

**RESERVED**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO 1

**O.A. No. 302 of 2013****Thursday, this the 10<sup>th</sup> day of Dec, 2015****“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member  
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**

No. 13964257 H Parmatma Singh Ex Sep (N/A) aged 49 years son of late Shri Shambhu Singh resident of Vilalge Sadhpur, Maharpur Ghazipur.....**Applicant**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), DHQ PO New Delhi-110011.
3. Officer Incharge, Records, Records, A.M.C
4. PCDA (P) Draupadi Ghat, Allahabad

**...Respondents****Ld. Counsel appeared for the Applicant****- Shri V.A.Singh,  
Advocate****Ld. Counsel appeared for the Respondents****- Shri Dileep Singh,  
Addl Central Govt  
Standing Counsel**

**ORDER**

**“Per Hon’ble Virendra Kumar Dixit, Judicial Member”**

1. Present 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 following reliefs-

**“(i) To direct the respondents to quash/set aside the rejection of Appeal for disability Pension.**

**(ii) To issue/pass an order to the respondents to grant Applicant Disability Pension from his date of invalidation with interest.**

**(iii) To direct the respondents to pay all consequential benefits till date.**

**(iv) To pass orders which their Lordships may deem fit and proper in the existing facts and circumstances of the case.**

**(v) To allow this application with costs.”**

2. The admitted and undisputed facts of the case are that the Applicant was enrolled in the Indian Army on 23.08.1985 and was discharged from service on 09.01.1994 under 13 (3) III (iii) of Army Rule 1954 on account of disability described “AMPUTATION ABOVE ELBOW (RT) FRACTURE (LT) ANGLE OF MANDIBLE”. His disability was quantified at 80% for two years by the Invaliding Medical Board held at Base Hospital Lucknow on 30.11.1993. The claim for disability pension was initially rejected by the PCDA (P) Allahabad vide letter dated 02.04.1996. The appeal against the order of PCDA (P) was preferred by the Applicant allegedly after efflux of 9-10 years i.e on 10.05.2005. The said appeal was returned un-acted upon on the ground of being time barred vide letter dated 23.03.2006. The applicant again submitted a petition dated 22.08.2010 to IHQ of MoD (Army)/AG/PS-4 through AMC records which was replied to, intimating

that the disability of the Applicant was considered to be neither attributable to nor aggravated by the Military service and as such, he was not entitled to grant of disability pension.

3. The Learned Counsel for the Applicant has submitted that the only ground on which the claim for disability pension was rejected by the PCDA (P) was that his disability was found neither attributable to nor aggravated by the Military Service. In connection with the above, the Learned Counsel has submitted that while posted at MH Agra, the Applicant was granted 10 days Casual leave commencing from 8<sup>th</sup> March to 17<sup>th</sup> March 1993 with prefix Sunday the 7<sup>th</sup> March 1993. He further submitted that OC Unit as per usual practice permitted the Applicant alongwith other persons going on leave to leave the Unit on Saturday the 06<sup>th</sup> March 1993 in the afternoon. On way to Railway station, the Jeep in which he was travelling was hit by a speeding truck, resulting in injuries to all the passengers. He further submitted that the Applicant on account of accident fell unconscious and was rushed to MH Agra from where he was shifted to Base Hospital Delhi Cantt on 10<sup>th</sup> March 1993. It was at Delhi hospital that his right hand was amputated above elbow. It is further submitted that the Invaliding Medical Board was held on 09.01.1994 with a promise of granting him disability pension and suitable civil re-employment in the Army. The Learned Counsel has also submitted that since the Applicant had been sanctioned casual leave for 10 days w.e.f 8.03.1993 to 17.03.1993 prefixing Sunday i.e. 07.03.1993 and that he was permitted by the OC Unit to leave on Saturday 6<sup>th</sup> March 1993 in the afternoon as per usual practice and since he was proceeding to Railway Station by a private Jeep to catch a home bound train, he would be deemed to be on duty. It is submitted that the Applicant was still on duty when he had

proceeded from his Unit to catch a train, further submitting that in order to reach the Railway Station, he had boarded the private Jeep from Agra. The precise submission is that since the leave granted to the Applicant was to commence from 08.03.1993, the Applicant was on duty at the time when he met with accident by virtue of permission granted to him by the OC Unit to proceed from the Unit.

