

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No. 620 of 2020**

**Thursday, this the 23<sup>rd</sup> day of September, 2021**

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt Kalawati widow of No 1192012 Ex Gunner (Late) Lakhan Singh, R/O Rampura Ghar, P.O.-Chakar Nagar, District-Etawah.

.... Applicant

Ld. Counsel for the: **Shri Rajesh Kumar Singh**, Advocate.  
Applicant **Shri Satendra Kumar Singh**, Advocate.

**Versus**

1. Union of India through Ministry of Defence, Govt of India, New Delhi.
2. Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi.
3. Director General of Army Air Defence (AAD-11), General Staff Branch, Integrated HQ of MoD (Army), DHQ, PO-New Delhi.
4. Sena Vayu Raksha Abhilekh, Army Air Defence Records, C/O 99 APO.

... Respondents

Ld. Counsel for the: **Shri Rajiv Pandey**, Advocate  
Respondents. Central Govt Counsel.

**ORDER (Oral)**

1. The present O.A. has been filed by applicant (widow of No 1192012 (late) Gnr Lakhan Singh) for grant of Family Pension under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has sought that this Tribunal may graciously be pleased to quash the impugned order dated 16.12.2017 passed by O.P. No.-4 as contained in Annexure No.-1 as well as the impugned orders dated 11.12.1970 and 07.06.1969 as contained respectively in Annexure No.-2 and 3 to this O.A. with further prayer to provide benefit of disability pension/family pension to applicant with consequential benefits from the due date.

2. Facts giving rise to Original Application in brief are that No. 1192012 Gnr Lakhan Singh was enrolled in the Army on 29.04.1963. He was granted 10 days casual leave for the period 20.01.1969 to 29.01.1969. During leave he sustained injury on 25.01.1969 while travelling by bus from his native village to Etawah for a personal work. On expiry of leave Gnr Lakhan Singh reported to unit in due time. Since applicant had sustained injury while on leave, a Court of Inquiry dated 01.05.1969 was conducted which opined his injury as not attributable to military service. Earlier, after rejoining from leave, on account of pain and swelling in his left arm and shoulder, he was admitted in Base Hospital, Delhi Cantt on 31.01.1969 and during treatment he was diagnosed as a case of 'Traction Injury Brachial Plexus Lt (N-840) E-882' and the medical authorities recommended him to be invalided out of service. Accordingly, his Invaliding Medical Board (IMB) was held at Base Hospital, Delhi Cantt on 07.07.1969 and

he was invalided out of service w.e.f. 08.10.1969 in low medical category in terms of Rule 13 (3) III (iii) of Army Rules, 1954. As per IMB, his disability was neither attributable to nor aggravated by military service (NANA). His disability pension claim was rejected vide order dated 23.01.1970 (Annexure R-I) on the ground of NANA. He was paid his due invalid gratuity. Appeal preferred against rejection of disability pension was also rejected vide order dated 11.12.1970 (Annexure R-II). Thereafter, Second Appeal submitted by the individual was dismissed being time barred. He had preferred a Civil Miscellaneous Writ Petition No. 28785 of 1999 before the Hon'ble High Court of judicature at Allahabad which was dismissed on merit vide order dated 02.12.2002. Against this order, Special Appeal No. 564 of 2003 filed by him was also dismissed on 06.10.2009 for want of prosecution. Lakhan Singh died on 10.02.2010. After his death Smt Kalawati (wife of deceased soldier) filed an appeal dated 02.05.2016 for grant of disability pension/family pension and during its pendency, applicant filed O.A. No. 241 of 2017 in this Tribunal praying therein to decide her representation/appeal dated 02.05.2016 and grant disability pension/family pension. This O.A. was disposed off on 12.07.2017 directing respondents to decide her representation/appeal by speaking and reasoned order within four months. Accordingly, respondent No. 4 passed speaking order dated 16.12.2017 mentioning therein reasons for non grant of disability pension/family pension. Thereafter, applicant submitted various representations for grant of family pension and they were suitably replied. Applicant has

filed this O.A. for grant of disability pension/family pension with all consequential benefits.

3. Learned counsel for the applicant pleaded that applicant's husband was on leave and he sustained injury enroute while going from his home to Etawah for exchange of travel warrant meant for return journey. His further submission is that on reporting to Base Hospital, Delhi Cantt, the medical authorities recommended him to be invalided out of service in low medical category. His contention is that applicant is entitled to family pension of her husband's disability pension as the deceased soldier was on authorized casual leave when he sustained injury. His submission is that there is clear connection of injury with military service as applicant's husband was proceeding to Etawah for exchange of railway warrant. Learned counsel for the applicant has relied upon Hon'ble Apex Court judgment in the case of ***Sukhwinder Singh vs Union of India & Ors***, Civil Appeal No. 1987 of 2011 decided on 13.03.2012 and submitted that in view of aforesaid judgment, applicant is entitled to family pension.

