

Neutral Citation No. - 2023:AHC-LKO:69584-DB

Court No. - 1

Case :- WRIT - A No. - 8297 of 2023

Petitioner :- No. 5346518 Ex Rifleman, Yam Kumar Shrestha

Respondent :- Union Of India Through Secretary, Ministry Of Defence, New Delhi And 2 Others

Counsel for Petitioner :- Ashok Kumar, Yatish Gupta

Counsel for Respondent :- A.S.G.I.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

- (1) Heard Shri Ashok Kumar, learned Counsel representing the petitioner and Shri S.B. Pandey, learned Senior Advocate/ Deputy Solicitor General of India assisted by Shri Varun Pandey, representing the respondents/Union of India.
- (2) The challenge in the present writ petition under Article 226 of the Constitution of India is to an order dated 11th January, 2023 passed by the Armed Forces Tribunal, Regional Bench at Lucknow (hereinafter referred to as '**Tribunal**'), whereby the Original Application No. 574 of 2022 preferred by the petitioner seeking to grant him disability pension has been dismissed for the reason that the injury of the petitioner was not found to be attributed to military service.
- (3) Succinctly, the facts which led to the filing of this writ petition are that on 25.01.1988, the petitioner was enrolled in Indian

Army and was invalidated out of service on 16.07.1991 on account of disability of '**Blast Injury Effects of (BIL) Optic Atrophy**', which was assessed 50% for two years. His claim for grant of disability pension was rejected by the respondents, against which appeal for grant of disability pension was filed by him, which too was rejected. Feeling aggrieved, the petitioner had instituted Original Application No. 574 of 2022 under Section 14 of the Armed Forces Tribunal Act, 2007 before the Tribunal with the following prayers :-

“(a) To quash the rejection order of the Government of India, Ministry of Defence, New Delhi rejection order bearing No. 7 (56)/93 (Pen-A & AC) dated 02 Aug 1993 with all the consequential benefits to the applicant.

(b) To direct the respondents to pay the disability pension to the applicant @ 50% with effect from the date of discharge and direct the respondents to hold Re Survey Medical Board and assess the percentage and to continue payment disability pension from the intervening period.

(c) To direct the respondents to pay benefits of rounding off to the applicant as catered for in paragraph 7.2 of Army Headquarter policy letter No. Government of India, Ministry of Defence Policy letter No. 1 (2)/97/D/Pen)-C dated 31 Jan 2001.

(d) To direct the respondents to dispose of the Statutory Final Appeal of the applicant submitted under Regulation 25 of the Casualty Entitlement Rules bearing No. D/SP/AAF/D/19070 dated 15 Dec 2021 within a time frame to be fixed by this Hon'ble Tribunal preferably one month.

(e) To issue any other order or direction considered expedient and in the interest of justice and equity.

(f) Award cost of the petition.”

- (4) Apparently, on a perusal of the prayer clause of the aforesaid Original Application, we find that the entire grievance raised by the petitioner before the Tribunal was in relation to grant of disability pension by stating that at the time of enrollment in Military Service, he was thoroughly examined and was in medical category SHAPE-I. Further, he had been periodically subjected to medical examination and had remained fit for all purposes to perform his functions and as such according to him the disability suffered by him was due to service conditions only. Thus, he has prayed for grant of disability pension to him.
- (5) This Court finds that the learned Tribunal has considered the aforesaid prayer and has opined that the grievance of the petitioner for disability pension has rightly been rejected by the respondents inasmuch as the claim put forth by the petitioner that injury was attributable during the military drill/exercise conducted on the intervening night of 25/26th December, 1988, has no substance for the reason that after the said military drill/exercise, no untoward incident as claimed by the petitioner was reported. The Tribunal has returned a finding on fact that after the completion of military drill/exercise, the petitioner went on casual leave for fourteen days on 08.02.1989, which

was extended for further six days and thereafter he joined duty on 28.02.1989. The Tribunal has recorded that it was only after resuming duty, the petitioner reported for the first time about the complaint of inability to see from left eye. In this background, the learned Tribunal has concluded that since the petitioner reported sick for the said injury after about three months from the date of the said military exercise and no incident of injury was reported at the time of military exercise or even after completion of exercise and the petitioner went on leave from the station in a fit condition, his disability was considered as neither attributable to nor aggravated by military service and the petitioner was thus denied for grant of disability pension due to injury being not connected with military service. The learned Tribunal, accordingly, dismissed the original application vide judgment/order dated 11th January, 2023, which is under challenge in the instant writ petition.

