

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 354 of 2020

Monday, this the 9th day of August, 2021

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

No. 15484597-W Ex Lance Dafadar Sanjay Kumar
S/o Shri Muneshwar Singh, R/o C/o Shri Awadhesh Narayan, Plot
No. 20, Tulsi Nagar, Shyam Nagar (Chandhari) Post-37 PAC Line,
District – Kanpur (UP) – 208015

..... **Applicant**

Ld. Counsel for the Applicant : **Shri R. Chandra**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi-11.
3. The Officer-in-Charge Armoured Corps Records, PIN – 900476, C/o 56 APO.
4. The Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad-14 (UP).

..... **Respondents**

Ld. Counsel for the Respondents : **Shri Rajiv Pandey**,
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

“(I) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01/10/2018 alongwith its arrears and interest thereon at the rate of 18% per annum. Further disability pension be rounded off @ 50%.

(II) 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. Counter affidavit along with copy of Release Medical Board filed by learned counsel for the respondents is taken on record.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 19.01.2002 and was discharged from service on 30.09.2018 (AN) in low medical category A2 (Permanent) under Rule 13 (3) III (1) (a) of Army Rules, 1954 after rendering 16 years, 08 months and 13 days of service being no sheltered appointment was available in the unit. The applicant is in receipt of service pension vide PPO dated 23.08.2018. While serving 51 Armoured Regiment, the applicant was placed in permanent low medical category A2 for the disability **“TRAUMATIC AMPUTATION DISTAL PHALANX (RT) RING FINGER”** w.e.f. 29.12.2009. The applicant was willing to serve,

hence, sheltered appointment was provided to him by the Commandant, 51 Armoured Regiment w.e.f. 29.12.2009 to 28.12.2017 being sheltered appointment commensurate with his disability was available in the unit. In Review Medical Board, held on 11.01.2018, the applicant was again placed in low medical category A2 (Permanent) for his disability w.e.f. 29.12.2017 to 29.12.2019. Subsequently, due to non availability of sheltered appointment commensurate to his low medical category in the unit, the Commandant 51 Armoured Regiment issued a Show Cause Notice to the applicant vide letter dated 22.01.2018 as to why his service should not be terminated being non availability of sheltered employment in the unit. The applicant in his reply letter dated 06.02.2018 requested for further retention in service in view of his domestic problems, however, due to non availability of sheltered appointment commensurate to his medical category in the unit, his request was not accepted by the Commandant 51 Armoured Regiment and accordingly, applicant was discharged from service on 30.09.2018 (AN). As per AO 03/89, Release Medical Board was held on 04.08.2018 and his disability **“TRAUMATIC AMPUTATION DISTAL PHALANX (RT) RING FINGER”** was assessed @ 9% for life and it was considered as ‘Attributable to military service’ and net assessment qualifying for disability pension @ Nil for life. The disability pension claim of the applicant was rejected vide order dated 24.11.2018. First appeal of the applicant dated 26.08.2019 against rejection of his disability pension claim was also rejected vide order

dated 20.04.2020. It is in this perspective that this O.A. has been filed.

4. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease/disability. Therefore, any disability suffered during service is attributable to military service. The disability of the applicant has been assessed by RMB @ 9% for life which is attributable to military service but disability element has been denied by the respondents. Learned counsel for the applicant also relied upon various judgments of the Hon'ble Apex Court on the subject and submitted that in terms of decision of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (Civil Appeal No. 4949 of 2010, arising out of SLP (C) No. 6940 of 2010, ***Secretary, Ministry of Defence and Ors vs. A.V. Damodaran (Dead) Through LRS and Others*** (2009) 9 SCC 140 and Para 173 of the Pension Regulations for the Army, 1961 (Part-1), disability element be granted to the applicant and benefit of rounding off to 50% also to be given from the date of discharge in view of Govt. of India letter dated 31.01.2001.

5. On the other hand, learned Counsel for the respondents submitted that applicant is in receipt of service pension vide PPO dated 23.08.2018 and has been denied the disability element on the ground that his disability was assessed less than 20%. The applicant was initially provided sheltered appointment in the unit in order to complete his pensionable service and thereafter, he was discharged

from service being no sheltered appointment available in the unit commensurate with his disability. Learned counsel for the respondents submitted that in para 4.3 of the Original Application, it has been accepted by the applicant that he met with an accident on 24.10.2009 while on leave resulting in injury. Further contention of learned counsel for the respondents is that the pension sanctioning authority has rightly denied disability element pension claim vide order dated 24.11.2018. As per Rule 12 of Entitlement Rules for Casualty Pensionary Awards which stipulates that there should be some causal connection of injury/disability to military duty for grant of disability element of pension. Learned counsel for the respondents vehemently opposed the opinion of the Court of Inquiry that injury sustained to the individual is attributable to military service. He submitted that at the time of accident applicant was on casual leave and he was going to drop his friend hence there is no causal connection between injury and military duty and injury sustained to the applicant cannot be treated as attributable to military duty. He further emphasised that competent authority has rightly rejected the disability element claim in terms of Para 81 (a) of Pension Regulations for the Army 2008, (Part-1) and Para 53 (a) of Pension Regulations for the Army, 2008 (Part I). Para 53 of Pension Regulations reads as under:-

“An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical

Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.”

