

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION NO 37 of 2016**

**Friday, this the 19<sup>th</sup> day of January 2018**

**“Hon’ble Mr. Justice D.P. Singh, Member (J)**  
**Hon’ble Air Marshal BBP Sinha, Member (A)”**

No 15128345Y Ex Nk (DS) Shreepal Son of Om Prakash Singh, Resident of Village-Mustfabad Daduva, Post Office-Mustfabad Duduva, Tehsil-Sikarpur, District-Bulandshahar (UP).

....Applicant

Ld. Counsel for the: **Shri Abhishek Singh**, Advocate  
 Applicant

Verses

1. Union of India Through the Secretary to the Government of India  
 Department of Ex-Servicemen Welfare, Ministry of Defence, New Delhi.

2. Chief of the Army Staff, IHQ of MOD (Army), New Delhi-110011.

3. Officer In-Charge Adjutant General Branch, IHQ of MOD (Army), Wing  
 No-3, Ground Floor, West Block-III, R.K. Puram, New Delhi.

4. P.C.D.A. (Pension) Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal**, Central  
 Respondents. Govt Counsel assisted by  
 Maj Salen Xaxa, OIC, Legal Cell.

**“Per Hon’ble Mr Justice Devi Prasad Singh, Member (J)”**

1. Present application has been preferred under Section 14 of the Armed Forces Tribunal Act, 2007 for payment of disability pension.
2. We have heard Shri Abhishek Singh, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents assisted by Maj Salen Xaxa, OIC Cell and perused the records.
3. The controversy in question is that the applicant was appointed in Indian Army on 24.04.1996. On 12.10.2011 the applicant suffered with multiple injuries with *contusion mould Lt Parietal region and depressed fracture Lt Parietal bone (b), Multiple abrasion over face, nose and toes and fracture clavicle (Lt) and fracture 1<sup>st</sup> 2<sup>nd</sup> Ribs and fracture RT Radius lower end and fracture Lt Radius*. The Medical Board placed the applicant in category S1H1A2(P)P1E1 and recommended for discharge from service.
4. According to Ld. Counsel for the applicant when the applicant was posted in 3223/322 Field Regiment, on 12.10.2011 the applicant went on out pass with permission of Officer Commanding to receive his relatives and suffered with the accidental injuries. It has not been disputed that the applicant had not gone on sanctioned leave but with the permission of Officer Commanding, locally he had gone to receive his relatives. The factum of accidental injuries has not been disputed by the respondents while filing reply in para 6 of the counter affidavit, which for convenience sake is reproduced as under:-

*“6. That in reply to the averments contained in paragraph 4.3 and 4.8 of the Original Application it is submitted the applicant was enrolled in the Regiment of Artillery on 24.04.1996. While serving with 322 Field Regiment, he was granted out pass to receive his guest on 12.10.2011. He was proceeding to ISBT Bus Stand by his Scooty to receive his guest. Suddenly two dogs came in*

front of his Scooty. In order to save them, he lost his balance, fell down and sustained the following injuries:-

- (a) Multiple injuries (RTA) with, contusion with wound IT Parietal region and depressed fracture LTA Parietal bone.
- (b) Multiple abrasion, over face nose and toes.
- (c) Fracture clavicle (LT).
- (d) Fracture I, '2<sup>nd</sup> RIBS.
- (e) Fracture RT Radius lower end.
- (f) Fracture LT Radius.

Then, he was admitted to Military Hospital, Dehradun for treatment and was placed in low medical category S1H1A3(T-24)P1E1. On subsequent re-medical categorization medical board, he was downgraded to low medical category S1H1A2P1E1 (Permanent). Meanwhile, a Court of Inquiry was ordered by Commanding Officer 322 Field Regiment to investigate the circumstances under which the applicant sustained injuries. After the detailed investigation, Commanding Officer opined as follows:-

“No 15128345Y Nk (DS) Shreepal Singh sustained the multiple injury while he went to receive his guest during out pass on 12 Oct 2011.

The injury sustained by the individual is not attributable to military service and the individual is not to be blamed as the incident happened due to unforeseen circumstances.”

