

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
COURT NO 1

T.A. No. 08 of 2015
Wednesday, this the 23rd day of December, 2015

"Hon'ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon'ble Lt Gen Gyan Bhushan, Administrative Member"

No. 101135109-L Ex Rfn Janki Prasad son of Sri Kedar Nath village-
 Naglu Teja, Post Rithouri Katra, Thana Saiyan District Agra..

.....Petitioner

Versus

1. Union of India (Raksha Mantri Appellate Committee (RMAC)
 through Secretary Ministry of Defence, South Block New Delhi-
 110011.
2. CCDA (Pensions) Allahabad
3. Commandant-cum-CRO RRRC and Records Delhi Cantt-110010.
4. Section Officer, Ministry of Defence New Delhi-
 110011.....**Respondents**

Ld. Counsel appeared for the Petitioner - Shri R.Chandra,
Advocate

Ld. Counsel appeared for the Respondent -Shri B.P.S.Chauhan,
Sr. Central Govt Counsel

ORDER**“Per Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member”**

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1. The matter in hand has come up before us by way of transfer under Section 34 of the Armed Forces Tribunal Act, from Hon’ble the High Court at Allahabad and it has been renumbered as Transferred Application No.08 of 2015.

2. The reliefs claimed in the T.A. filed by the Petitioner are excerpted below :-

“(a) issue a writ, order or direction in the nature of certiorari quashing the order dated 12.11.1999 passed by respondent no.4 (Annexure No.5 to this writ Petition);

(b) issue a writ, order or direction in the nature of mandamus directing the respondents to provide disability pension month to month to the petitioner;

(c) issue any other suitable writ, order or direction which this Hon’ble Court may deem just and proper under the facts and circumstances of the present case;

(d) Award the costs of this writ petition.”

3. The facts of the case in short are that the Petitioner was enrolled in the Territorial Army on 01.09.1989 and was discharged from service with effect from 02.06.1994. The Medical Board held prior to his discharge assembled and his disability was assessed at 80% (permanent) but his disability was opined to be neither attributable to nor aggravated by Military service. The claim for disability pension was rejected vide order dated 10.04.1995 and his first appeal against rejection of disability pension was also rejected as contained in communication dated 20.11.1999. Aggrieved by the decision aforesaid, the Petitioner preferred a writ Petition being Writ Petition No

4945 of 2000 which was transferred to this Tribunal and the same was registered as T.A. No. 08 of 2015 vide order dated 25.05.2015.

4. We have heard learned counsel for the Petitioner as also learned Counsel appearing for the Respondents. We have also been taken through the materials on record.

5. The precise submission of Learned Counsel for the Petitioner is that on 07.03.1993, while posted at Delhi, the petitioner was issued an out-pass in terms of Sec 39 (I) of the Army Act, 1950 which is treated as not an absence but on duty. He was accompanied by Sepoy Rakesh Kumar Tyagi, a Bat-man of Lt Col. Ashok Kumar, who had a packet in his hand which was to be carried for its delivery to someone known to Lt Col Ashok Kumar at Vallabhgarh. Aforesaid Sepoy Rakesh Kumar insisted to drive the Motor cycle. On way to Vallabhghat, the Petitioner was a pinion rider. Unfortunately for the Petitioner, the motor cycle was hit by a Haryana Road Way Bus in which the Petitioner was thrown off the motor cycle and suffered injuries. He was rushed to Army Base Hospital and then was shifted to ACU where he was operated upon amputating his right leg from above knee on 15.03.1993. He was then referred to Artificial Limb Centre Pune for medical treatment where his disability was declared as permanent. He also referred to the Certificate issued by Col R.K.Saigal, Commanding Officer, 105 Inf. Bn. (TA) on 6.7.1993 wherein injury of the petitioner was said to be attributable to military service. Referring to the above submissions, Learned Counsel for the Petitioner submitted that the PCDA (P) Allahabad has erred on the side of severity in rejecting the claim of the Petitioner for disability pension without regard being had to the fact that the Petitioner at the time of accident was on duty and had left the Unit with valid out-pass. He also assailed the orders

passed by the Respondents in First Appeal wherein the view of the PCDA (P) Allahabad was given affirmance.

