

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

**Original Application No. 57 of 2019**

Tuesday, this the 08<sup>th</sup> day of December 2020

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ex Nk (TS) Subhash Singh S/O Shri Ranjit Singh, R/O Village and Post-Ugarpur Sultanpatti, District-Farrukhabad (UP).

**..... Applicant**

Learned Counsel for the Applicant : **Shri Bachchan Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of defence, South Block, DHQ, PO, New Delhi-110011.
2. Dte Gen of Arty (Arty-10), General Staff Branch, IHQ of MoD (Army), PIN-908705, C/O 56 APO.
3. Officer-in-Charge, Artillery Records, PIN-908802, C/O 56 APO.
4. PCDA (Pensions), Draupadi Ghat, Allahabad-211014.

**..... Respondents**

Learned counsel for the : **Shri Asheesh Agnihotri**  
Respondents Central Govt Counsel.

**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (i) *This Hon'ble Tribunal may graciously be pleased to reject the decision and order of respondent No. 4 (PCDA) (P) dated 12 Nov 1999 rejecting the disability pension of the applicant consequently rejecting the order of the Appellate Authority i.e. Defence Minister's Appellate Committee on Pension which had rejected the claim of disability pension of the applicant dated 01 May 2001 followed by the intimation of respondent No. 3 (Arty Records) dated 04 Jul 2001 after summoning the letter mentioned in Annexure No A-1.*
- (ii) *This Hon'ble Tribunal may further graciously be pleased to order and direct the respondents to pay the disability pension @ 20% with the benefit of rounding off @ 50% for life from the date of discharge i.e. 31.03.1999 alongwith interest @ 12% p.a. on the arrears of amount due till the date of actual and final payment.*
- (iii) *Compensation of Rs five lakhs for physical harassment, mental agony and financial loss due to non-payment of disability pension for all these years, may kindly be awarded to the applicant and against the respondents.*
- (iv) *Cost of this application Rs 50,000/- may graciously be awarded against the respondents to be paid to applicant.*
- (v) *Any other beneficial relief which this Hon'ble Tribunal may consider fit, just and proper may kindly also be awarded to the applicant and against the respondents.*

2. The applicant is in receipt of service pension. Succinctly stated, the facts germane for deciding the present application are that applicant was enrolled in the army on 18.03.1982 and was discharged from service w.e.f. 31.03.1999 on fulfilling the terms of engagement in low medical category in terms of Rule 13 (3) III (i) of Army Rules, 1954. The Release Medical Board (RMB) held on 17.03.1999 at the time of discharge at Military Hospital (MH) Devlali assessed his disability '**Compression Fracture LV-1, N-806 E-881**' @ 20% for five years and considered it to be neither attributable to nor aggravated by military service (NANA).

Disability pension claim preferred by applicant was rejected by PCDA (P) Allahabad vide order dated 12.11.1999. His first appeal was also rejected vide order dated 31.05.2001. Feeling aggrieved, applicant has preferred the instant O.A.

3. Learned Counsel for the applicant submitted that in the year 1995, applicant, while on casual leave, slipped down from staircase of his house and sustained severe injury on 26.05.1995. He was hospitalized in MH, Fatehgarh for the period 26.05.1995 to 28.05.1995 and thereafter was referred to MH, Lucknow where he remained admitted for a prolonged period from 28.05.1995 to 13.07.1995 and was downgraded to medical category 'B' (permanent). Release Medical Board (RMB) conducted on applicant assessed his disability @ 20% for five years neither attributable to nor aggravated by military service (NANA). His further submission is that disability claim was submitted but the respondents denied the same as his disability was decided as neither attributable to nor aggravated by military service. Learned Counsel for the applicant further submitted that at the time of enrolment in the army there was no note in his primary service documents with regard to any disease and applicant was found fit in all respects at the time of enrolment. Therefore, whatever the disease with which applicant suffered during service is attributable to military service. Learned Counsel for the applicant drew our attention to Entitlement Rules for Casualty Pensionary Awards, 1982 which provides that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his subsequently being discharged from service on medical grounds, any deterioration in his health which took place is entirely due to

military service. Argument of learned counsel for the applicant is that since a person is deemed to be on duty during leave, therefore, injury sustained by him during the period of leave has to be treated to be attributable to military service. During course of arguments, learned counsel for the applicant further submitted that there are many judgments on the subject that armed forces personnel while on casual leave, is to be treated on duty and in the event of being suffered with disability will be granted disability pension. Thus, in view of these he has pleaded for grant of disability element to the applicant.