4. **Per contra**, Learned Counsel appearing for the Respondents repudiated the submissions contending that the disabilities of the Applicant were opined to be not connected with Military Service. He has further submitted that the disability of the Applicant was opined to be neither attributable to nor aggravated by the Military service and hence his claim for disability pension was rightly rejected by the PCDA (P). To prop up his submission, he put forth the submission that on the fateful day, the Applicant while he was on way to Railway Station in a private Jeep on 6<sup>th</sup> March 1993, sustained traumatic amputation BE (R) and fracture humerous (RT) and fracture angle of mandible in the accident. He was given first aid at Firozabad and then was rushed to Agra and was treated at Military Hospital at Agra and thereafter he was shifted to AH Delhi Cantt 10<sup>th</sup> March 1993 where above elbow, amputation (R) was done, interdeutal wiring was done for fracture mandible. He was then transferred to MH Agra for provision of prosthesis and disposal. He further contended that the disability claim of the Applicant was submitted to PCDA (P) Allahabad by the Army Medical Corps Record office vide letter dated 18.04.1994 which was returned by the PCDA (P) with certain queries vide letter dated 18.04.1994 and letter dated 16.06.1994. The queries were replied to by letter dated 10.09.1995 (Annexure CR-4) enclosing therewith the injury report as well as proceedings of Court of Inquiry. Taking into

reckoning the injury report as well as the proceedings of Court of Inquiry, the PCDA (P) rejected the claim of disability pension on the ground that his disability was not connected with Military service which was duly communicated to the Applicant with the advice to file appeal against the decision of the PCDA (P). The learned Counsel further contended that Rule 173 of Pension Regulations for the Army 1961 (Part I) stipulates that "*unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over*". In the instant case, it is contended, the Invaliding Medical Board was held at Base Hospital Lucknow on 30.11.1993 and his disability was assessed at 80% for two years. By this reckoning, it is then contended, the Applicant was not entitled to grant of disability pension. He also contended that the total service rendered by the Applicant was 08 years, 04 months and 17 days which falls short of qualifying service as envisaged under Rule 13 (3) III (iii) of Army Rule 1954 for grant of disability i.e. "AMPUTATION ABOVE ELBOW (RT) FRACTURE (LT) ANGLE OF MANDIBLE".

5. We have given our anxious considerations to the rival submissions as aforesaid. We have also been taken through the relevant papers pertaining to the case.

6. In connection with the submission, we feel called to refer to Regulation 173 of the Pension Regulations for the Army 1961 which encapsulates primary conditions for grant of disability pension.

(a) **Pension Regulation for the Army 1961 (Part I)**

**Para 173.** "*Unless otherwise specifically provided a disability pension consisting of service element and*

*disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by Military service in non-battle casualty and is assessed at 20 percent or over."*

7. We also feel called to refer to Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982 wherein it is enumerated that a person of the Armed Forces is treated on duty while performing anyone of the functions mentioned in paragraph (a), (b) and (c) of the Pension Regulations.

**"Rule 12: Duty:- The Entitlement Rules 1982**

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 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: x x x x x x x x x

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.

(e) 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.

(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."

8. It would appear that in terms of Rule 12 of The Entitlement Rules 1982, the disability sustained during the course of an accident, which occurs when the personnel of the Armed Forces is not strictly on duty may also be attributable to service on fulfilling certain conditions enumerated therein, but there has to be a reasonable causal connection between the injuries resulting in disability and the military service

9. The Learned Counsel for the Applicant referred to Rule 10 of the Leave Rules for the Services. Rule 10 of the said rules reads as under:

“Casual leave counts as duty except as provided for in Rule 11 (a).”

10. As per this rule when army personnel is on casual leave, same is counted as duty unless he comes under any one of the exceptions under Rule 11 (a) of the rules.

11. It is not the case of the Respondents that the Petitioner comes under any such exceptions.

12. Our attention has been drawn to decision of Hon'ble The Apex Court in **Madan Singh Shekhawat vs Union of India & Ors reported in (1999) AIR (SCW) 3342**. The Apex Court referred to Rule 48 of the Defence Service Regulations. Being relevant it is quoted below:

“Disability Pension when admissible-

“(c) a person is also deemed to be on duty during the period of participation, organized or permitted by Service Authorities and of travelling in a body or singly under organized arrangements. A person is also considered to be on duty when proceeding to his leave station or returning to duty from his leave station at public expenses.”

Dealing with Rule 48 in para 7, Hon'ble The Apex Court observed that *"this rule is a deeming provision which provides for situations under which a person on duty, if he suffers disability, is entitled to the grant of disability pension. The last part of this sub-rule provides that a person incurring disability when proceeding to his leave station or returning to duty from his leave station at public expense is also entitled to the grant of disability pension"*. Dwelling on expression "public expenses", Hon'ble The Apex Court in para 12 of the said decision observed that *"applying the above rule, we are of the opinion that the rule makers did not intend to deprive the army personnel of the benefit of the disability pension solely on the ground that the cost of journey was not borne by the public exchequer. If the journey was authorized, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself"*.