The aforesaid opinion has also been upheld by the Commander 14 Artillery Brigade in Injury Report on 10.03.2012. Eventually, the applicant had submitted an application in July, 2013 to Commanding Officer requesting for premature discharge on extremely compassionate grounds. His request for discharge was considered and approved vide Artillery Records letter No 1377/PMD/JCOs/OR/32/RA-6 dated 07.02.2014 (AN) (from the Army on 01.01.2015 (FN) at his own request before fulfilling the conditions of enrolment under item III (iv) of the table annexed to Army Rule 13 (3).

At the time of discharge, the applicant was in low medical category S1H1A2P1E1 (Permanent) due to disabilities i.e. (i) “VOLAR BARTON FRACTURE RIGHT WRIST (OPTD)” id (ii) “FRACTURE DISTAL END OF RADIUS LEFT” and ID (iii) “FRACTURE LATERAL END OF CLAVICLE LEFT (OPTD)”. Therefore, prior to discharge from service, he was brought before Release Medical Board held at 150 General Hospital on 21.06.2014, to assess cause, nature and degree of disablement. The duly

*constituted Release Medical Board regarded his disabilities as under:-*

Disability	Attributability to military service	Aggravated by military service	Connected with military service	% of disablement with duration	Composite assessment for all disabilities with duration	Net assessment qualifying for disability Pension with duration
<i>Volar Barton Fracture right wrist</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>30% for Life</i>	<i>60% for Life</i>	<i>Nil for Life</i>
<i>Fracture distal end of radius</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>20% for life</i>	<i>60% for life</i>	<i>Nil for Life</i>
<i>Fracture Lateral End of Clavicle Left (Optd)</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>30% for life</i>	<i>60% for Life</i>	<i>Nil for Life</i>

*That Under the provisions of Government of India, Ministry of Defence letter No 1(2)/2002/D (Pen-C) dated 01.09.2005, as amended vide letter of even No dated 31.05.2006 and Integrated HQ, of MoD, (Army) letter No B/40122/MA (P)/AG/PS-5 dated 20.07.2006, the Competent Authority on attributability/aggravation factor aspect was carefully considered the case of the applicant and upheld the decision of the Release Medical Board. Therefore, he was not granted disability element of pension in terms of Para 173 of Pension Regulations for the Army 1961, Part-I as amended vide Para 81 of Pension Regulations for the Army 2008, Part-I. The aforesaid fact was communicated to applicant vide Artillery Records letter No 15128345Y/DP-70675/Pen-2 dated 13.06.2015 with an advice to prefer an appeal to Director PS-4, AG's Branch, IHQ of MoD (Army) within six months from the date of receipt of the letter, if he was not satisfied with the decision of the Competent Authority.*

*That aggrieved by the decision of the Competent authority, the applicant had preferred an appeal dated 22.09.2015 against rejection of his disability pension, which was processed to Appellate Committee on First Appeals (ACFA) vide Artillery Records letter No 15128345Y/Appeal-9445/Pen-2(D) dated 08.11.2015. The appeal is under consideration with the Competent Authority and the*

*outcome of the same will be intimated to the applicant on its receipt.”*

5. After the accident, a court of inquiry was held. On the basis of said report of court of inquiry the payment of disability pension was denied to the applicant. He preferred an appeal on 22.09.2015 against the rejection of disability pension to Record Office on 08.11.2015 but the same has not been decided. Under Section 22 of the Armed Forces Tribunal Act, 2007 in case an appeal has not been decided within a period of six months then an incumbent may approach the Tribunal after expiry of six months. Clause (b) of sub section (1) of Section 22 is reproduced below :-

*“(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made.”*

6. Being aggrieved with the denial of pension and keeping in view the fact that appeal was not decided within six months, the applicant has preferred the instant O.A. after expiry of statutory period permissible in law. The applicant had preferred the present O.A. in January 2016 though at the time when O.A. was filed, the appeal was pending. O.A. could have been rejected to avail the alternative remedy. Till the time the counter affidavit was filed on 22.11.2016, the statutory appeal was not decided as is evident from para 6 of the counter affidavit, that too after expiry of 14 months. The respondents have placed reliance on a case reported in AIR 1996 SC 1623 **State of Haryana vs Chandra Mani & Ors** wherein their Lordships of the Supreme Court has observed that the Government is imperial machinery and decisions are taken at slow pace. May it be, but the statutory right of a person cannot be thwarted by the Government machinery. The Tribunal has right to decide a petition

after a period of six months without awaiting the disposal of appeal, hence primary objection raised by the respondents is rejected.