6. **Per contra**, Learned Counsel for the Respondents contended that at the relevant time, the Petitioner was admitted to 187 Military Hospital at Delhi for treatment of the complaint "BLURRING OF VISION (LTD). He was transferred to Base Hospital Delhi Cantt on 23.02.1993. While admitted to Base Hospital Delhi Cantt, he applied for out-pass on 07.03.1993 for marketing which the Authority issued for the duration 1000 hours to 1800 hours (10 am to 06.00 pm). He further submitted that the Petitioner was brought back to Base Hospital Delhi Cantt with injuries described as 'Mutiple Injuries, compound Fracture Femur and Boots Bones Leg (RT)'. In this connection, the precise contention is that since the injuries sustained by the Petitioner were opined to be not attributable to military service, his claim for disability pension was declined initially by the PCDA (P) Allahabad and then by the Govt. of India, Ministry of Defence in Appeal. Learned Counsel for the Respondents also repudiated the claim of the Petitioner submitting that since the Petitioner had suffered disability when he was on out on out-pass, he was not entitled to disability pension in terms of Regulation 173 of the Regulation for the Army, 1961 read with Rule 12 of Entitlement Rules, 1982. He further submitted that disability is granted to an individual who is invalided out of service on account of disability which is either attributable to or aggravated by military service. He also submitted that in the facts of the case, the act of the respondent was not even remotely connected to his military duty.

7. 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."*

8. 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

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.”

9. 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.

10. Dwelling on Rule 12: Duty:- The Entitlement Rules, 1982, the Delhi High Court in para 21 in the case of **Ex Sepoy Hayat Mohd vs Union of India and others rendered in Writ Petition No. (C) 15971 of 2006 decided on 11.01.2007**, observed as under:

“21. “Causal” depicts a link which exists between the act and the consequence. It has also been explained as arising from cause. A cause from which such a connection arises should be relatable to military service. The kind of leave does not have much of significance as per the respondents but in any case a person on casual leave, annual leave or even a sick leave, has been held to be on duty and if the act was otherwise having at least a casual connection or nexus between the nature of the act and the expected behaviour of military services the petitioner would be entitled to the grant of disability pension. In addition to the above judgments reference can also be made to a Division Bench judgment of this Court in the case of G.D. Eshwar Chand vs. Union of India and Ors. 2004 (3) SLR 439, judgments of Punjab and Haryana High Court in the case of Gurmeet Singh vs. Union of India 2000 (5) SLR 596 and in the case of Ex. Naik Manjit Singh vs. Government of India 2000 (1) SLR 100. The provisions of the Army Act and the Rules framed thereunder do not define the word “duty”. This expression finds mention in Appendix II attached to Regulations 48, 173 and 185 of the Pension Regulations for the Army, 1961. In Clause 12 of the said appendix, this expression has been descriptively. It illustrates what could be a 'duty' for the purposes of determining attributability to military service or its aggravation. Such a clause which restrictively defines an expression would be incapable of being given a restricted meaning. Clause 'f' of Rule 12 even includes accidents which occurs when a man is not strictly 'on duty'. There are certainly acts and deeds which a member of the Force would be expected to perform while on actual duty in the Unit or while on leave. For example, going to

the market to purchase his households, to go to drop his ward to school or going to some public office or booking office for booking a ticket or other such requirements. These are some of the acts, attributability to service whereof will not change by virtue of location or posting of the person subject to the Army Act. 22. "

11. 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."

12. Dealing with Rule 48 of the Pension Regulations for the Army, 1961 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 at the relevant time, the Petitioner was admitted to 187 Military Hospital at Delhi for treatment of the complaint "BLURRING OF VISION (LTD). He was transferred to Base Hospital Delhi Cantt on 23.02.1993. While admitted to Base Hospital Delhi Cantt, he applied for out-pass on 07.03.1993 for proceeding to market to make purchases which the Authority issued for the duration 1000 hours to 1800 hours (10 am to 06.00 pm). He further submitted that the Petitioner was brought back to Base Hospital Delhi Cantt with injuries described as '**Mutiple Injuries, compound Fracture Temur and Boots Bones Leg (RT)**'. From a close scrutiny, it would transpire that the Petitioner was brought back within the hours for which he was permitted to leave on the basis of out-pass. In the instant case, the Learned Counsel limited himself to the contentions that the Invaliding Medical Board was held in which his disability was assessed at 80% (Permanent) but his disability was said to be neither attributable to nor aggravated by Military service and hence, he contended that the Petitioner was rightly denied the disability pension by the authorities. He also contended that the total service rendered by the Petitioner was 3 years and 301 days which falls short of qualifying service as envisaged under Rule 13 (3) III (iii) of Army Rule 1954 for grant of disability pension. On the other hand, learned counsel for the Petitioner repudiated the submissions that he was issued out-pass for marketing and submitted that as a matter of fact, he was issued out-pass for delivery of packet to some known as Lt Col Ashok Kumar at Vallabhgarh and Bat-man namely