4. Per contra, on behalf of the respondents, it has been vehemently argued that Hon'ble the Apex Court in the case of ***Union of India & ors vs. Ex Naik Vijay Kumar***, in Civil Appeal No. 6583 of 2015 (arising out of CAD No. 13923 of 2014), decided on 26.08.2015 has observed that there should be some nexus between the military duty and the incident resulting in the injury to a person subject to Military Act; if there is no causal connection between the military duty and the accident which resulted into injury, the injury sustained cannot be treated to be result of army duty. Learned Counsel for the respondents submitted that in para 4.4 of the Original Application, it has been accepted by applicant that during casual leave on 25.05.1995, he slipped down from staircase of his house resulting into serious injury. Since applicant got injury during casual leave and the injury has got no causal connection with military service, the Release Medical Board considered the disability as neither attributable to nor aggravated by military service (NANA). His disability claim was submitted to the competent authorities, but the same was denied as the

invalidating disease is not covered under Rule 9 of the Entitlement Rules -2008 being not attributable to military service.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. The moot question which arises for our consideration is, whether a person who is on casual leave, if he sustains injury while doing personal work, the injury sustained can be treated to be attributable to or aggravated by army service? Admittedly, in the instant case, the applicant while at his home during continuance of his casual leave had with an accident i.e. slipped down from staircase. A large number of judgments have been pronounced by various Courts vide which it has been made clear that the cause of injury suffered by military personnel should bear a causal connection with military service. Whether injury was suffered during annual leave or casual leave or at the place of posting or during working hours is not relevant because attributability to military service is a factor which is required to be established in all such cases.

7. Hon'ble High Court of judicature at Allahabad in the case of ***Madan Singh Shekhawat vs Union of India & Ors***, AIR 1999 SC 3378 lays down that an army personnel will be deemed to be on duty when he is on any type of authorized leave, during travelling to or from home or from place of posting, but there should be some nexus between leave and military duty. In the facts of the aforesaid case, the applicant was travelling for getting his return reservation to join duty when he met with an accident, therefore, it was held that the injury sustained was attributable to army service. However, in the present case, applicant though while availing casual leave slipped down from stair case and sustained severe

injury, but there was no causal connection, even remotely, between the injury and military duty.

8. Hon'ble Apex Court in the case of ***Union of India & Ors vs. Ex Naik Vijay Kumar***, in Civil Appeal No. 6583 of 2015 (arising out of CAD No. 13923 of 2014), decided on 26.08.2015, has observed that there should be some nexus between the military duty and the incident, resulting in injury to a person subject to Military Act, if there is no causal connection between the military duty and the accident which resulted into injury, the injury sustained cannot be treated to be result of army duty.

9. In the Full Bench decision of Hon'ble Delhi High Court in the case of ***Ex Nk Dilbag Singh vs Union of India & Ors***, delivered on 22.08.2008 in Writ Petition No. (C) 6959 of 2004 and connected matters, their Lordships observed in para-19, 23 and 24 as under:-

*"19. For similar reasons we are unable to subscribe to the views in Ex. Sepoy Hayat Mohammed -vs- Union of India, 138(2007) DLT 539(DB) to the effect that the petitioner was eligible for the grant of Disability Pension owing to the fact that while on casual leave in his home he suffered several injuries owing to a steel girder and roof slabs falling on him. One of the reasons which appear to have persuaded the same Division Bench was that persons on annual leave are subject to the Army Act and can be recalled at any time as leave is at the discretion of the Authorities concerned. A rule of this nature is necessary to cover the eruption of insurgencies or the breakout of a war. They neither envisage nor attempt to deal with liability to pay Disability Pension. It is impermissible to extrapolate a rule catering for a particular situation to altogether different circumstances.*

*23. We have also perused the detailed Judgment of the Division Bench of this Court in Shri Bhagwan wherein Jarnail Singh also came to be discussed. The Bench observed that - "An individual may be "on duty" for all practical*

*purposes such as receipt of wages etc. but that does not mean that he is "on duty" for the purpose of claiming disability pension under the 1982 Entitlement Rules. .... A person to be on duty is required, under the 1982 Entitlement Rules, to be performing a task, the failure to do which would constitute an offence triable under the disciplinary code applicable to him. A person operating a wheat thresher while on casual leave cannot, by any stretch of imagination, be said to be performing an official duty or a task the failure to perform which would lead to disciplinary action". We respectfully affirm these views of the Division Bench.*

*24. To sum up our analysis, the foremost feature, consistently highlighted by the Hon"ble Supreme Court, is that it requires to be established that the injury or fatality suffered by the concerned military personnel bears a causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the concerned personnel was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the causal connection which alone is relevant. Fourthly, since travel to and fro the place of posting may not appear to everyone as an incident of military service, a specific provision has been incorporated in the Pension Regulations to bring such travel within the entitlement for Disability Pension if an injury is sustained in this duration. Fifthly, the Hon"ble Supreme Court has simply given effect to this Rule and has not laid down in any decision that each and every injury sustained while availing of casual leave would entitle the victim to claim Disability Pension. Sixthly, provisions treating casual leave as on duty would be relevant for deciding questions pertaining to pay or to the right of the Authorities to curtail or cancel the leave. Such like provisions have been adverted to by the Supreme Court only to buttress their conclusion that travel to and fro the place of posting is an incident of military service. Lastly, injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death has occurred at the place of posting or during working hours. This is because attributability to military service is a factor which is required to be established."*