13. In the instant case, it would appear from a perusal of the averments made in the counter affidavit that on the fateful day the Applicant while proceeding on casual leave, left his Unit in the afternoon of 6<sup>th</sup> March 1993 sustained traumatic amputation BE (R) and fracture humerus (RT) and fracture angle of mandible in a jeep accident. He was given first aid at Firozabad and then treated at Military Hospital Agra and AH Delhi Cantt where above elbow amputation (R) was done interdeental wiring was done for fracture mandible. He was then transferred to MH Agra for provision of prosthesis and disposal. He further contended that the disability claim of the Applicant was submitted to PCDA (P) Allahabad by Army Medical Corps Record office vide letter dated 18.04.1994, which was returned by the PCDA (P) with certain queries vide letter dated 18.04.1994 and letter dated 16.06.1994. The queries were replied to by letter dated

10.09.1995 (Annexure CR-4) enclosing therewith the injury report as well as proceedings of Court of Inquiry. Taking into reckoning the injury report as well as proceedings of Court of Inquiry, the PCDA (P) rejected the claim of disability pension which was duly communicated to the Applicant with the advice to file appeal against the decision of the PCDA (P). In the instant case, the crux of the contentions is that the Invaliding Medical Board was held at Base Hospital Lucknow on 30.11.1993 and his disability was assessed at 80% for two years. By this reckoning, it is then contended that the Applicant is not entitled for disability pension. He also contended that the total service rendered by the Applicant was 08 years, 04 months and 17 days of qualifying service which falls short of qualifying service as envisaged under Rule 13 (3) III (iii) of Army Rule 1954 for grant of disability "AMPUTATION ABOVE ELBOW (RT) FRACTURE (LT) ANGLE OF MANDIBLE". It is not disputed that the Applicant had been sanctioned 10 days' casual leave with prefixes and suffixes for his visit to his home town and that he was duly permitted to proceed from his Unit on 6<sup>th</sup> March 1993 by the OC Unit. Categorical averment has been made in Para 4.6 of the Original Application that the Applicant was permitted to leave the Unit by the OC Unit in the afternoon of 6<sup>th</sup> March 1993. The aforesaid averment has been duly replied to in para 15 of the Counter Affidavit. From a close scrutiny of the averments made in para 15 of the counter affidavit, the deponent of the Counter Affidavit did not repudiate this averment. By this reckoning, it is nobody's case that the Applicant had left the Unit un-authorisedly.

14. From a scrutiny of the record it would transpire that the Medical Board in its report dated 30.11.1993 had opined the disablement to 80% for two years. It is worthy of notice here that no opinion was

articulated about its being connected with Military service ostensibly for want of injury report. It was in the Court of Enquiry held on 02.05.1996 that it was opined that the disability of the Applicant was neither attributable to nor aggravated by Military service.

15. Learned Counsel for the Applicant has submitted that it is settled principle of law that a soldier on leave, be it casual leave or annual leave, is subject to the Army Act and can be recalled at any time as the leave is at the discretion of the authorities concerned. The impugned order, it is submitted, is ultra vires, arbitrary, unjust and illegal and violates Article 14, 16 ad 21 of the Constitution of India. He pleaded that a person on casual leave is deemed to be on duty and there must be an apparent nexus between the normal living of a person subject to military law while on leave and the injuries suffered by him. Thus non-grant of disability pension merely because the applicant had proceeded from the Unit to avail of casual leave is illegal arbitrary and made with non-application of mind without regard being had to the fact that the leave was to commence from 8<sup>th</sup> March 1993 with prefix Sunday 7<sup>th</sup> March 1993 and that he had left the Unit with prior permission of the OC Unit on 6<sup>th</sup> March 1993 and further that the Applicant was on way to Railway Station to catch his home bound train, when the Jeep in which he was travelling, collided headlong with a speeding truck which resulted in injury and consequent loss of right hand due to amputation.

16. Be that as it may, in the instant case, the facts filtered from the rival submissions are that the leave sanctioned to the Applicant was to commence from 8<sup>th</sup> March 1993 with prefix Sunday the 7<sup>th</sup> March 1993. He was duly permitted by the OC Unit to proceed from the Unit on Saturday the 6<sup>th</sup> March 1993 in the afternoon. The Applicant, it

would appear from the record, was a native of Ghazipur and he was to catch a train from the Railway Station for his home. In order to reach the Railway Station, he had boarded on a private Jeep alongwith other army personnel who had also been sanctioned leave and were to catch train from the Railway Station alongwith the Applicant. On way to Railway Station, the aforesaid Jeep was hit by a speeding truck and turned turtle. The submission of the Learned Counsel for the Applicant that since the casual leave was to commence on 8<sup>th</sup> March 1993, and that since he had been permitted to proceed from his Unit on Saturday the 6<sup>th</sup> March 1993 in the afternoon, he would be deemed on duty, carries weight and commends to us for acceptance.