7. Now question cropped up as to whether the applicant is entitled for disability pension? It is not disputed that the applicant was not on sanctioned leave but had gone on out pass with prior approval of Officer Commanding when the accident took place. Since he had gone outside the unit lines with prior permission of the Officer Commanding to receive his relative during course of duty, he shall be deemed to be on duty being far away from his home at the place of posting. Going locally with the permission of Officer Commanding followed by some accident shall not deprive an incumbent of disability pension with service element.

8. Respondents themselves have relied upon the Entitlement Rules for Casualty Pensionary Awards, 1982 and reproduced the same in para 7 of the counter affidavit which is reproduced as under:-

*“7. That the averments contained in paragraph 4.9 of the Original Application are not admitted as stated hence denied. In reply thereto, it is submitted that as per Para 12 of Entitlement Rules for Casualty Pensionary Awards, 1982, a person will deemed to be on duty in the following circumstances:-*

*“A person subject to the disciplinary code of the Armed Forces shall be treated 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 organized or permitted by service authorities and during the period in a body or singly by a prescribed or organized route.”*

Note 1.

(a) *Personnel of the Armed Forces participating in-*

(i) *Local/national/international sports tournaments as members of service teams or*

(ii) *Mountaineering expeditions/gliding organized by service authorities, with the approval of Service HQs, shall be deemed to be, on duty for the purpose of these rules.*

(b) *Personnel of Armed Forces participating in above named sports tournaments or in privately organized mountaineering expeditions of indulging in gliding as a hobby in their individual capacity, shall not be deemed to be on duty for the purpose of these Rules, even though prior permission of the competent service authorities may have been obtained by them.*

(c) *Injuries sustained by personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organized by or with the approval of, the local service authority, and death or disability arising from such injuries, will be regarded as having occurred on duty for the purpose of these Rules.*

Note 2.

*The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling and other similar institutes shall be treated a par with personnel attending other authorized professional courses or exercise for the Defence Services for the purpose of grant disability/family pension on account of disability/death sustained during the courses.*

(d) *When proceeding from his duty station to 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 organized 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, provide 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 injury 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 Army/Navy/Air Forces Act.*

*In the instant case, the applicant sustained injuries while he was on out pass on 12.10.2011. Therefore, he was not counted as on duty in terms of above mentioned regulations. As such, the disability caused due to the injuries sustained during out pass was correctly assessed as not attributable to military service by the duly constituted Release Medical Board i.e. Competent Medical Authority and Competent Authority.”*

9. Clause (f) of the Entitlement Rules, 1982 (supra) clarifies two things. First, at the time of accident a man may not be strictly on duty but it may be attributable to service and secondly, the risk factor should not be a risk common to human existence in modern conditions in India. The exception in clause (f) squarely covers the present case. The applicant had gone to receive his relatives on scooty. Unfortunately accident took place while going to Bus Stand. Going out would have been fatal in case the applicant had not obtained the permission from his Officer Commanding. He had gone outside for short period with due permission of his Officer Commanding to receive his relative. Obviously, the relatives come from outside because the members of Armed Forces stay away from their home for a longer period and if a person goes to receive them, he cannot be held to be a man not in service or duty. During course of discharging of duty for a short span of time, in case an incumbent leaves the premises with due approval of Officer Commanding for some personal work and accident occurs then he shall be deemed to be in



service and would be entitled for disability pension. In case the Officer Commanding had not granted permission to the applicant to go out of the unit lines to receive his relative, there would have been no reason for him to leave the station for Bus Stand to receive his guest. A thing done with prior permission of Officer Commanding shall not disconnect the service element and the incumbent shall be entitled for disability pension.

10. In one identical case i.e. **B.K. Tyagi vs. Union of India & Ors** decided on 04.07.2016 in O.A. No. 312 of 2013 by Armed Forces Tribunal, Regional Bench, Lucknow when the opinion of the Army was not adhered to and the disability pension was denied for the reason that the applicant had gone to take mid night meal outside the station, disability was granted by the Tribunal relying upon in the case of **Centre for Public Interest Litigation and Ors vs. Union of India & Ors**, (2012) 3 SCC 1. Observations made by the Tribunal in para 7, 8 and 9 of **B.K. Tyagi's** (supra) case is reproduced as under:-