10. The aforesaid view expressed by the Full Bench of Hon'ble Delhi High Court was considered by the Hon'ble Supreme Court in the case of ***Union of India & Ors vs. Jujhar Singh***, reported in (2011) 7 SCC 735. The Hon'ble Supreme Court has also considered the case of ***Regional Director, E.S.I. Corporation & Anr vs. Francis De Costa and another***, (1996) 6 SCC 1. Though the case of ***Francis De Costa*** (supra) was not a case relating to army, but the question involved in that case was whether the injury sustained by respondent in the said case amounted to "employment injury" within the meaning of Employees' State Insurance Act, 1948 and he is entitled to claim disablement benefit. This question was replied by the Hon'ble Apex Court in negative. The Hon'ble Apex Court observed as under:-

*"A road accident may happen anywhere at any time. But such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something incidental to his employment."*

11. In the case of ***Jujhar Singh*** (supra) the Hon'ble Apex Court has concluded in Para 23 as under:-

*"23. As rightly pointed by the counsel for the Union of India, the High Court failed to appreciate that even though the respondent sustained injuries while he was on annual leave in 1987, he was kept in service till superannuation and he was superannuated from service w.e.f. 01.07.1998. It is relevant to point out that he was also granted full normal pension as admissible under the Regulations. In the case on hand, inasmuch as the injury which had no connection with the military service even though suffered during annual leave cannot be termed as attributable to or aggravated by military service. The member of the Armed Forces who is claiming disability pension must be able to show a normal 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 member of such forces. Inasmuch as the respondent sustained disability when he was on annual leave*



*that too at his home town in a road accident, the conclusion of the learned Single Judge that he is entitled to disability pension under Regulation 179 is not based on any material whatsoever. Unfortunately, the Division Bench, without assigning any reason, by way of a cryptic order, confirmed the order of the learned Single Judge."*

12. The view expressed by the Full Bench of the Hon'ble Delhi High Court, approved by the Hon'ble Apex Court, clearly establishes that the requirement of law is that it has to be established that the cause of injury suffered by the military personnel bears a causal connection with military service. Whether injury was suffered during annual leave or casual leave or at the place of posting or during working hours is not relevant because attributability to military service is a factor which is required to be established in all such cases. A careful study of observations made in the case of **Ex Nk Dilbagh Singh vs Union of India**, 2008 (106) Delhi Reported Judgments 865 shows that it considered the word "duty" as given in Appendix II of Regulation 423 of Medical Services of Armed Forces Regulations, 1983 defining the attributability to service.

13. The Hon'ble Apex Court in **Union of India & Ors vs. Baljit Singh**, reported in (1996) 11 SCC 315 their Lordships observed that in each case where a disability pension is sought for and made a claim, it must be affirmatively established as a fact as to whether the injury sustained was due to military service or was aggravated by military service.

14. The consequence of the principle of law laid down by the Hon'ble Full Bench in the case of **Ex Nk Dilbag Singh** (supra) is that there should be a causal connection between the commission or omission of the act of the army personnel with discharge of his military duty which is sine qua non for the claim of disability

pension. This principle of law laid down in the case of **Ex Nk Dilbag Singh** (Supra) was nodded with approval by the Hon'ble Apex Court in the case of **Jujhar Singh** (Supra).

15. It may be noticed that in the case of **Union of India and Another vs Talwinder Singh**, (2012) 5 SCC 480, the Hon'ble Apex Court has also considered the same point for grant of disability pension for injury sustained while on annual leave. The Apex Court in Paras 11, 12 and 14 of the judgment has held as follows:-

*"11. This Court recently decided an identical case in **Union of India & Ors. v. Jujhar Singh**, AIR 2011 SC 2598, and after reconsidering a large number of earlier judgments including **Secretary, Ministry of Defence & Ors. v. A.V. Damodaran** (dead) through L.Rs. & Ors., (2009) 9 SCC 140; **Baljit Singh** (supra); **Regional Director, ESI Corporation & Anr. v. Francis De Costa & Anr.**, AIR 1997 SC 432, 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 Service Medical Authorities. 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 specialized 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.*

*"12. 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. This view stands fully fortified by the*

*earlier judgment of this Court in **Ministry of Defence vs. Ajit Singh.**"*

*14. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service. In the instant case, as the injury suffered by the respondent could not be attributable to or aggravated by the military service he is not entitled for disability pension."*

