

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : TA 134 OF 2010 {OJC- 5620 of 1996}

THE WEDNESDAY, THE SEVENTH DAY OF MARCH, 2012

CORAM : Hon'ble Mr. Justice Sadhan Kumar Gupta, Member (Judicial)
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

Akhila Bihari Singh aged 36 years s/o Paramananda
Singh Vill/PO Nuahat Via. Banarapal at present Dist.
Angul.

..... Petitioner

-VS -

1. Union of India represented through the Secretary,
Ministry of defence (Govt. of India) New Delhi 110011
2. Controller, Defence Accounts (P) . Allahabad (U.P)
3. Officer in charge of Records, Artillery , Nasik Road,
Camp, Maharastra.
4. The Chief of Army Staff, Sena Bhawan, New Delhi..

..... Respondents.

For the applicant : Mr. Bhaskar Chandra Behera, Advocate

For the respondents : Mr. D.K.Mukherjee, Advocate
Mr. Rajib Mukherjee, Advocate

O R D E R

Per Lt. Gen. K.P.D.Samanta, Member (Administrative)

This writ petition bearing No. OJC 5620 of 1996 was initially filed before
the Hon'ble High Court of Orissa, which after the coming into force of the Armed

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Forces Tribunal Act, 2007, has stood transferred to this Bench of the Tribunal for disposal and accordingly, it has been re-numbered as TA 134 of 2010.

2. The petitioner, Shri Akhila Bihari Singh, was enrolled in the Army in ASC on 21.1.1974 and was later transferred to the Regiment of Artillery on 7.10.1975. He was discharged from service w.e.f. 28.5.1981 after rendering approximately 7 years of service. The discharge was on account of his being in low medical category under Army Rule 13 item (III)(v).

3. The petitioner did not get the service pension for not having put in the minimum pensionable service and was also denied any disability pension as adjudicated by the respondents. Being aggrieved with this decision, the petitioner initially approached the Court of Sub-Judge, Dhenkanal in 1984 through a Title Suit being TS No. 41/84. That title suit was dismissed on 23.6.92 on the ground that the civil court had no jurisdiction. Thereafter, the petitioner filed a writ petition before the Hon'ble Orissa High Court in 1993 being OJC No. 9023/92, which was disposed of on 23.9.93 with a direction that the petitioner should appeal before the concerned authority for redressal of his grievance. Accordingly, the petitioner preferred an appeal to the respondent No. 4 i.e. Chief of Army Staff with copies being endorsed to the OIC, Records, Regiment of Artillery. However, his appeal was rejected by the Govt. of India,(MOD) vide reply dt. 20.5.1996 (annexure-5). Being aggrieved, the petitioner once again approached the Hon'ble Orissa High Court through the instant writ petition, which has since been transferred to this Tribunal for disposal, as stated earlier.

4. The fact of the matter, as stated by the petitioner in his application, is regarding sustaining of injury while on annual leave. The petitioner was on annual leave from 8.1.79 to 12.3.79 for visiting his home town in dist. Angul, Orissa. While on such leave, he met with a two wheeler accident on 5.3.79 while he was travelling to the railway station. He was immediately evacuated to the Medical College Hospital at Cuttack where he was treated for fracture of his leg from 5.3.79 to 26.3.79. Soon thereafter, he was shifted to the Command Hospital, Calcutta and was treated there from 27.3.79 to 28.9.79 after which he proceeded on sick leave, as granted by the command Hospital, from 28.9.79 to 24.11.79. On completion of the sick leave, he was re-admitted in the Command Hospital, Calcutta from 24.11.79 to 10.12.79 after which he was sent back to his unit where he joined the service w.e.f. 12.1.79 and continued to serve till discharge on medical ground on 28.5.81.

5. The petitioner was placed in a permanent low medical category for "*fracture tibia fibula*" in left leg (OPTD). In 1981 prior to discharge, he was subjected to release medical board at MH, Meerut, in which he was assessed of having disability of 40% but opinion on attributability /aggravation due to military service was left vague, as revealed from the medical documents, that have been submitted by the respondents later in the court in sealed cover.

6. As stated earlier, the petitioner in response to his appeal was replied by the Govt. of India, Ministry of Defence vide their letter dt. 20.5.96 (annexure-5) that his appeal was rejected since he was on annual leave when on 5.3.79 he met with motor cycle accident. Accordingly, as opined by the Govt. (MOD), in the

ibid letter, his injury could not be considered as aggravated or attributable to military service in any manner. Therefore, his appeal for disability pension could not be granted.