*“7. The framers of Rule in their wisdom have considered the attributability with the condition preceded by word “due to or hastened by either or wound or injury or disease”. The use of word ‘hastened’ means not only during the course of service but in case an injury is caused and the person dies on account of Air Force Service or if the causation generated on account of Air Force Service then it shall be deemed to be aggravated by Air Force Service.*

*8. In Oxford dictionary and thesaurus Vol 3, the word ‘hasten’ or ‘hastiness’ has been defined as under:-*

*‘hasten-verb (cause to) proceed or go quickly.*

- 1. Hastiness (noun)-Abrupt, brief, brisk, fast, hurried, immediate, instantaneous, quick, rapid, short, speedy, sudden, swift.*
- 2. Careless, cursory, foolhardy, headlong, hot-headed, hurried, ill-considered, impetuous, impulsive, incautious, pell-mell, perfunctory, precipitate, rash, reckless, rushed, slapdash, summary (justice), superficial, thoughtless, unthinking.”*

*Keeping in view the aforesaid definition of word ‘hasten’ there appears to be no room for doubt that causation to go*

*outside for dinner was germane on account of discharge of duty in air force during late night by which time the MESS was closed. The word 'or' used in Rule 74 (supra) is in dis-junction and means the injuries caused were either incidental to air force service or because of air force service or disease. In the present case, the foundation of the entire episode was late night air force service compelling the deceased to go out for dinner on account of closure of MESS.*

9. *In the present case, the deceased was on duty as he had left to attend an emergency call at SMC. It is not disputed that the deceased used to take meal/dinner/lunch from the Mess of the Air Force. Admittedly, the MESS according to its own Rules, gets closed at 10.30 pm. There is no denying that the deceased had left without having dinner/meal from the MESS on account of emergency call where he discharged his duties upto 11 pm and when he came back at 11 pm, the MESS had already been closed at 10.30 pm. On account of closing of MESS, the deceased alongwith his colleagues had to leave for dinner/meal on the motor cycle. On way back after taking dinner, the deceased, who was riding the pillion, met with an accident in which he succumbed to his injuries. In the circumstances, there is no room for doubt that on account of duty conferred by the Air Force Service, the applicant could not take meal in the MESS within the prescribed time and in consequence thereof, he had no option except to go out of the Air Force Campus to have dinner. The situation and contingency compelled the deceased to go out for dinner on account of closing of Mess hours. It brooks no dispute that neither any rule nor any provision nor any circular inhibited an officer to go out for dinner in case MESS is closed particularly when such a person was busy on duty. In such situation, the sequence of events shows that the deceased suffered massive injuries and succumbed to his injuries which by all reckoning are attributable to Air Force Service."*

11. Undoubtedly, in the present case the applicant suffered injuries while he was discharging military duty outside his home. Admittedly a relative had come there to meet him, and for that purpose he had gone to receive him on his scooty with due permission of Officer Commanding.

12. At the time of discharge on account of injuries, the applicant has been found disabled to the extent of 60% i.e. 20% for each cause. Accordingly the applicant was held to be suffering from 60% composite disability. The applicant, therefore, seems to be entitled for payment of disability pension to the extent of 60% for life which will be rounded off to 75% for life in view of

settled proposition of law as held in **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. The operative portion of the aforesaid judgment is reproduced as under:-

*“4. By the present set of appeals the appellant raise the question, whether or not, an individual, has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to suffering from some disability which is attributable or aggravated by the military service, is entitled to grant the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, the basis of Circular No. 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available on to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.*

*5. we have heard learned counsel for the parties at length.*

*6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*

*7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.”*

13. In view of the above, we are of the view that the applicant is entitled for disability pension with service element and the impugned order suffers from vice and arbitrariness. In the present case, the accident thus took place while the applicant was performing military duties at a distant place when he suffered the disability in question and the disability is attributable to and aggravated by military service making the applicant entitled for disability pension with service element. The O.A. deserves to be allowed. Impugned order of denial of payment of disability pension to the applicant is liable to be set aside.

**ORDER**

14. O.A. is **allowed** accordingly. Impugned order dated 13.06.2015 is set aside with all consequential benefits. The Applicant shall be entitled for disability pension with service element to the extent of 60% for life which shall be rounded off to 75% for life from the date of discharge. Let the consequential benefits be provided to the applicant within a period of four months from today failing which the applicant shall be entitled to interest at the rate of 10% per annum.

No order as to costs.

**(Justice Devi Prasad Singh)**  
**Member (J)**

Dated: January 2018

Rathore