Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 186 of 2017

Thursday, this the 26th day of July, 2018

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

Kamlesh Singh Yadav, son of Sri Nawab Singh, resident of House No. 34/4. Krishna Colony, Deori Road, Agra.

…Applicant

Counsel for the applicant: Shri Yash Pal Singh

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi
2. Additional Director General Personnel Services, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army) DHO PO. New Delhi – 110011.
3. Officer-in-Charge, Defence Security Corps Records, Cannanore, PIN – 901277, C/O 56 APO
4. Principal Controller of Defence Accounts (Pension), Allahabad.

…. Respondents

Counsel for the Respondents :Modh Zafar Khan,
Addl. Central Government Counsel

ORDER

"Per Hon'ble Air Marshal BBP Sinha, Member (A)"

1. By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

> *(a) Issuing/passing of an order setting aside the letter/order dated 20.05.2016 issued by the Defence Security Corps Records denying service pension to the applicant for the service rendered by him in the Defence Security Corps, and directing the Respondents to pay service pension to the applicant from due date along with arrears and interest at the prescribed rate.*
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> *(b) Issuing/passing of an order setting aside the letters/orders dated 14.10.2013 and 28.08.2015 rejecting the applicant's case for disability element; and directing the Respondents to pay disability element to the applicant from due date along with arrears and interest at the prescribed rate.*
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> *(c) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
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> *(d) Allowing this Original Application with cost.*

2. The applicant was enrolled in the Kumaon Regiment of the Indian Army on 26.11.1980 and on completion of seventeen years of service tenure; he was discharged in the rank of Naik on 30.11.1997. Admittedly, he is getting pension for this spell of service. The applicant was re-enrolled in Defence Security Corps ('DSC' for short) on 17.09.1998 and was discharged therefrom on 30.09.2013 after rendering qualifying service for 15 years and 14 days under Rule 13 (3) III (i) of the Army Rules, 1954. As per pleadings on record, while serving in the DSC the applicant sustained injury, i.e. COMMINUTED FRACTURE LOWER END (LT) FEMUR on 04.10.2011 and was placed in low medical category A2 (Permanent). Applicant's case for disability pension was processed and denied and he was communicated the decision

rejecting his claim for disability pension vide order dated 14.10.2013. The applicant preferred an appeal which did not see the light of the day, as such, he preferred O.A. No.127 of 2015 which was disposed of by this Tribunal vide order dated 21.08.2015 with direction to respondents to decide his appeal. Meanwhile the Appellate Committee vide order dated 28.08.2015 rejected the appeal of the applicant. In compliance of directions of this Tribunal dated 21.08.2015, the DSC Records rejected the claim of the applicant for grant of disability pension. The plea of disability pension of the applicant was denied on ground that as per provisions of Para 53 (a) of the Pension Regulations for the Army, 2008 (Part-1) the disability of the applicant, i.e. COMMINUTED FRACTURE LOWER END (LT) FEMUR was "neither attributable to nor aggravated" by Military service and the injury sustained by the applicant in the bathroom while taking bath has no causal connection with Military duty.

3. We would first take up relief (b) prayed for by the applicant, i.e. for a direction to the respondents to grant disability pension.

4. It has been argued on behalf of the applicant that even if a person subject to Army Act is on casual leave, the law on the point is that he shall be deemed to be on duty. It is submitted that the applicant was on duty when he had sustained the injury; therefore, injury sustained by him has to be treated to be attributable to military service.

5. Hon'ble the Apex Court 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 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. Their Lordships

held that if there is no nexus/causal connection between the Military duty and the incident which resulted into injury, then the injury sustained cannot be treated to be result of Army duty.

6. In the case of ***Ex Naik Vijay Kumar*** **(supra),** Hon'ble Apex Court in para-19 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."

7. 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."

8. 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.
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> (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.

(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."

9. The 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 :
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> > "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.

10. We are in full agreement with the view expressed by the co-ordinate Bench of Chandigarh Armed Forces Tribunal in the case of ***Baldev Singh*** (supra) which finds full support from several pronouncements of Hon'ble Apex Court. In the case in hand, admittedly, the applicant while at his home had slipped in the bathroom and sustained injury at his home while taking bath. By no stretch of imagination, the injury sustained by the applicant can even remotely be

said to have causal connection with Army duty. Learned counsel for the applicant has not been able to make out a good ground in the present O.A. to the effect that the applicant's injury due to accident had causal connection with Army duty.

