

A.F.R.**Court No.1**
Reserved JudgmentARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**Original Application No. 116 of 2010****Wednesday this the 29th day of March, 2017****Hon'ble Mr. Justice D. P. Singh, Member (J)****Hon'ble Lt Gen Gyan Bhushan, Member (A)**No 14802483Y Ex NK (TS) Nekasu son of Shri Mool
Chand, Resident of Village : Ranau, Post : Gathona,
District : Badaun**..... Applicant**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Directorate General Medical Services, Army Headquarters, New Delhi
3. The Officer-in-Charge, ASC Records (South), Bangalor-560007
4. Director PS-4, AG's Branch, Integrated HQ of MoD (Army), DHQ PO New Delhi-110011
5. PCDA (P), Draupadi Ghat, Allahabad (UP)-211014

..... Respondents

Ld. Counsel appeared for the Applicant	-	Shri Lal Chandra Sahu Advocate
Ld. Counsel appeared for the Respondents	-	Shri Virendra Kumar Singh Central Government Counsel

O.A. 116 of 2010 (Nekasu vs. UOI)

ORDER

“Hon’ble Lt Gen Gyan Bhushan, Member (A)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

“(a) The Hon’ble Tribunal may please to issue order or direction commanding respondents to grant 50% disability pension and disability benefits with all consequential benefits forthwith.

(b) This Hon’ble Armed Forces Tribunal may please to issue order or direction which this Hon’ble Armed Forces Tribunal may deem fit and proper under circumstances of the case.”

2. Undisputed factual matrix of the case is that the applicant was enrolled in the Army on 16.08.1989 and discharged from service with effect from 31.08.2006 (afternoon) on medical ground due to low medical category ‘CEE’ (Permanent). While in service, the applicant was granted part of annual leave for the year 2003 and on 15.03.2003 while on part of annual leave, the applicant sustained injury and was admitted in Military Hospital Bareilly on 24.03.2003 and was subsequently treated in various Military Hospitals. Prior to discharge from service, Medical Board assessed his disability as 50% for life, however, the same was considered as neither attributable to nor aggravated by Military service. The applicant’s claim for disability pension was rejected vide order dated 30.10.2006. Subsequently, his first and second appeals were also rejected vide orders dated 28.11.2007 and

21.05.2009 respectively. Aggrieved by the aforesaid impugned orders, the applicant has filed the instant Original Application.

3. Heard Shri Lal Chandra Sahu, Learned Counsel for the applicant, Shri Virendra Kumar Singh, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant was enrolled in the Army after proper medical examination and he was found fit for service in the Army. While in service, he was granted part of annual leave for the year 2003 and while on leave on 15.03.2003 the incident of dacoity took place in his house where the applicant sustained serious injuries on his hands and collar bone. The applicant lodged an First Information Report of the incident under Section 395 and 397 of the I.P.C. in the Police Station. He was admitted in Military Hospital Bareilly on 24.03.2003 for treatment and subsequently he was treated in various military hospitals. His medical category was lowered to 'CEE' (Permanent) by Military Hospital Pathankot and the applicant was discharged from service on 31.08.2006 (afternoon) on medical ground with recommendations of 50% disability pension. His claim for grant of disability pension was processed but the same was rejected by PCDA (P) Allahabad vide order dated 30.10.2006. His First and Second appeals were also rejected on 28.11.2007 and 21.05.2009 respectively on the ground that injury sustained by the applicant while on part of annual leave cannot be treated as on duty and hence under the provisions of Entitlement Rules, 1982, his

disabilities cannot be considered as attributable to military service.

5. Ld. Counsel for the applicant elaborating the definition of duty laid down in Rule 12 of the Entitlement Rules, 1982, stated that the injury sustained by the applicant should be treated as injury sustained during duty hours, since the injury was due to attack of dacoit; it was neither self inflicted nor during any undesirable activities, as such it should be considered as attributable to service. He added that the injury sustained due to attack by dacoit whether during work or non work or while on leave are on the same footing and a soldier is never off from duty.

6. In support of his case, Learned Counsel for the applicant placed reliance on two judgments, one by Hon'ble Supreme Court in the case of **Union of India & another vs. Ex Naik Surendra Pandey, reported in Mil LJ 2014 SC 12** and the other by Armed Forces Tribunal, Regional Bench, Kolkata in O.A. No.52 of 2015, **Debasish Ghosh vs. Union of India and others, decided on 14.03.2016**, and submitted that the case of the applicant was fully covered by the aforesaid judgments and as such he was entitled to grant of disability pension.

7. **Per contra**, Learned Counsel for the respondents submitted that applicant has been denied disability pension for the reason that the applicant was attacked by miscreants at home town and had sustained injuries while he was on part of annual leave as such, it could not have been treated as attributable to or aggravated by military service. The applicant's claim has been rightly rejected. As per Para 173 of the Pension Regulations, disability pension is admissible

to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or above. Rejection of the claim for disability pension has been confirmed by the first and second appellate committees, and thus, the applicant has no case and his case for disability pension has been rightly rejected as per policy.