6. Learned counsel for the respondents further submitted that since the percentage of disability in this case is less than 20%, therefore, applicant is not entitled to disability element and O.A. deserves to be dismissed.

7. We have heard learned counsel of both sides and found that moot question involved in this case is whether disability pension is payable to an incumbent who sustained injury while on leave and disability is less than 20% and whether applicant was invalidated out of service on account of the disability?

8. In the instant case, the question which arises for our consideration is, whether a person who has sustained injury while going Railway Station to drop his friend can be treated to be attributable to or aggravated by Army service? Admittedly, in the instant case, the applicant while on casual leave going to drop his friend to Railway Station met with an accident but there is no causal connection between injury sustained and military duty. During the course of hearing learned counsel for the applicant referred to the case of Manjit Singh, Ex Naik versus Government of India and Ors and submitted that applicant is eligible for grant of disability element of pension. There is distinction in the facts of the present case and the case of Manjit Singh, Ex Naik versus Government of India and Ors in Civil Writ Petition No. 3835 of 1997 decided on 7th Oct 1999 by Punjab and Haryana High Court. The applicant in the said case while

on casual leave was going to attend his younger brother's marriage at his native place and while returning from the place of marriage in a jeep in which he was travelling met with an accident with a truck and was seriously injured. In that case the petitioner was on casual leave and such leave has been deemed to be on duty; hence the case was allowed in the petitioner's favour. But since then, large number of judgments have been pronounced by various Courts vide which it has been made clear that the cause of injury suffered by the military personnel should bear a causal connection with military service. Whether injury was suffered during annual leave or casual leave or at the place of posting or during working hours is not the only consideration because attributability to military service is a factor which is required to be established in all such cases.

9. The Full Bench decision of Hon'ble Delhi High Court in the case of Ex Nk Dilbag Singh vs Union of India & Ors delivered on 22.08.2008 in Writ Petition No. (C) 6959 of 2004 and connected matters, their Lordships observed in para-19, 23 and 24 as under:-

"19. For similar reasons we are unable to subscribe to the views in Ex. Sepoy Hayat Mohammed -vs- Union of India, 138(2007) DLT 539(DB) to the effect that the petitioner was eligible for the grant of Disability Pension owing to the fact that while on casual leave in his home he suffered several injuries owing to a steel girder and roof slabs falling on him. One of the reasons which appear to have persuaded the same Division Bench was that persons on annual leave are subject to the Army Act and can be recalled at any time as leave is at the discretion of the Authorities concerned. A rule of this nature is necessary to cover the eruption of insurgencies or the breakout of a war. They neither envisage nor attempt to deal with liability to pay Disability Pension. It is impermissible to extrapolate a rule catering for a particular situation to altogether different circumstances.

23. We have also perused the detailed Judgment of the Division Bench of this Court in Shri Bhagwan wherein Jarnail Singh also came to be discussed. The

Bench observed that - "An individual may be "on duty" for all practical purposes such as receipt of wages etc. but that does not mean that he is "on duty" for the purpose of claiming disability pension under the 1982 Entitlement Rules. A person to be on duty is required, under the 1982 Entitlement Rules, to be performing a task, the failure to do which would constitute an offence triable under the disciplinary code applicable to him. A person operating a wheat thresher while on casual leave cannot, by any stretch of imagination, be said to be performing an official duty or a task the failure to perform which would lead to disciplinary action". We respectfully affirm these views of the Division Bench.

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 causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility 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 causal 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, a 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 duration. Fifthly, the Hon"ble Supreme Court has simply given effect to this Rule and has not laid down in 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 adverted 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."

10. The aforesaid view expressed by Full Bench of Hon"ble Delhi High Court was considered by the Hon"ble Supreme Court in the case of Union of India & Ors vs. Jujhar Singh, reported in (2011) 7 SCC 735. The Hon"ble Supreme Court has also considered the case of Regional Director, E.S.I. Corporation & anr vs. Francis De Costa and

another, (1996) 6 SCC 1. Though the case of Francis De Costa (supra) was not a case relating to Army, but the question involved in that case was whether the injury sustained by respondent in the said case amounted to “employment injury” within the meaning of Employees’ State Insurance Act, 1948 and he is entitled to claim disablement benefit. This question was replied by Hon^{ble} Apex Court in negative. The Hon^{ble} Apex Court observed as under:-

“A road accident may happen anywhere at any time. But such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something incidental to his employment.”