16. Hon'ble Apex Court in the case of **Sukhwant Singh vs Union of India & Ors**, (2012) 12 SCC 228 has again considered this point and held in para 6 as under:-

*"6. In our view, the Tribunal has rightly summed up the legal position on the issue of entitlement of disability pension resulting from any injuries, etc. and it has correctly held that in both cases there was no causal connection between the injuries suffered by the appellants and their service in the military and their cases were, therefore, clearly not covered by Regulation 173 of the Regulations. The view taken by the Tribunal is also supported by a recent decision of this Court in Union of India vs Jujhar Singh."*

17. Thus, Hon'ble Apex Court has confirmed the view taken by the Hon'ble High Court and the Armed Forces Tribunal. By the said judgment, Hon'ble Apex Court has decided two Appeals through a common judgment. First Appeal was of **Sukhwant Singh vs. Union of India & Ors**, (Civil Appeal No. 1987/2011 and the other was **Jagtar Singh vs. Union of India & Ors** (Civil Appeal No. 1988 of 2011.

18. Facts of Civil Appeal No. 1987 of 2011, as they appear from the judgment of Hon'ble Apex Court, were as under:-

*"Appellant Sukhwant Singh, enrolled in the Army, while he was on nine day's casual leave, sustained an injury in a scooter accident that rendered him unsuitable for any further military service. Therefore, he was discharged from service and his claim for the disability pension*

*was rejected by the authorities concerned on the ground that the injury sustained by the appellant was not attributable to military service as stipulated in Regulation 173 of the Army Pension Regulations, 1961."*

19. Facts of Civil Appeal No. 1988 of 2011, as noticed by the Hon'ble Apex Court in aforesaid Civil Appeal, were as under:-

*"Appellant Jagtar Singh was on two months' annual leave. He met with an accident in which his brother died and he himself received serious injuries that led to the amputation of his left leg above the knee. In his petition appellant did not disclose the circumstances in which the accident took place."*

20. In the above mentioned factual background the Tribunal rejected the claim of the army personnel for grant of disability pension for the reasons mentioned in detail in its judgment. The reasons given by the Tribunal were considered by the Hon'ble Apex Court in its judgment and the same were confirmed. We feel it pertinent to mention that facts of above mentioned both the cases were absolutely similar to the present case before us.

21. To consider as to what acts are covered by the term 'duty' we may like to make reference to Entitlement Rules Appendix II of Clause 12 which defines the word duty, which for convenience sake may be reproduced as under:

*"DUTY: 12. A person subject to the disciplinary code of the Armed Forces is 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 organised or permitted by Service Authorities and during the period of travelling in a body or singly by a prescribed or organised route.*

**Note:1**

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

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

(ii) *Mountaineering expeditions / gliding organised by service authorities, with the approval of Service Hqrs. will be deemed to be "on duty" for purposes of these rules.*

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

(c) *Injuries sustained by the personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, or disability arising from such injuries, will continue to be regarded as having occurred while „on duty“ for purposes of these rules.*

**Note: 2**

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

(d) *When proceeding from 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, 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. Thus for instance, where a person is killed or injured 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 the Army/Navy/Air Force Act.”*

22. The co-ordinate Bench of the Armed Forces Tribunal, Regional Bench, Chandigarh in the case of **Baldev Singh vs Union of India**, O.A. No. 3690 of 2013 decided on 02.03.2016 has considered this question in great detail. It would be fruitful to reproduce para-21 of aforesaid judgment as follows:-

*“21. Recently, the Apex Court in Civil Appeal No.6583 of 2015 Union of India & others Versus Ex Naik Vijay Kumar, vide its judgment dated 26th August, 2015 has held that if the injury suffered or death caused to an individual, has no causal connection with the military service, it cannot be said that the said disability or death is attributable to military service. In the said judgment, the apex court has considered para 12 of the judgment given in another case Union of India and Another Vs. Talwinder Singh (2012) 5 SCC 480 which is reproduced as below :*

*“12. 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 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. This view stands fully fortified by the earlier judgment of this court in Ministry of Defence V. Ajit Singh, (2009) 7 SCC 328.*

23. We are in full agreement with the views expressed by the Co-ordinate Bench of Armed Forces Tribunal, Chandigarh in the case of

**Baldev Singh** (supra), which finds full support from several pronouncements of the Hon'ble Apex Court judgments, and keeping in view the principle of law laid down in that case, we find that learned counsel for the applicant has not been able to make out a case in the present O.A. that the applicant's injury due to accident during casual leave has any causal connection with army duty.

24. O.A. has no merits, deserves to be dismissed and is accordingly **dismissed**.

25. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated : December, 2020  
rathore