11. Adverting to prayer (a) (supra), it may be noticed that the applicant has been denied pension for this spell of service in DSC on the ground that he has not completed the minimum required qualifying service of 15 years. As per pleadings on record, the applicant has 14 years 349 days of qualifying service to his credit. In other words, there is a shortfall of about 16 days for earning pension for the DSC service, condonation whereof has been denied by the respondents, thereby denying him the second pension. The submission of the applicant is that in terms of Rule 125 and the policy of the respondents, he is entitled to condonation of shortfall in service. The denial of condonation by the respondents on the ground that he is getting pension from the Army and, therefore, he is not entitled for condonation in the second spell of service with DSC, is unjustified.

12. Per contra, the ground for denying condonation, as espoused by the respondents, is that the applicant had rendered only 14 years and 349 days of qualifying service (excluding 30 days non-qualifying service due to his overstayal from leave) as such, he has not completed the mandatory minimum required qualifying service of 15 years as per para-74 of the Pension Regulations for the Army, 2008 (Part-1). Further ground taken by the respondents is that the applicant is already in receipt of service pension from Army and the intention for grant of condonation of deficiency of service for grant of service pension is that the individual must not be left high and dry and should be made eligible for at least one

pension which the applicant is already in receipt of. It is argued that as per the provisions contained in Para 132 and 271(a) of the Pension Regulations for the Army 1961 (Part-I), minimum 15 years qualifying service is mandatory to earn 2nd service pension and as per GOI, Ministry of Defence/ Department of Ex-Servicemen Welfare letter No.1(20/2011/D(Pen/Pol) dated 23.04.2012 the condonation of deficiency in qualifying service is not applicable for the grant of second service pension.

13. We find that the controversy involved in this case is no longer RES INTEGRA and has been set at rest in favour of the applicant in the following cases:-

(i) OA No.60 of 2013, ***Bhani Devi vs. Union of India & Ors.***, decided by the AFT, Principal Bench, New Delhi on 07.11.2013.

(ii) OA No.931 of 2012, ***Ex Sub Krishan Singh Tanwar vs. Union of India & others***, decided by the Jaipur Bench of AFT on 18.05.2015;

(iii) OA No.1468 of 2014, ***Duni Chand Vs Union of India & others*** decided by Chandigarh Regional Bench at Chandmandir on 17.09.2015

(iv) OA. No. 1089 of 2017 ***Om Prakash vs. UOI & ors*** decided by Chandigarh Regional Bench at Chandmandir on 11.07.3027, and

(v) OA No 83 of 2011 ***Amar Singh vs Union of India & Ors*** decided by Chandigarh Regional Bench at Chandmandir on 24.01.2011.

(vi) OA No. 407 of 2017, ***Desh Raj vs. Union of India & ors***, decided by Armed Forces Tribunal, Lucknow Bench on 11.07.2018.

14. In the case of ***Bhani Devi vs. Union of India*** (supra), the Hon'ble Principal Bench has considered:

(i) Rule 266 given in Chapter 4 of the provisions for the DSC;

(ii) Rule 125, relating to condonation of deficiency in service for eligibility of service/ reservist pension; and

(iii) the letter dated 23.04.2012, issued by the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, D(Pension/Policy).

15. The said letter dated 23.04.2012 being the anchor sheet of the respondents' arguments, is reproduced below:-

"No.14(2)/2011/D(Pen/Pol)
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare
D (Pension/Policy)

…

New Delhi, the 23rd April, 2012

To
The Chief of Army Staff
The Chief of Naval Staff
The Chief of Air Staff

Subject: Review of Rule 125 of Pension Regulation for Army Pt. I (1961): Condonation of deficiency in service for grant of 2nd service pension.

The matter regarding condonation of shortfall in service towards second service pension in respect of DSC (Defence Security Corps) personnel raised by ADGPS vide their No. B/46453/AG/PS-4(Legal) dated 9th March 2012 has been examined in this department. It is conveyed that the intention behind grant of condonation for deficiency of service for grant of service pension is that the individual must not be left high and dry but should be made eligible for at least one pension. On the principle that no dual benefit shall be allowed on same accord. It is clarified that no condonation shall be allowed for grant of 2nd service pension.