- (6) Placing reliance upon the judgment of the Apex Court in **Dharamvir Singh Vs. Union of India and others**: 2013 (8) SCALE 58 and **Sukhvinder Singh Vs. Union of India** :2014 (8) SCALE 619, learned Counsel for the petitioner has contended that at the time of his enrollment in military service, the petitioner was thoroughly examined and he was declared fit and was in medical category SHAPE-I. Further, he was being medically examined periodically and was found to be in Medical Category SHAPE-I. Therefore, his submission is that

the disability suffered by the petitioner was due to the injury sustained by him during the military exercise conducted on the intervening night of 25/26th December, 1988 and, hence the petitioner is entitled to get the disability pension. According to the learned Counsel for the petitioner, the learned Tribunal has lost sight of the fact in not considering facts while passing the impugned judgment that the petitioner had suffered injury on his eye in the military exercise/drill and not during the leave period, therefore, the petitioner is entitled to get the disability pension.

- (7) Per contra, learned Deputy Solicitor General of India representing the respondents has submitted that there has to be a causal link or a reasonable connection between the injuries sustained by a member of Armed Forces resulting in disability and the Military service. Inviting our attention to Regulation 173 of the Pension Regulations for the Army, 1961 (for short, '**the Pension Regulations**') and Rule 12 of the Entitlement Rules for Casualty Pensionary Awards, 1982, he has submitted that military exercise/drill was conducted on the intervening night of 25/26th December, 1989 and after completion of training, neither the petitioner nor anyone had reported any untoward accident or any injury caused during the drill. The petitioner went on leave immediately after the training on 28.01.1989 and he returned from leave on 28.02.1989 and thereafter only he reported for the first time about his inability

to see from left eye. Thus, the injury occurred couple of days after the petitioner travelled from the place of his duty to leave station.

(8) Learned Senior Counsel representing the respondents has argued that under Regulation 173 of the Pension Regulations, disability pension is granted to an individual who is invalidated out of service on account of disability which is either attributable to or aggravated by military service. It was submitted that in the facts of the case, the act of the petitioner was not even remotely connected to his military duty and while so, the learned Tribunal has rightly dismissed the claim of the petitioner to grant him disability pension.

(9) Having regard the submissions advanced by the learned counsel for the parties and going through the impugned judgment/order passed by the Tribunal as well as the material placed on record before this Court in the instant writ petition, it is an admitted position that the petitioner was granted 14 days' casual leave on 28.01.1989 which was extended for further six days. He reported for duty on 28.02.1989. Thereafter, the petitioner reported Medical Inspection Room 14, Gorkha Training Centre with a complaint of inability to see from left eye on 03.04.1989. Immediately thereafter, he was referred to Command Hospital, Chandigarh for opinion of Ophthalmologist. On 04.04.1989, the petitioner was admitted in Command Hospital, Chandigarh

and discharged therefrom on 20.04.1989, wherein he was recommended to be downgraded to Low Medical Category EEE. Thereafter, a Court of Inquiry was conducted to investigate into the circumstances under which the petitioner sustained severe injury leading to inability to see from left eye. In the said Court of Inquiry, it was found that the petitioner sustained injury in left eye when he was on leave and not during the training period on the intervening night of 25/26th December, 1988. Ultimately, the Invalidated Medical Board had examined the petitioner on 31.05.1991 and his disability was assessed as 'neither attributable to nor aggravated by military service' with degree of disablement @ 50% for two years.

- (10) As noted hereinabove, disability of the petitioner was assessed @ 50%. Regulation 173 of the Pension Regulations provides that:

“173. Primary conditions for the grant of disability pension.-Unless otherwise specifically provided a disability pension consisting of service element and **disability element may be granted to an individual who is invalidated out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.**”

- (11) Further, even Rule 12 of the Entitlement Rules, 1982, which defines 'Duty' cannot come to the rescue of the petitioner. Admittedly, Clause (d) of Note 2 of Rule 12 of the Entitlement Rules clarifies that personnel while travelling between the place

of their duty to leave station and vice-versa, shall be treated on duty. It is not the case made out by the petitioner that the injury occurred to him, when he was travelling to leave station. Apparently, the injury might have happened after he reached the leave station. Thus, from the aforesaid, it is crystal clear that unless the disability is attributable to or aggravated by military service and is more than 20%, the entitlement to disability pension does not arise.

(12) If we analyze and scrutinize the impugned judgment/order passed by the Tribunal, which is under challenge before us in light of the discussions made in the preceding paragraphs, this court is of the considered view that the Tribunal has not erred in law or on facts. We do not find any perversity or infirmity in the impugned judgment and order warranting any interference by us in this petition. The judgment relied by the petitioner is distinguishable from the facts and circumstances of the present case.

(13) Resultantly, the writ petition is hereby **dismissed**. However, there will be no order as to costs.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 19.10.2023

Shubankar/Ajit/-