Sepoy Rakesh Kumar Tyagi had accompanied him and at the time of accident it was Sepoy Rakesh Kumar Tyagi who was driving the motor cycle. There is no denying that the Petitioner had been issued out-pass in terms of section 39 (I) of the Army Act. It is also not denied that a personnel on out-pass is treated on duty. Be that as it may, a categorical averment has been made in Para 4 of the counter affidavit that the Petitioner was permitted to proceed on out-pass issued by the Authority concerned between 1000 hours to 1800 hours on the fateful day. By this reckoning, it is nobody's case that the Petitioner had left without valid out-pass.

14. Even otherwise, 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% (Permanent). It is worthy of notice here that in para 8 of the writ petition, it is clearly stated that Col R.K.Saigal, Commanding Officer, 105 Inf. Bn. (TA) issued a certificate on 06.07.1993 stating therein that the injuries of the Petitioner were attributable to Military service. A copy of the Certificate has been annexed to the Writ Petition as Annexure no.3. The averments made in para 8 of the writ petition have not been replied in the counter affidavit.

15. Learned Counsel for the Petitioner has submitted referring to Section 39 (I) of the Army Act, 1950 that a soldier who had gone out on the basis of validly issued "out-pass" is to be deemed on duty and it is not a case in which the Petitioner had either been granted casual leave or annual leave. He further submitted that within the hours he was permitted to remain out, the petitioner was brought back in injured condition. By this reckoning, the view of the authorities that be that his injuries were not connected with military duties is wholly

erroneous and untenable and it would amount to denying the Petitioner what is validly due to him. By this reckoning, it is submitted, the impugned orders are not only ultra vires, arbitrary, unjust and illegal but are violative of Article 14, 16 and 21 of the Constitution of India. Thus, non-grant of disability pension merely because the Petitioner had proceeded out on valid out-pass is illegal arbitrary and made with non-application of mind.

16. Having given our anxious considerations to the above discussions, we are of the firm view that the Petitioner on being permitted by the concerned Authority to proceed with valid out-pass, would be deemed to be on duty, regard being had to Rule (f) of Rule 12 of the Entitlement Rules, 1982 and by this reckoning, he cannot be divested of disability pension merely on the ground that the disability incurred by the Petitioner as a result of accident were not connected with military service.

17. 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 Petitioner, right leg of the Petitioner was amputated above knee. On account of this disability, the Petitioner has been deprived of his livelihood and was unable to eke out his living for his family.

18. In our considered view, the Petitioner who has rendered more than 3 years of service, was given marching orders without any help or means to sustain himself and his family. It would be erring on the side of harshness, if we allow the Petitioner to fend on their own without any external help particularly from the Department in which he served for more than 3 years with utmost devotion and dedication. Having been rendered incapacitated in the year 1993, it would not be difficult to visualize, how the Petitioner has been able to sustain himself and his family without any proper means to fall back upon.

19. In our considered view, it is not a fit case in which the law laid down in **Shiv Das case (supra)** has to 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.

20. In the above conspectus, we converge to the view that the impugned orders contained in communication dated 10.04.1995 and 20.11.1999 whereby the claim of disability pension of the Petitioner was rejected, were not only unjust, illegal but also was not in conformity with rules, regulations and law and deserve to be set aside and the Petitioner is found to be entitled to disability pension @80% for life from the date of discharge with interest at the rate of 9% per annum till the date of actual payment.

21. 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 10th 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 invalidated 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.

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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."

In view of the above, the benefit of rounding off should accrue to the Petitioner and it is allowed to the extent that the disability pegged at 80% would stand rounded off to 100%.

Order

22. Thus in the result, the Transferred Application succeeds and is allowed. The impugned orders contained in communication dated 10.04.1995 and 20.11.1999 are set aside. The Petitioner is held entitled to disability pension @ 80% for life from the date of discharge which would stand rounded off to 100% for life in terms of the decision of Hon'ble The Apex Court in the case of **Union of India vs 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 are further directed to comply with the order within three months from the date of production of a certified copy of this order.

23. No order as to costs.

(Lt Gen Gyan Bhushan)
Administrative Member

(Justice Virendra Kumar DIXIT)
Judicial Member

Date: December, ,2015