7. The petitioner through this writ application has contested that the contention of the respondent authorities was not judicious and hence the impugned order, as above, should be quashed and thereafter, he be sanctioned disability pension @ 40%, as awarded by the medical board. He has also prayed for quashing of the annexure-2 dt. 25.5.83 by which he was denied disability cover under the Army Group Insurance Scheme on the ground that he was not invalidated out of service in medical category but was discharged from service.

8. The respondents have contested the writ application by filing a counter affidavit in which they have more or less admitted the factual aspect of occurrence. However, they have brought out a few additional points to substantiate their decision to deny the petitioner's claim for disability pension.

9. The respondents at the outset have submitted in the counter affidavit that the petitioner was not invalidated out but was discharged on medical ground since no sheltered appointment could be made available to him with the existing medical category. To this extent, they have further submitted vide annexure-A to the counter affidavit that the petitioner was not willing to continue in any alternative employment after he was placed in permanent low medical category of CEE w.e.f. 28.5.1980. Such unwillingness certificate dt. 18.10.80 has been appended in the ibid annexure duly signed by the petitioner. Thereafter, the Commanding Officer has also certified on the same annexure to the effect that

the petitioner could not be usefully employed in his present trade in that medical category. Therefore, he was discharged under Army Rule 13 item (III)(v) on 28.5.81. Prior to his discharge, a release medical board was carried out at MH, Meerut. The report of the two medical boards – one held in Command Hospital, Calcutta subsequent to his injury and the release medical board held at MH, Meerut prior to his discharge, were not submitted by the respondents along with their counter affidavit. These were, however, filed subsequently after direction from this Bench on 6.6.2011 and the original documents were received on 12.12.2011 and we have perused them in connection with the present case.

10. According to the respondents in their counter affidavit, the release medical board for the petitioner was held on 3.3.81 wherein his disability was assessed as 40% for a duration of two years. (*we confirmed this fact from the original medical documents*). The respondents have continued to insist that his disability was neither attributable nor aggravated due to military service, since the accident had occurred on 5.3.79 while the petitioner was on annual leave. Therefore, the petitioner was not entitled to any disability pension, as per regulation 173 of Pension Regulations, as quoted by the respondents.

11. As regards the disability cover under Army Group Insurance Scheme, the respondents in their counter affidavit have submitted that the petitioner was not entitled to such cover because he was not invalidated out of service in medical category but was discharged under Army Rule 13.

12. We have considered the arguments put forward by both the ld. advocates for the parties and also have gone through the averments made in the writ

10/12/2011

petition as well as the counter affidavits. We have also perused all the annexures as submitted by both the parties besides going through the original documents (inclusive of medical board proceedings as submitted by the respondents). Our considered view on the entire issue hinges on adjudication of the question whether the injury that resulted in petitioner being placed in low medical category, had indeed any casual connection with his military duty or otherwise. Towards this aspect, we would like to bring forward the following findings that have important bearing while applying our mind on the issues.

- a) No injury report or court of inquiry proceeding with regard to the accident sustained by the petitioner on 5.3.79 was held. In the normal course, nearest military station headquarter, in this case, Station Headquarters, Bhubaneswar, should have conducted a station court of inquiry to ascertain whether the individual was performing any activity relating to his military duty at the time of the accident on 5.3.79. We find from the original documents that Artillery Records vide their letter No. 13857879/20540/NE dt. 29.6.81 had requested the unit of the petitioner i.e. 226 Medium Regiment, that a copy of the injury report and court of inquiry proceeding were required by their office in order to adjudicate upon the disability pension claim. This was, however, not submitted by 226 Medium Regiment despite the above direction from the record office to be dealt with top priority basis. In normal course, the unit, in absence of a station court of inquiry, should have conducted a

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court of inquiry even at belated stage but no such step was taken. As regards the injury report, which should have been initiated by the first military hospital, where the individual was admitted, which in this case was the Command Hospital, Calcutta. However, from our perusal of the records, we do not find any such injury report on record. Therefore, it is evident that the authorities have adjudicated and concluded that the individual was not entitled to any disability pension, without such vital documents, which is highly improper.

- b) In the absence of such documents, we rely on the statement given by the petitioner in his first medical board when he was discharged from the Command Hospital, Calcutta and also the statement given by him while he was being subjected to release medical board at MH, Meerut. We have perused all these documents, as are available in the file produced by the respondents. We find that the petitioner was for the first time treated at the Military Hospital, Calcutta (Command Hospital, EC, Calcutta) for "*fracture tibia fibula*". The individual has clearly stated that there was no court of inquiry held but he did say that there was an injury report which was initiated by the Command Hospital (EC), Calcutta. However, the respondents have not been able to produce any injury report with regard to this case nor have they appended the same along with the original documents including the release medical board.

