Rule 12 of the Entitlement Rules for Casualty Pensionary Award, 1982 is reproduced as under :-

“12. A person subject to the disciplinary code of 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 organized or permitted by service authorities and during the period of travelling in a body or singly by a prescribed or organized route”.

8. Emphasis of Ld. Counsel for the respondents is that, in view of Rule 12 (supra), since injury was suffered during casual leave, it shall not be covered under duty period for the purpose of granting disability pensionary award. Rule 10 (a) of the Entitlement Rules for Casualty Pensionary Award (supra) deals with regard to accidental injuries and the same, for convenience sake, is reproduced as under:-

“In respect of accidents or injuries, the following rules shall be observed:-

(i) Injuries sustained when the individual is “on duty” as defined,

shall be treated as attributable to military service (provided nexus between injury and military service is established).

(ii) In cases of self-inflicted injuries while “on duty”, attributability shall not be conceded unless it is established that service factors were responsible for such action”.

10. Question cropped up whether the applicant was deemed to be on duty while suffering the accident (supra) during course of casual leave and whether injury suffered may be treated as attributable to military service?

11. A Bench of Armed Forces Tribunal, Kolkata, in which one of us (Hon’ble Mr. Justice Devi Prasad Singh) was the Member, delivered judgment/order on 25.06.2015 in O.A. No. 73 of 2011, **Smt Fool Jahan Ara vs. Union of India & Ors**, wherein the Tribunal, relying upon the Apex Court judgment AIR 1980 SC 648, observed as under:-

“12. We must differentiate between the words ‘service’ and ‘duty’. A person in service may not be on duty like in case he is on leave or hospitalized, etc. but the person shall be deemed to be in service in case he or she is on duty or assigned some work by the Establishment to which he or she owes allegiance. The Hon’ble Supreme Court in a case reported in AIR 1980 SC 648 p. 649, page 987-Judicial Dictionary 14th Edition – Coal Mines Provident Fund Commissioner vs Ramesh Chander Jha has observed that

service means to 'perform function, do what is required'. The word 'service' means necessarily something more."

15. *In another case Sukhdev vs Union of India, the Hon'ble Punjab & Haryana High Court relying upon judgment of Full Bench of Punjab & Haryana High Court (supra) Union of India vs Khushwant Singh, held that any accident remotely connected and inconsistent with military service such as when a person returned from hospital or during a normal activity, would not be taken as disability attributable to military service. However, a Full Bench Judgment of the Hon'ble Delhi High Court in the case of Nk Dilbagh Singh vs Union of India & Ors while summarizing the decision based on an Apex Court judgment held, to reproduce from para 10 of the judgment as under:-*

*"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 casual connection with military service.** Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of Medical Board, the obligation and the responsibility for 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 casual 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, 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 to 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 averred 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”.

12. Keeping in view the law flowing from the aforesaid judgment based on judgment of Delhi High Court as well as Punjab & Haryana High Court, there seems to be no room of doubt that the applicant is entitled to disability pension. The travel to and fro is based on posting in view of Pension Regulations which provides such travel within entitlement for disability pension and even if an injury is sustained while availing casual leave, would entitle the victim to claim disability pension. The entitlement to receive disability pension during casual leave is no more res integra in view of the judgment of Armed Forces Tribunal, Kolkata, based on full Bench judgment of

Punjab & Haryana High Court (supra). In the present case what is germane is that the applicant went on casual leave which has nexus with military service. Availing benefit on leave during military service and journey to join the leave station is attributable to military service. Similarly after expiry of leave period, journey to join duty has got nexus with the military service. The interpretation that a person shall be entitled to disability pension while proceeding to leave-station or returning to duty from leave-station is further established from the proposition of law flowing from Apex Court's judgment in the case of ***Madan Singh Shekhawat vs. Union of India & Ors***, AIR 1999 SCC 3378 which relates to disability pension to Army person, who was travelling to select-town on casual leave granted to him by competent authority, met with an accident. After interpreting the relevant Rules and Regulations the Court held that person concerned shall be entitled to disability pension which covers the period which may be claimed even after retirement in terms of Regulations.

13. No provision has been brought into notice of the Tribunal by Ld. Counsel for the respondents under which a person availing casual leave has to adopt shortest route for leave-station. In the absence of any bar, applicant cannot be deprived opportunity to claim disability pension only because after leaving Bharatpur he had

gone to Haldwani. He had adopted the route via Haldwani to Bareilly with intention to meet his brother who was at Haldwani. The provision with regard to disability pension is based on welfare scheme and it is well settled that such provision should be interpreted liberally to extend benefit to the victim.

14. Apart from the above, the recent Apex Court judgment in the case of ***Dharamvir Singh Vs. Union of India & Ors*** reported in (2013) 7 SCC 316 in which Hon'ble The Apex Court had observed the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance, to sum up the legal position emerging from the same in the following words:-

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. *The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

29.4. *If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*

29.5. *If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

29.6 *If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons[(Rule 14 (b)); and*

29.7 *It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the "Guide to Medical Officers (Military Pensions), 2002 - "Entitlement : General Principles", including Paras 7,8 and 9 as referred to above (para 27).*

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31. *In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is*

suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of appellant, it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from clause (d) of Para 2 of the opinion of the Medical Board, which is as follows:-

“(d) In the case of a disability under (c) the Board should state what exactly in their opinion is the cause thereof.

YES

Disability is not related to military service”.

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33. *In spite of the aforesaid provisions, the pension sanctioning authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rule 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from “Generalized Seizure (Epilepsy)” at the time of acceptance of his*

service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

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35. In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31-7-2009 in Union of India v. Dharamvir Singh and uphold the decision of the learned Single Judge dated 20-5-2004. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be liable to pay interest as per the order passed by the learned Single Judge. No costs.”

15. In view of liberal interpretation given by the Supreme Court, the applicant seems to be entitled to disability pension for the reason that he suffered injury during service period while on sanctioned casual leave which has got nexus with military service.

16. In view of the above, O.A. deserves to be allowed, hence **allowed**. Impugned order dated 07.01.2008 discharging the applicant from service, order dated 11.05.2009 passed in appeal preferred by the applicant denying disability pension, order dated 31.12.2009 rejecting First Appeal and order dated 06.04.2011 rejecting Second Appeal are set aside with all consequential

benefits. Applicant shall be entitled to disability pension @ 30% which is rounded off to 50% for life in terms of Apex Court judgment held in the case of ***Sukhhvinder Singh Vs. Union of India & Ors*** (supra) along with interest @ 10% per annum. Let the consequential benefits be provided to the applicant within four months from the date of presentation of a certified copy of this order. OIC Legal Cell shall communicate the order to all concerned forthwith.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

Rathore

(Justice D.P. Singh)
Member (J)