11. In the case of Jujhar Singh (supra) Hon^{ble} Apex Court has concluded in Para 23 as under:-

“23. As rightly pointed by the counsel for the Union of India, the High Court failed to appreciate that even though the respondent sustained injuries while he was on annual leave in 1987, he was kept in service till superannuation and he was superannuated from service w.e.f. 01.07.1998. It is relevant to point out that he was also granted full normal pension as admissible under the Regulations. In the case on hand, inasmuch as the injury which had no connection with the military service even though suffered during annual leave cannot be termed as attributable to or aggravated by military service. The member of the Armed Forces who is claiming disability pension must be able to show a normal 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 member of such forces. Inasmuch as the respondent sustained disability when he was on annual leave that too at his home town in a road accident, the conclusion of the learned Single Judge that he is entitled to disability pension under Regulation 179 is not based on any material whatsoever. Unfortunately, the Division Bench, without assigning any reason, by way of a cryptic order, confirmed the order of the learned Single Judge.”

12. The view expressed by the Full Bench of the Hon^{ble} Delhi High Court, approved by the Hon^{ble} Apex Court, clearly establishes that the requirement of law is that it has to be established that the cause of injury suffered by the Military personnel bears a causal connection with military service. Whether injury was suffered during

annual leave or casual leave or at the place of posting or during working hours is not the only consideration because attributability to military service is a factor which is required to be established in all such cases. A careful study of observations made in the case of Ex Nk Dilbagh Singh vs Union of India, 2008 (106) Delhi Reported Judgments 865 shows that it considered the word "duty" as given in Appendix II of Regulation 423 of Medical Services of Armed Forces Regulations, 1983 defining the attributability to service.

13. The Hon"ble Apex Court in ***Union of India & Ors vs. Baljit Singh***, reported in (1996) 11 SCC 315, wherein their Lordships observed that in each case where a disability pension is sought for and made a claim, it must be affirmatively established as a fact as to whether the injury sustained was due to military service.

14. The consequence of the principle of law laid down by the Hon"ble Full Bench in the case of ***Ex Nk Dilbag Singh*** (supra) is that there should be a causal connection between the commission or omission of the act of the Army personnel with discharge of his military duty which is sine qua non for the claim of disability pension. This principle of law laid down in the case of ***Ex Nk Dilbag Singh*** (Supra) was nodded with approval by the Hon"ble Apex Court in the case of Jujhar Singh (Supra).

15. It may be noticed that in the case of ***Union of India and another vs Talwinder Singh***, (2012) 5 SCC 480, Hon"ble the Apex Court has also considered the same point of grant of disability

pension for injury sustained while on annual leave. The Apex Court in Paras 11, 12 and 14 of the judgment has held as follows:-

“11. This Court recently decided an identical case in Union of India & Ors. v. Jujhar Singh, AIR 2011 SC 2598, and after reconsidering a large number of earlier judgments including Secretary, Ministry of Defence & Ors. v. A.V. Damodaran (dead) through L.Rs. & Ors., (2009) 9 SCC 140; Baljit Singh’s (supra); Regional Director, ESI Corporation & Anr. v. Francis De Costa & Anr., AIR 1997 SC 432, came to the conclusion that in view of Regulation 179, a discharged person can be granted disability pension only if the disability is attributable to or aggravated by military service and such a finding has been recorded by Service Medical Authorities. In case the Medical Authorities records the specific finding to the effect that disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that Medical Board is specialised authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual.

“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 an 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.”

14. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service. In the instant case, as the injury suffered by the respondent could not be attributable to or aggravated by the military service he is not entitled for disability pension.”

16. 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.”

17. Thus, the 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).

18. 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.”

19. 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.”

20. In the above mentioned factual background, the Tribunal rejected the claim of the Army personnel for grant of disability pension for the reasons mentioned in detail in its judgment. The reasons given by the Tribunal were considered by the Hon“ble Apex Court in its judgment and the same were confirmed. We feel it pertinent to mention that facts of above mentioned both the cases were absolutely similar to the present case before us.

21. To consider as to what acts are covered by the term “duty” we may like to make reference to clause 12 of “Entitlement Rules Appendix II” 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.

(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."

22. 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 :

"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.

23. We are in full agreement with the views expressed by the Coordinate Bench of Armed Forces Tribunal, Chandigarh in the case of **Baldev Singh** (supra), which finds full support from several pronouncements of the Hon"ble Apex Court and, keeping in view the principle of law laid down in that case, we find that learned counsel for

the applicant has not been able to make out a case in the present O.A. that applicant's injury which took place at the time of going Railway Station to drop his friend had any causal connection with Army duty. After sustaining injury, applicant was provided sheltered appointment for a long period for completion of pensionable service and was not invalided out from service, hence disability element cannot be granted to him.

24. In view of the above facts, O.A. has no merits, deserves to be dismissed and is accordingly dismissed.

25. No order as to costs.

26. Pending applications, if any, are disposed off.

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

Dated: 9th August, 2021

Ukt/-