- c) The release medical board should have clearly given their opinion with regard to the attributability or aggravation of the injury in the absence of a court of inquiry/injury report on the subject. Strangely, we find that in the release medical board proceedings dt. 31.3.81 (as produced along with the original documents by the respondents) it is mentioned that "attributability to be decided by the CDA(P) in the absence of injury report." In the column for recommendation with regard to attributability/aggravation, the board just relied on the individual's statement. However, in para 21 of Part IV of the release medical board proceeding on form AFMS 16 dt. 31.3.81, the board has clearly mentioned that the petitioner is recommended "for disability pension". Besides the above endorsement, the petitioner in the aforesaid medical board has been awarded 40% disability valid for two years.

13. In consideration to the averments made by the respondents and also the applicant through their respective affidavits and having perused the medical board proceedings, as submitted in original by the respondents, we are of the opinion that there existed doubt in the mind of the medical board as regards the circumstances which would make the injury attributable or aggravated due to military service. Under such circumstances, in the absence of the injury report/court of inquiry proceeding, we are inclined to give benefit of doubt by analyzing the circumstances with regard to "casual connection of the injury with the duty". It is quite likely that the petitioner could have gone to the railway station

on 5.3.79 (date of accident) to make query regarding his return reservation, which was required as he was to rejoin his duty on 12.3.79 on expiry of the leave shortly. Therefore, though he was on annual leave, any movement of the individual that would have any casual connection with the task relating to his ensuing duty, cannot be considered as off duty. In any case, annual leave that he was availing, was a sanctioned leave and he was being paid his complete salary during such leave and the accident took place in his declared leave station, perhaps, while going to the railway station for making query relating to his return movement in order to join duty. Under such circumstances, if at all the court of inquiry was held, such an inquiring board would have definitely viewed these circumstances before opining with regard to attributability/aggravation on account of duty.

14. In view of the discussion made above, we are of the opinion that the injury sustained by the petitioner, which ultimately resulted in him being placed in low medical category, and eventually caused him being discharged under Army Rule 13, was on account of circumstances that had some casual connection with military duty. In that event, the accident, as a result of which the individual sustained injury in circumstances that were attributable to his military duty, the Army Group Insurance Scheme authorities should reconsider his case appropriately.

15. Ld. advocate for the petitioner has relied on certain decisions of the Hon'ble Apex Court in support of his case viz. **Lance Dafadar Joginder Singh – vs- UOI & Ors**, 1995(Supp.3) SCC 232, **Madan Singh Shekhawat –vs- UOI**,

AIR 1999 SC 3378. We have gone through these judgements of the Hon'ble Apex Court but in our opinion, these are not applicable as in the first cited case, the appellant-soldier suffered injury when he was on casual leave which is treated as 'on duty' while in the latter case, the appellant was travelling in train to proceed to his home station on casual leave at public expenses when the accident occurred. But in the instant case, the petitioner was on annual leave and the accident occurred in his home town during the leave period. The facts are, therefore, distinguishable. Be that as it may, we have come to our finding independently on the basis of records, as discussed above.

16. In the result, we allow this application on contest but without cost. The Transferred Application is disposed of by issuing the following directions :-


- i) The impugned orders at annexure-2 and 5, referred to above, be hereby quashed. The petitioner's injury be considered as "attributable to military service".
- ii) The petitioner should be awarded disability pension at the rate of 40% for a period of two years with effect from 28.5.1981.
- iii) The petitioner shall be immediately called for review medical board to re-ascertain his percentage of disability at the nearest military hospital, which in this case, would be Command Hospital, Calcutta. Continuance of his disability pension further will be subject to and regulated by as per rules depending on the percentage of disability to be

assessed by the review medical board. However, the period intervening the period from the date of expiry of initial two years till the decision of the review medical board is taken, the petitioner shall continue to receive 40% disability pension.

- iv) The percentage of disability pension shall be rounded off to 50% in terms of extant rules.
- v) Compliance of the above directions shall be made by the respondents within four months from the date of receipt of a copy of this order.
- vi) The original records be returned to the respondents after re-sealing it by the Registry. However, Id. adv. for the respondents is required to supply attested copies of the documents referred to in this Order for our record.

16. Let plain copy of this order be handed over to the Id. advocates for both the parties.


(LT. GEN. K.P.D.SAMANTA)
MEMBER(ADMINISTRATIVE)


(JUSTICE S.K.GUPTA)
MEMBER (JUDICIAL)