

ORDER

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

1. By means of this Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed for the following reliefs :-

“(i) Issue/pass an order by setting aside/quash the impugned order dated 05 June, 1998, as contained in Annexure No. A-1 to the O.A.

(ii) Issue/pass an order or direction of appropriate nature to Respondents to pay Special Family Pension from the date of death of her husband with arrears.

(iii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(iv) Cost of the appeal be awarded to the applicant.”

2. In brief the facts necessary for the purpose of this O.A. may be summarised as under :

The applicant’s late husband Late Sowar Sabhajit Singh was enrolled in the Army on 27th August 1990. In the month of June 1997, the husband of the applicant was on annual leave. He got injured when he was travelling to his father-in-law’s house by a vehicle UP60-3429 which met with an accident due to negligent driving. He was immediately taken to Sadar Hospital Ballia for treatment, but as his condition was critical, he was referred to Varanasi for better treatment, but he died on his way before reaching Varanasi. After the death of the husband, the applicant was prayed for gratuity and Special Family Pension, but Special Family Pension was denied as the death of the husband of the applicant was neither attributable to nor aggravated by military service and had no causal connection with Army duty. However, the ordinary family pension was granted and the same is being paid to the applicant. It is claimed by the applicant that the Entitlement Rules also stipulate that death disability in such

cases must be deemed to be attributable to military service and as such Special Family Pension ought to have been granted by the respondents.

3. In the O.A., reference has been made of a pronouncement of Hon'ble Punjab & Haryana High Court in the case of Gurmit Singh Butter vs. Union of India (2000 (5) SLR, wherein it has been held that "casual leave, annual leave, Furlough or medical leave, the relationship of employees and employer does not cease and the same shall continue. In this case, alongwith the O.A., a copy of the FIR of the accident, in which the husband of the applicant had sustained injuries, has also been filed.

4. In the counter affidavit it is pleaded that the husband of the applicant was on 23 days part annual leave w.e.f. 10th June 1997 to 02nd July 1997. A Court of Inquiry was conducted in the matter regarding the cause of death of the husband of the applicant, which found that the deceased was staying with his family during his leave at Village Balesra Post Kurezi Tehsil Rasara District Ballia (U.P.). The deceased alongwith his family members was going to offer prayer to a religious temple at Rampur from his Village Balesra on 17th June 1997 by a Civil Vehicle (TATA 407 Reg.No. UP 60 3429). In the way, the driver suddenly lost his control over the vehicle and met with an accident. FIR to this accident was lodged. On 04th February 1998 the Station Commander, Station Headquarters recommended that "the death of deceased may be regarded as attributable to Military Service in peace". However, the Officiating Commander, HQ, Allahabad Sub Area vide his order dated 09th February 1998 directed that "the death of deceased is not attributable to Military Service" and accordingly, the Special Family Pension claim of the applicant was rejected by the PCDA (P), Allahabad.

5. Now the claim of the applicant is that since Court of Inquiry had reported that it may be treated as attributable to Military Service,

therefore, the order of the Officiating Commander that it is not attributable to Military service, should be ignored and Special Family Pension should be granted in favour of the applicant. Under Section 16 of the Pension Regulation for grant of Special Family Pension, the following conditions are necessary :

“16. In case death of an Armed Forces Personnel happens under the circumstances mentioned be Special Family Pension will be admissible to the families of such personnel. There shall be no condition minimum service on the date of death for grant of Special Family Pension:

- (a) *Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to a hostile work environment, subject to extreme weather condition occupational hazards resulting in death or disability would be example.*
- (b) *Death or disability due to accidents in the performance of duties such as :*
 - (i) *Accidents while travelling on duty in Government Vehicles or public/private transport.*
 - (ii) *Accidents during air journeys.*
 - (iii) *Mishaps at sea while on duty.*
 - (iv) *Electrocution while on duty, etc.*
 - (v) *Accidents during participation in organised sports events/adventure activities/expedition training.”*

6. Keeping in view the aforesaid regulation, it is clear that there must be causal connection between the cause of injury and the Army duty. In the instant case, the husband of the applicant was on part of annual leave. He was going by a private civil vehicle with his family to offer prayer by bus and on the way, the bus met with an accident, in which the husband of the applicant sustained injuries. In view of this admitted facts situation, how any causal connection with the Army duty can be presumed? Hon’ble Apex Court in several matters has considered the point of causal connection with the Army duty. Similar conditions must be satisfied for grant of disability pension when disability is the result of some injury caused in an accident. We would like to reproduce Paras 9 to 23 of the judgment passed by this Bench in **Shreepal vs. Union of India & others** (O.A.No.37 of 2016) decided on 23rd July 2018, which reads as under :

9. Hon’ble Apex Court has in the case of Madan Singh Shekhawat, 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. Since in the facts of the instant case, as stated earlier, the applicant had taken out-pass and had gone to receive his relatives from bus station when he met with an accident. He was permitted out-pass to receive relatives which was only a personal reason to apply for out-pass. 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 connection with Army duty*

10. *In the case relied upon by the learned counsel for the respondents in the case of **Ex Naik Vijay Kumar (supra)**, 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.”

11. *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.*

12. *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)

13. 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 disablement 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."

14. 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)

15. 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.

16. *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.*

17. *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)**.*

18. *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 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 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)

19. 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.”

20. 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.”

23. *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.”*

7. Keeping in view the aforementioned opinion expressed by the Hon’ble Apex Court, the case law on which the learned counsel for the applicant has placed reliance in his O.A., loses its binding effect. Keeping in view the facts of the instant case, by no stretch of imagination, it can even be presumed that there was any causal connection with the Army duty and the accident. In order to ascertain whether there was any causal connection with the Army duty, the very important test is whether commission or non commission as the case may be, would have rendered the husband of the applicant liable for disciplinary action. Reply to such question, keeping in view of the facts of the instant case, is in ‘negative’, because if the husband of the applicant had not gone to offer prayer during part of the annual leave, then it could not made him liable for disciplinary proceedings. It was an act of the husband of the applicant himself and, therefore, we are of the view that the Officiating Commanding Officer has given absolutely correct report that it cannot be treated to be attributable to Military

service and, therefore, we do not find any illegality or irregularity in the order of denial of Special Family Pension to the present applicant.

8. The conditions which are necessary for grant of disability pension are akin to the grant of Special Family Pension because for grant of Special Family Pension, a causal connection between the Army duty and the cause of accident is also required in the same manner.

9. Accordingly, the O.A. is devoid of merit, deserves to be dismissed and is hereby **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: May , 2019
PKG