

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****M.A.No.477 of 2019 Inre O.A.No. Nil of 2019****Friday this the 24th day of May, 2019****Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

Ex Naik Aditya Kumar Tiwari (No. 10505198N)
 S/o Sri Om Prakash Tiwari
 Vill – Diwanpur Choudhry
 Post – Biuti Khurd
 Tehsil – Bhogaon
 Dist – Mainpuri (U.P.) PIN 205001

..... Applicant

Ld. Counsel appeared for the Applicant - Col B.P. Singh (Retd)
 Advocate

Versus

1. Union of India, through the Secretary
 Ministry of Defence,
 South Block, New Delhi.
2. Chief of the Army Staff,
 Integrated Headquarters of Ministry of Defence
 South Block, New Delhi - 110001.
3. Addl Dte Gen Territorial Army TA-3,
 GS Branch, IHQ of MoD (Army), 'L' Block
 Church Road, New Delhi - 110011.
4. Officer Incharge Records JAT Records
 Bareilly PIN 900496 C/o 56 APO.
5. Principal Controller Defence Accounts (Pension),
 Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel appeared for the Respondents - Shri Adesh Kumar Gupta,
 Central Government Counsel

M.A.No.477 of 2019

This is an application for condonation of delay in filing the O.A., which is delayed by more than one year.

Grounds shown in the affidavits filed in support of the application seem to be genuine.

Accordingly, the application is allowed and the delay in filing the O.A. is hereby condoned.

ORDER (Oral)

1. Heard the learned counsel for the parties on the point of admission.
2. On behalf of the respondents, it is submitted that this O.A. need not be admitted because the injuries, which led to the invalidment of the applicant, were sustained by him while he was on annual leave and there is no causal connection with the Army service, therefore, the O.A. of the applicant claiming disability pension has no substance and it would be futile exercise to admit this O.A. and the same deserves to be dismissed *in limine*.

3. Admittedly the applicant sustained injuries in a road accident, which led to his invalidment while he was on annual leave. The applicant was on 25 days of part of annual leave w.e.f. 24.06.2013 to 18.07.2013. The applicant sustained injuries in the road side accident on 26.06.2013 while going to Firozabad. Alongwith this O.A., certain medical documents have been filed, wherein the statement of the applicant has been mentioned as under:

“मैं लीव पर था 26/06/13 को मैनपुरी से फ़िरोज़ाबाद मोटर साइकिल से जा रहा था, फ़िरोज़ाबाद से पहले मकखनपुर तिराहे पर एक टाटा 407 ने मुझे साइड मार दिया और मैं चोट खाकर वहीं पर गिर गया उसके बाद मुझे कुछ पता नहीं चला कि मैं कहाँ पर हूँ क्योंकि मैं बेहोशी हालत में था जब मुझे होश आया सिविल अस्पताल में था।”

4. Thus, admittedly the applicant, at the time of accident, was not travelling from the place of posting and on his way to home station, but

after completing the said journey, he was going from Mainpuri to Firozabad and met with a road side accident which led to his invalidment.

5. Learned counsel for the applicant has submitted that every Army personnel on any type of leave whether casual or annual, shall be deemed to be on duty and therefore, the applicant shall be entitled to disability pension. In support of his submission, he has placed reliance on the pronouncement of Hon'ble Co-ordinate Bench of Armed Forces Tribunal, Guwahati Bench in the case of **Ex Subedar Dhaneshwar Saikia vs Union of India & Others** (O.A.No. 10 of 2018) decided on 07.08.2018.

6. Learned counsel for the applicant, during the course of arguments, has drawn our attention towards certain paragraphs of the said judgment where pronouncement of Hon'ble Apex Court in the case of **Jarnail Singh vs Union of India & others** (1998 (1) SLR 418) and also the pronouncement of the Hon'ble Apex Court in the case of **Madan Singh Shekhawat vs. Union of India & others** (AIR 1999 (66) SC 3378) has been relied, wherein the Hon'ble Apex Court has held that every Army person shall be deemed to be on duty when he was on any type of authorised leave during travelling to or from home or while on casual leave.