2. This has the approval of Secretary (ESW).

Yours faithfully,

sd/-
(Malathi Narayanan)
Under Secretary (Pen/Pol)"

16. The Hon'ble Principal Bench in ***Bhani Devi's*** case (supra), after taking into consideration the aforesaid letter in the light of the relevant

provisions of the Pension Regulations for the Army, has observed, to quote:-

> "The communication dated 23.04.2012 (R-1), nowhere conveys that the Rule 125 stands modified by the order/ communication dated 23.04.2012 (Annexure R-10. It appears that the matter was brought to the notice of the Ministry with respect to the interpretation of Rule 125. The communication dated 23.04.2012 is only an opinion given by the Government and therefore observed that "intention behind grant of condonation" is that individual must not be left high and dry "but should be made available for at least one pension". The benefit of Rule 125 "for at least for one pension" is not in the Rule 125. The communication dated 23.04.2012 nowhere supersedes the original Rule 125 nor reviewed Rule 125, but it is only an opinion of the Govt. that according to Govt. what was the intention behind the grant of condonation for deficiency of service for grant of service pension. When the rule is very clear the intention is irrelevant. The Rule 266 clearly declared that all general rules shall be applicable to the employees governed by the provisions of Chapter 4 and we have already observed that there is no inconsistent rule to the Rule 125 under Chapter 4 of the Regulations. The communication/ letter dated 5 (OA No.1468 of 2014) 23.04.2012 neither have modified the Rule 125 nor reviewed it but it only conveyed that according to opinion of Govt. what was the intention for making Rule 125. In view of the above reasons, mere opinion of the Govt. and interpretation of Rule 125, is not binding upon the Tribunal, particularly, when the Rule 266 and Rule 125 as are in force today are very clear.
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> 11. In view of the above reasons, we are of considered opinion that petitioner's husband was eligible under Rule 125 for condonation of shortfall in service in pensionable service. So far as the fact is concerned, petitioner's husband's shortfall in service was only less than one year which could have been condoned. In view of the clear rules made under Pension Regulations for the Army 1961, and particularly, Rule 266, which provides that the general rule shall not be applicable when they are inconsistent with the rules framed under Chapter 4, the Govt.'s communication dated 23.04.2012, just runs just contrary to Rule 266 and therefore, cannot be given effect to."

17. In the case of ***Amar Singh vs Union of India & Ors*** (supra), the co-ordinate Bench of Armed Forces Tribunal, Chandigarh Bench at Chandmandir considered the provision of Regulation 9 of the Pension Regulations for the Army, 1961 and observed as under :-

> "However, how the period of qualifying service is to be computed, in the present circumstances, is a matter, which is governed by Regulation 9 of the Pension Regulations for the Army, 1961, which reads as under:-
>
> > 9. In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service. A bare reading of this provision makes it clear that fraction of a year equal to three months or above, but less than six months, is to be treated as completed half year. Accordingly the period of 308 days exceeds three months beyond six months and therefore, he is required to be treated to have completed a year of service, and if that is so then it is clear that the petitioner has completed 15 years of service"

18. In the case of ***Desh Raj*** (supra), this Tribunal while deciding the issue of condonation of shortfall of qualifying service rendered in the DSC for the purpose of pension, has observed as under:-

> "Submission of learned counsel for the applicant is that the aforesaid shortfall in DSC service may be condoned. According to him, as per provisions of Government Policy dated 14.08.2001, shortfall in service upto 01 year can be condoned by the respondents. He has also placed reliance on the pronouncement of Hon'ble Apex Court in Civil Appeal No. 9389 of 2014, Union of India and another versus Surender Singh Parmar, decided on 20.01.2015. In that case, the individual had taken voluntary discharge before completing his qualifying service and the shortfall of one year was condoned by the Hon'ble Apex Court. Reliance has also been placed on the pronouncement of this Bench in OA No. 154 of 2016, Shiv Ram versus Union of India and others, decided on 01.02.2018, wherein, in similar facts and circumstances, the shortfall of 4 months and 09 days in minimum qualifying service of the individual in DSC for earning service pension was condoned."

19. Accordingly, the O.A. is **allowed in part**. However, prayer for disability pension is rejected. The shortfall of 16 days in minimum qualifying service of the applicant to earn DSC pension is hereby condoned and the applicant is held entitled to get service pension for the second spell of service in DSC as well, in addition to the pension which

he is already getting from the Army. The impugned rejection order is hereby quashed and set aside and the respondents are directed to grant service pension to the petitioner from the due date i.e. 30.09.2013.

20. The respondents are further directed to work out the arrears admissible to the petitioner by virtue of the present order and pay the same to him within a period of four months from the date of receipt of a certified copy of this order, failing which, the amount shall carry interest @ 9% per annum from the date of this order, till actual payment thereof.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : July, 2018

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