



2025:DHC:2841-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 23.04.2025***

+ W.P.(C) 4575/2024

EX SGT ONKAR MISRA

.....Petitioner

Through: Mr.Shivankar Rao Mr.Tanishq
Sharma, Mr.Sumit Goyal,
Mr.Vaibhav Kumar, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Siddharth Khatana, SP &
Mr.Akash Pathak, Adv.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE RENU BHATNAGAR****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed, challenging the Orders dated 25.05.2023 and 06.12.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'learned Tribunal) in O.A. 1578/2020 and in RA 62/2023 in OA 1578/2020, dismissing the OA and the Review Application filed by the petitioner respectively.

2. The petitioner had filed the above OA before the learned Tribunal praying for setting aside of the Orders dated 12.11.2018 and 19.10.2020 of the respondents by which the claim of the petitioner for grant of disability element of pension had been rejected, and an appeal against the said rejection had also been dismissed by the respondents.



3. It was the case of the petitioner before the learned Tribunal that the petitioner, while being posted at Air Force Station, Pathankot, had sustained an injury due to a fall while he was straightening an iron pole in the garden of his quarter on 28.08.2016. The injury was later assessed as under:

- a. *Partial ACL Tear (Lt) Knee @ 20% for life, and,*
- b. *Chondromalacia @ 15-19% for life*

4. The Release Medical Board dated 22.03.2018 opined that the injury suffered by the petitioner was neither attributable nor aggravated by service.

5. The petitioner being aggrieved thereof, appealed against the same, however, the same was also dismissed.

6. The petitioner thereafter filed the above OA claiming that the above injury suffered by him was in discharge of service and therefore, attributable to service. The OA, as noted hereinabove, was dismissed by the learned Tribunal by its Impugned Order dated 25.05.2023, observing as under:

*“2. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disabilities of the applicant was assessed to be more than 20% which is the bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulation for the Indian Air Force, 1961 (Part-I). It is also a fact that the composite assessment for the disability was assessed to be 40% for life which was reduced to 20% for life due to unwillingness of the applicant for undergoing the surgery. **It is pertinent to bring on record that the applicant suffered the aforesaid injuries whilst he was on leave and was***



straightening the pole in his house which does not bear any causal connection between injury and performing military duty. The applicant was thus not performing any duty whatsoever assigned to him by the superior authorities which may be termed to be under the ambit of his military duties.....”

7. Aggrieved thereby, the petitioner filed a Review Application, being RA 62/2023, which was again dismissed by the learned Tribunal *vide* its Impugned Order dated 06.12.2023, observing as under:

“7. The applicant has sought to submit vide the present RA 62/2023 to the effect that the applicant's injury was whilst he was straightening an iron pole in the garden of his quarter as has been mentioned in the OA and that the same was not taken into consideration. Apparently, the aspect of the straightening of the iron pole in the garden of his quarter is dealt with vide observations detailed in para 4 of the order sought to be reviewed.

8. Another aspect which cannot be overlooked and is essential to be taken into consideration is that the averments in para 5 of the present RA place reliance on a Show Cause Notice dated 28.08.2018 submitted as Annexure A-2 to the application under consideration issued by the Air Officer Commanding AOC to the applicant calling upon the applicant to explain as to why necessary disciplinary action should not be initiated against him for having failed in following the instructions issued and that the said Show Cause Notice had called upon the applicant to submit the response by 29.08.2018. The said Show Cause Notice relates to the cleaning of the compound and surrounding upto 10 meters as stipulated in Chapter 11 Para 37 P II of IAP 2501. It is essential to observe that the said Show Cause Notice is dated 28.08.2018 and is already



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*observed hereinabove, the date of the incident
in the instant case is 28.08.2016.”*

8. The learned counsel for the petitioner submits that the learned Tribunal has failed to appreciate that it was a part of the duty of the officer to keep the surrounding upto 10 meters of his official residence clean. This is evident from the Show Cause Notice dated 28.08.2018 issued to the petitioner, which was placed by the petitioner before the learned Tribunal alongwith the Review Application. In the Show Cause Notice, it has been clearly stated that this part of the duty is imposed on a personnel of the Indian Air Force in terms of Chapter XI, Para 37(b)(ii) of IAP 2501. He submits that the learned Tribunal, however, has erred in not relying upon the said Show Cause Notice only on the ground that the Show Cause Notice was issued on 28.08.2018 while the injury suffered by the petitioner was in the year 2016. He submits that the Show Cause Notice was placed on record only to show that the cleaning of the compound next to the official accommodation was a part of the duty of a personnel of IAF and therefore, the injury suffered while performing this duty should be considered as attributable to service.

9. On the other hand, the learned counsel for the respondents submits that the injury suffered by the petitioner was while he was on leave and at his residence. He submits that the injury was suffered by the petitioner as he slipped while performing his own household work and therefore, cannot be said to be attributable to service.

10. We have considered the submissions made by the learned counsels for the parties.



11. It is not disputed by the respondents that the injury was suffered by the petitioner while he was straightening the iron pole in the compound of his official residence in the Air Force Station. Ordinarily, this may not be stated in course of service, however, the Show Cause Notice dated 28.08.2018 shows to the contrary. By the said Show Cause Notice, the respondents have alleged that the petitioner is expected to ensure the cleaning of the garden, compound, and surrounding upto 10 meters of the official quarter, as stipulated in Chapter XI, Para 37(b)(ii) of IAP 2501. The above Show Cause Notice clearly shows that therefore, keeping the compound clean and the consequent injury while straightening the pole, would be within the course of performance of the duty of the official, even though he was on leave and at his official residence. Any injury suffered while performing such duty, for which he was also show caused in case of non-performance, therefore, has to be held to be attributable to service.

12. We therefore, set aside the Impugned Orders dated 12.11.2018 and 19.10.2020 passed by the respondents, and also the Orders dated 25.05.2023 and 06.12.2023 passed by the learned Tribunal.

13. The respondents shall reassess the entitlement of the petitioner for the grant of disability pension taking his injury to be attributable to service, and in accordance with the law, within a period of twelve weeks from today. In case the petitioner is held entitled to the grant of disability pension, the arrears of the same shall be released to the petitioner within the period of four weeks thereafter alongwith interest at the rate of 6% p.a. In case the entitlement of the petitioner is still



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rejected by the respondents, reasons for the same shall be communicated to the petitioner, and it shall be open to the petitioner to challenge the same in accordance with the law.

14. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 23, 2025/Arya/VS

Click here to check corrigendum, if any