7. Now the point to be considered is whether a person, who is on annual leave and met with an accident while availing the said annual leave, shall be treated to be on duty and if injury is sustained by him which led to his invalidment, shall make him entitled to get the disability pension.

8. On behalf of the respondents, it has been argued that in order to enable the applicant to get the disability pension, he is required under law to establish the causal connection between the Army duty and the injuries sustained by him. Hon'ble Apex in the case of **Madan Singh Shekhawat vs Union of India & others** (AIR 1999 SC 3378) has held 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 from place of posting. In

the instant case, the applicant at the time of accident, was not travelling from the place of posting and on his way to home station, but after completing the said journey, he was going from Mainpuri to Firozabad and met with a road side accident which led to his invalidment. So by no stretch of imagination, it can be treated to be an Army duty and was entirely a private act. The case of **Madan Singh Shekhawat (supra)** cannot be stretched to such an extent to entitle Army personnel to claim disability pension for the injuries sustained which has no causal connection with Army duty.

9. Now we will have to examine the legal position. In the case of **Union of India & others Versus Ex Naik Vijay Kumar** (Civil Appeal No.6583 of 2015) decided on 26th August, 2015, Hon^{ble} Apex Court in para-19 has held, to quote:-

“19. In the light of above discussion, it is clear that the injury suffered by the respondent has no casual 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.”

In the facts of the above mentioned case, the respondent was on annual leave for 30 days. While in the house of his sister, on second floor he fell down from the stairs due to darkness and sustained injuries. In that factual background, it was held that the incident resulting in the injury had no casual connection with Army service. Accordingly, the judgment passed by the Armed Forces Tribunal granting disability pension to the respondent was set aside and the appeal of the Union of India was allowed.

10. 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 is very relevant here. In that case 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} Apex 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} Apex 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 Apex 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.”

(Underlined by us)

11. The aforesaid view expressed by Full Bench of Hon“ble Delhi High Court was considered by Hon“ble Apex Court in the case of **Union of India & ors vs. Jujhar Singh**, reported in (2011) 7 SCC 735. Hon“ble Apex 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 invalidment benefit. This question was replied by Hon“ble Apex Court in negative. 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.”

12. In the case of **Jujhar Singh (supra)** 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.”

(Underlined by us)

13. The view expressed by the Full Bench of Hon^{ble} Delhi High Court, approved by 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. In order to determine whether there was causal connection with the Army duty, the first and important test is whether failure to do such act would have entailed any disciplinary action or such failure constitute any offence under the Army Act, 1950. In the facts of the instant case, if the applicant had not gone to receive his relatives, it would not have made him liable for any disciplinary action nor would such omission constitute any Army offence.

14. Hon^{ble} Apex Court in **Union of India & ors vs. Baljit Singh**, reported in (1996) 11 SCC 315 wherein 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.

15. The consequence of the principle of law laid down by 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)**.

16. It may be noticed that in the case of **Union of India and another vs Talwinder Singh**, (2012) 5 SCC 480, Hon^{ble} the Apex Court has also considered the same point of 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’s (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 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 invalidment 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 v. 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.”

(Underlined by us)

17. 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 casual 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.”

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

21. *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 days” 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 9 O.A. No. 37 of 2016 Shreepal 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.”

22. *Facts of Civil Appeal No. 1988 of 2011, as noticed by 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.”

19. 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 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 are to a large extent similar to the present case before as the applicant was on out-pass to receive his relatives from the bus stand.

20. Keeping in view, the opinion expressed by the Hon’ble Apex Court repeatedly in the subsequent judgments, makes it abundantly clear that in order to claim disability pension for an injury sustained during leave, it must be established that there was a causal connection with the Army duty. Deeming clause to treat an Army personnel on duty while on casual or annual leave, is for a very limited purpose of pay and allowances. In view of the admitted facts of this case and the legal position, discussed above, the only conclusion that can be drawn is that the accident in which the applicant suffered injuries which led to his invalidment, has no causal connection with the Army duty and, therefore, the applicant is not entitled to get disability pension.

21. Accordingly, this O.A. deserves to be dismissed and is hereby **dismissed in limine.**

(Air Marshal BBP Sinha)
Member (A)

Dated: 24th May, 2019
PKG

(Justice SVS Rathore)
Member (J)