17. Having given our anxious considerations to the above discussions, we are of the firm view that the Applicant on being permitted by the OC Unit to proceed from his Unit by OC Unit on Saturday the 6<sup>th</sup> March 1993 in the afternoon and that his leave was to commence from 8<sup>th</sup> March 1993, would be deemed to be on duty. Even otherwise, the Applicant having been sanctioned Casual Leave by the OC Unit, he was on authorized leave and cannot be divested of disability pension merely on the ground that the disability incurred by the Applicant as a result of accident were not connected with military service.

18. At this stage, the Learned Counsel for the Respondents also called in question the payment of arrears from the date of discharge submitting that it should be restricted to three years prior to filing of the Transferred Application and in this connection, referred to the decision of Hon'ble the Apex Court in **Shiv Das v Union of India and Ors** reported in **(2008) 2 PLR 573**. We have given our anxious consideration to the above submissions. It may be noted here that in

the injuries sustained by the Applicant, right hand of the Applicant was amputated above elbow. On account of this disability, the Applicant has been deprived of his livelihood and was unable to eke out his living for his family which included minor children and ailing wife. On being invalided out, the dues of the Applicant were settled in the following manner.

Invalid Gratuity Rs 9180/-

DCRG Rs 8748.00

Total Rs 17028.00

Debit Balance Rs 6728.00

Balance Rs 11200.00

19. In our considered view, the Applicant who has rendered more than 8 years of service, was given marching orders with the aforesaid paltry amount without pondering, how he would sustain his family consisting of ailing wife, four daughters and one son in the absence of any regular pension or for matter of that, the disability pension vis a vis the fact that he was unable to eke out his living even by doing the odd jobs with only one hand on account of amputation of his right hand above elbow. It would be erring on the side of harshness, if we allow the Applicant to fend on their own without any external help particularly from the Department in which he served for 8 long years with utmost devotion and dedication. We cannot but appreciate the spirit with which the Applicant has pursued his case despite being seriously handicapped.

20. In our considered view, it is not a fit case in which the law laid down in **Shiv Das case (supra)** can be invoked. In view of the facts and circumstances of the case, we are of the considered view that the Petitioner is entitled to arrears to be paid with interest at the rate of

9% per annum from the date of discharge till the date of actual payment.

21. Coming to the contention advanced by Learned Counsel for the Respondents that there was inordinate delay of more than seven years in preferring the Original Application, the Court has already condoned the delay vide order dated 29.10.2013 and hence, the contention on this count does not survive.

22. In the above conspectus, we are of the considered view that the impugned orders dated 02.04.1996 passed by PCDA (P) rejecting the claim of disability pension of the Applicant was not only unjust, illegal but also was not in conformity with rules, regulations and law. The impugned order 02.04.1996 passed by the Respondents deserve to be set aside and the Applicant is found to be entitled to disability pension @100% for two years from the date of discharge with interest at the rate of 9% per annum till the date of actual payment.

23. Coming to the question of rounding off of disability pension, we feel called to refer to the decision in **Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014**) in which Hon'ble The Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided out of service. The relevant portion of the decision being relevant is excerpted below:

*"4. By the present set of appeals, the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on 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 only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.*

Xxx

xxx

xxx

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.*

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

24. Coming to the question of conducting the Re-survey Medical Board, in view of the law laid down by Hon'ble The Apex Court in the case of **Veer Pal** Singh reported in **(2013) 8SCC 83**, in which Hon'ble The Apex Court observed to the effect "*In our considered view, having regard to the peculiar facts of this case, the Tribunal should have ordered constitution of Review Medical Board for re-examination of the appellant, we are of the view that in the interest of justice, the case of applicant be referred to the Re-Survey Medical Board for re-assessing the medical condition of the applicant for further entitlement of disability pension, if any.*

### **Order**

25. Thus in the result, the Original Application succeeds and is allowed. The impugned order dated 02.04.1996 passed by the Respondents is set aside. The Applicant is entitled to disability pension @ 80% for two years from the date of discharge which would stand rounded off to 100% in terms of the decision of Hon'ble The Apex Court in the case of **Ram Avtar (supra)**. The Respondents are directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per annum from the date of discharge till the date of

actual payment. The Respondents shall refer the case to Re-Survey Medical Board for re-assessing the medical condition of the Applicant for further entitlement of disability pension, if any. The Respondents are further directed to comply with the order within three months from the date of pro.

duction of a certified copy of this order.

26. No order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Administrative Member**

**(Justice Virendra Kumar DIXIT)**  
**Judicial Member**

Date: December, ,2015