8. We have considered the rival submissions made by Learned Counsel for the parties and perused the record. The primary conditions for grant of disability pension are mentioned under Regulation 173 of the Pension Regulations for the Army 1961 and Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982. For ready reference Regulation 173 and Rule 12 aforesaid are extracted below:

Pension Regulations for the Army 1961

Para 173. "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 or is assessed at 20% or over."

Entitlement Rules for Casualty Pensionary Awards 1982

Rule 12 "Duty : The Entitlement Rules 1982 A person subject to the disciplinary code of the Armed Forces is on duty:-

“When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him;

When moving from one place of duty to another place of duty irrespective of the mode of movement;

During the period of participation in recreation and other unit activities organized or permitted by service authorities and during the period of travelling in a body or singly by a prescribed or organized route.

Note 1: xx xx xx xx

Note 2: (d) Personnel while travelling between place of duty to leave station and vice versa to be treated on duty irrespective of whether they are in physical possession of railway warrant/concession vouchers/cash TA etc or not. An individual on authorized leave would be deemed to be entitled to travel at public expense.

The time of occurrence of injury should fall within the time an individual would normally take in reaching the leave station from duty station or vice versa using the commonly authorized mode(s) of transport. However, injury beyond this time period during the leave would not be covered.

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.”

9. In the instant case, it is undisputed that the injury was sustained by the applicant while on part of annual leave when he was attacked by dacoit in his house on 15.03.2003. The medical board has considered the disability as 50% for life and has opined that the disability is neither attributable to nor aggravated by military service, as the injury giving rise to the disability was sustained by the applicant at home while on part of annual leave and based on the said report, the disability pension claim of the applicant has been rejected.

10. We have gone through the judgments relied upon by the Learned Counsel for the applicant in the case of **Ex Naik Surendra Pandey** (supra) and **Debasish Ghosh** (supra) and find that the facts and circumstances of these cases are different from the instant case. Thus, we find that the ratio of these two judgments has no application to the facts and circumstances of the case at hand.

11. In a similar case pertaining to award of disability pension, **Union of India and Anr. vs. Talwinder Singh, (2012) 5 SCC 480**, the disability pension was claimed by the individual enrolled in the army who was on annual leave for two months, got injured during the leave by a small wooden piece "Gulli" while playing with children which seriously damaged his left eye. The Hon'ble Apex Court has observed that 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, 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. In para 9 of the judgement Hon'ble The Apex Court has held as under :

“.....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. 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.”

12. The Hon'ble Supreme Court in another identical case in **Union of India & Ors. v. Jujhar Singh, AIR 2011 SC 2598**, after reconsidering a large number of earlier judgments 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 Medical Authorities. Therein, it was held by the Hon'ble Supreme Court that :-

“8. It is clear that if a person concerned found suffering from disability attributable to or aggravated by military service, he shall be granted disability pension. The other condition is that the disability is to be examined/assessed by Service Medical Authorities and based upon their opinion a decision has to be taken by the authority concerned. The respondent should satisfy the conditions specified in the Regulation. In this case, it is the definite stand of the authorities that disability has neither occurred in the course of employment nor attributable to or aggravated by military service. We have already pointed out and it is not in dispute that the respondent was on annual leave when he met with a scooter accident as a pillion rider and sustained injuries on 26.03.1987 at his native place. He was not on military duty at the time of the accident in terms of Para 12 (d) of Entitlement Rules, 1982 as clarified vide Government of India, Ministry referred letter No.1(1)/81(PEN)C/Vol. II dated 27.10.1998.

In view of the same, the injuries sustained cannot be held to be attributable to the military service.”

13. A case of similar nature, **Civil Appeal No.6583 of 2015**, decided on 26.08.2015, **Union of India and others vs. No.3989606P Ex-Nk Vijay Kumar**, came up before Hon'ble The Apex Court against an order dated 13.07.2011 in Original Application No.248 of 2011 and the order dated 31.10.2012 in M.A.Nos.795 & 796 of 2012 passed by the

Armed Forces Tribunal, Regional Bench, Chandigarh, wherein the respondent Vijay Kumar had sustained injury while he was at home on annual leave. The Tribunal had allowed O.A. holding that the individual was entitled to grant of disability pension, Hon'ble The Apex Court after considering many of its own judgments, referred to herein above, allowed the appeal and summed up as under:

“In the light of the above discussion, it is clear that the injury suffered by the respondent has no causal connection with the military service. The tribunal failed to appreciate that the accident resulting in injury to the respondent was not even remotely connected to his military duty and it falls in the domain of an entirely private act and therefore the impugned orders cannot be sustained”

14. In view of the above, we have noted that in the instant case, the applicant had sustained injury while on part of annual leave and the injury sustained had no causal connection with military duty. The medical board had assessed the disability as neither attributable to nor aggravated by military service. We find that this case is squarely covered by the ratio of the judgments of Hon'ble The Apex Court in the case of **Talwinder Singh** (supra), **Jujhar Singh** (supra) and **Ex Nk Vijay Kumar** (supra), as such we are of the considered view that the applicant is not entitled for disability pension and the Original Application is liable to be dismissed.

15. In view of rules, regulations and case laws discussed herein above, the Original Application No. 116 of 2010 is hereby dismissed.

16. However, keeping in view his physical condition, the respondents may consider grant of suitable financial assistance from Welfare Fund.

17. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : March, 2017

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