

**Reserve****Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO 48 of 2018**Monday, this the 12<sup>th</sup> day of March, 2018**“Hon’ble Mr. Justice SVS Rathore, Member (J)****Hon’ble Lt Gen Gyan Bhushan, Member (A)”**

No. 7773933-L Ex Hav Jai Prakash Yadav, son of Late Ram Bujh Yadav, resident of Village Gahaji, Bhakuhi, Post Office Gahaji, district Azamgarh, U.P.

....Applicant

Ld. Counsel for the applicant: Shri Parijaat Belaura, Advocate.

Verses

1. Union of India through the Secretary, Ministry of Defence, New Delhi
2. Addl Dte Gen of Personnel Services, Adjutant General’s Branch (AS/PS-4/Imp-II), Integrated Head Quarter, Ministry of Defence, South Block, New Delhi.
3. Officer-in-Charge, Sena Police Corps, Abhilekh Karyalaya, Corps of Military Police Records, PIN-900943 C/O 56 APO.
4. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the Respondents : Shri Arun Kumar Sahu  
 . assisted by Maj Salen Xaxa,  
 OIC Legal Cell.

**Per Hon'ble Lt Gen Gyan Bhushan, Member (A)**

1. The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with denial of disability pension to the applicant.
2. We have heard Shri Parijaat Belaura, learned counsel for the applicant and Shri Arun Kumar Sahu, learned counsel for the respondents assisted by Maj Salen Xaxa, OIC, Legal Cell.
3. The facts, briefly stated, are that the applicant was enrolled in the Army in the Corps of Military Police on 22.05.1984 and after rendering 24 years, 08 months and 10 days of service, was discharged on 31.12.2007 in low medical category. His disability due to 'FRACTURE NECK FEMUR (RT)' was considered as attributable to but not aggravated by service. The applicant preferred an appeal which was rejected by the Appellate Committee on First Appeals vide order dated 19.01.2009 (Annexure CA-5 to the counter affidavit) on the ground that the injury sustained by the applicant while on casual leave is not attributable to military service.
4. Learned counsel for the applicant submitted that the applicant was on casual leave when he sustained injuries and casual leave is to be treated as on duty under the relevant Leave Rules, as such, the applicant is entitled for disability pension.
5. In rebuttal, learned counsel for the respondents drew attention to the injury sustained by the applicant and submitted that it is admitted to the applicant himself that he sustained injury while on casual leave, therefore, the injury sustained and disability incurred by the applicant

has no casual connection with military service and cannot be termed to be attributable to military service.

6. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

7. The present is a case of injury suffered by the applicant while on casual leave. The respondents have not come up with a case that the injuries suffered by the applicant were on account of negligence on the part of the applicant. In view of the decision in the case of *Nand Kishore Mishra vs. Union of India & ors*, 2013 (2) SCT 263, it cannot be disputed that casual leave is also treated as being on duty as well as is active service. In the case of *Nand Kishore Mishra* (Supra), their Lordships of the Hon'ble Supreme Court have held:

*“14. The Central Government has framed certain rules regarding the conditions of leave of the persons subject to Army Act and it would be profitable to refer to some of the relevant rules dealing with “casual leave”. Relevant portion of Rule 9 of the Rules of the service provides as follows:*

*“9. Casual leave counts as duty except as provided for in Rule 10(a).” Rule 9 of the Rules (supra) thus specifically states that casual leave counts as duty except as provided for in Rule 10(a). **It therefore follows that a person subject to the Act would be deemed to be “on active service” even when he is on casual leave.** Learned counsel for the parties, in view of this legal position, did not dispute that the appellant, though on casual leave, would be deemed to be on “active service” in view of the notification dated 5-12-1962 (supra).” On the basis of the Notification dated November 29, 1962, therefore, the appellant must be held to have received the injury while on active service.”*

*(Emphasis supplied)*

8. The Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 258 of 2014 Ex Nk Krapal Singh vs. Union of India and others decided on 16.01.2015 held as under:

“We have considered the submissions of the learned counsel for the parties and perused the material placed on record as well as the judgments relied upon by the learned counsel for the petitioner, which are judgments of the Armed Forces Tribunal, Chandigarh Bench reported in 2011 (1) LJ 389, *Labhpreet Singh vs. Union of India & ors*, Full Bench judgment of Punjab & Haryana High Court delivered in the case of *UOI Vs. Khushbash Singh etc*, reported in 2010 (2) SCT 805, one of the judgment delivered in the case of Civil Appeal No. 2337 of 2009 *Union of India & orss vs. Chander Pal* dated 18.09.2013, and recent judgment of Hon’ble Supreme Court delivered in the case of *Nand Kishore Mishra vs. UOI & Ors*. Reported in 2013 (2) SCT 263.

This is a case of injury because of which the petitioner suffered three disabilities. **The petitioner was on casual leave. In view of the decision in the case of Nand Kishore Mishra (supra), it is not disputed that casual leave is also treated as being on duty, as well as in active service.....**”

(Emphasis supplied).

9. The law on the point of grant of disability pension and its rounding off is no more *res integra*. In the case of *Dharamvir Singh vs. Union of India & Ors*, (2013) 7 SCC 316, while considering the question with regard to payment of disability pension, their Lordships of Hon’ble Supreme Court held that an Army personnel shall be 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 being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In *Dharamvir Singh’s* (supra), their Lordships held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is not attributable to nor aggravated by military service. Similar view was expressed by their Lordships of the Hon’ble Supreme Court in the cases of *Sukhvinder Singh vs. Union of India*, (2014) 14 SCC 364,

*Union of India & ors vs. Angad Singh Titaria*, (2015) 12 SCC 257 and *Union of India vs. Rajbir Singh*, (2015) 12 SCC 264.

10. In the case in hand, since the Medical Board has assessed the disability as 30% for life. The disability suffered by the applicant in view of the settled proposition of law is to be considered to have been sustained on active service and attributable to military service.

11. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision in the case of *Union of India vs. Ram Avtar & ors* (Civil Appeal No. 418 of 2012 decided on 10<sup>th</sup> December, 2014).

12. It is settled proposition of law that if claim for pension is based on continuing wrong, relief can be granted if such continuing wrong creates a continuing source of injury. In the case of *Shiv Dass vs. Union of India*, reported in 2007 (3) SLR 445, para-9, Hon'ble Apex Court has observed:

*“9. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

13. In the case of *Union of India vs. Tarsem Singh*, reported in 2008 (8) SCC 648, the question that surfaced in that case was as to whether the claim of the person for disability pension is barred by time or not. The

Apex Court taking into consideration its earlier decisions in various cases held as under:

*“Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.”*

14. In the instant case, the service related claim is based on continuing wrong, as such, relief can be granted despite there being delay in seeking remedy with restriction of benefit to a period of three years prior to filing of the O.A.

15. Accordingly, the O.A. is allowed. The impugned order is set aside. The respondents are directed to grant disability pension to the applicant after rounding off @ 50% for life from three years prior to the filing of the instant O.A. i.e. 31.05.2014. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order failing which the applicant shall be entitled to simple interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

No order as to cost.

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

**(Justice SVS Rathore)**  
**Member (J)**

Dated : March 2018  
anb