4. Per contra, learned counsel for the respondents submitted that it is not disputed that husband of applicant sustained injury on 25.01.1969 while on leave and the injury was declared as neither attributable to nor aggravated by military service. His further submission is that applicant was travelling by bus from his home town to Etawah when he met with an accident resulting in injury which ultimately led his invalidation out of service. Further averment made by respondents is that though the medical board had assessed his disability @ 30% for two years but it was denied

by pension sanctioning authority on the ground of disability being NANA. However, for grant of disability pension/family pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injury/death and military service. He further submitted that unless injury sustained/death has causal connection with military service, armed forces personnel/their NOKs cannot be allowed disability pension/family Pension merely on the reason of being on casual leave. He further submitted that in the given facts and circumstances, injury sustained by applicant's husband was not attributable to military service therefore, he was not granted disability pension and in view of denial of disability pension, applicant is not entitled to family pension as she is claiming. In support of his contention, learned counsel for the respondents has placed reliance on the following facts:-

(a) The injury of applicant's husband was opined as neither attributable to nor aggravated by military service and also not connected with military service by the Court of Inquiry dated 01.05.1969.

(b) Disability pension claim was denied vide order dated 11.12.1970 on the ground of no nexus between injury and military duty.

(c) Writ Petition No. 28785 of 1999 filed by Ex Gnr Lakhan Singh (now late) was dismissed on merit by the Hon'ble High Court of Allahabad vide order dated 02.12.2002.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. In this case, applicant's husband Gnr Lakhan Singh (now late), while on casual leave met with an accident on 25.01.1969 and sustained severe injuries. His medical board was held on 07.07.1969 and he was invalided out of service w.e.f. 08.10.1969 having completed only 06 years and 162 days of service. His disability pension claim was denied vide order dated 11.12.1970. Subsequently CMWP No. 28785 of 1999 was dismissed on 02.12.2002 by the Hon'ble High Court of Allahabad and Special Appeal No 564 of 2003 was dismissed in default.

7. As per Court of Inquiry dated 01.05.1969 injury sustained by Gnr Lakhan Singh (now late) was declared as not attributable to military service.

8. The respondents have denied family pension to applicant on the reason that her husband was not in receipt of any pension who died on 10.02.2010. We have observed that for getting disability pension/family pension, in respect of her deceased husband, who was invalided out of service in low medical category on account of sustaining injury while on casual leave, there must be some causal connection between the injury sustained and military service, and this being lacking in applicant's case, as there was no causal connection between the injury and military service, she is not entitled for the same.

9. The question with regard to causal connection has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the Hon'ble Apex Court. In a more or less similar matter titled, **Secretary, Govt of India & Others Vs. Dharamveer Singh**, decided on 20 September 2019, in Civil Appeal No 4981 of 2012, the facts of the case were that

respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with “Faciomaxillary and Compound Fracture 1/3 Femur (LT)”. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave report, dated August 18, 1999 to the effect that injuries occurred in peace area, were attributable to military service. One of the findings of the report recorded under Column 3 (c) was that “No one was to be blamed for the accident. In fact respondent lost control of his own scooter”. In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon’ble Apex Court in the case of **Madan Singh Shekhawat v. Union of India & Ors**, (1999) 6 SSC 459 was allowed by the Tribunal holding that respondent was entitled to disability pension. Aggrieved by the same, a Civil Appeal was filed in which the Hon’ble Apex Court framed following 03 points for consideration:-

(a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?

10. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

11. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

*“In view of Regulations 423 clauses (a), (b), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury be connected with military service howsoever remote it may be. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributed to risk common to human being. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service”.*

12. Regarding question number 3, the Hon'ble Apex Court held that if a causal connection has not been found between the disabilities/death and military service, applicant would not be entitled to the disability pension/Family Pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well as various Benches of the Armed Forces

Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and, for such injury, resulting in disability, the injury would be considered as attributable to or aggravated by military service.

13. The Hon'ble Apex Court while summing up has also taken note of the guiding factors of the Armed Forces Tribunal, in the case of **Jagtar Singh v. Union of India & Ors**, decided on November 02, 2010 in T.A. No. 60 of 2010, approved in the case of **Sukhwant Singh** and **Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability/death is to be required to be dealt accordingly. Those guiding factors are reproduced below for the ready reference:-

*“(a) The mere fact of a person being on ‘duty’ or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as ‘duty’.*

*(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.*

*(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.*

*(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service.*

*An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.*

*(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.*

*(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service.”*

14. We have considered the applicant's case in view of above guiding factors and we find that, though, husband of applicant was on casual leave when he sustained injury resulting in his invalidation, the activity in which injury occurred is not connected with his military service in any manner.

15. We have also noted that Writ Petition No. 28785 of 1999 filed by applicant's husband for grant of disability pension was dismissed by the Hon'ble High Court Allahabad vide order dated 02.12.2002, operative portion of which is reproduced as under:-

*“I have gone through the Writ Petition. In the Writ Petition it has not been stated that the petitioner was going to join his duty when he met with an accident, while he was travelling in civil bus. From the facts stated in the counter affidavit, it is clear that the*

*petitioner was on casual leave from 20.01.1969 to 29.01.1969. He met with an accident on 25.01.1969, while going from his village to district Etawah, it appears on his personal work. Since the petitioner was on casual leave and was not going to join his duty, therefore, the injury sustained by him cannot be attributed or aggravated by the military service. Therefore, Regulation 173 and Rule 12 (e) and (f) are not applicable and do not help the petitioner.*

*For the aforesaid reasons, I do not find any merit in the Writ Petition. The Writ Petition fails and is accordingly dismissed.”*

16. In the result, we hold that since applicant's husband was denied disability pension by the Hon'ble High Court of Allahabad on the ground that there was no causal connection between his injury and military service, therefore applicant is not entitled to family pension.

17. Resultantly, O.A. is **dismissed**.

18. No order as to costs.

19. Pending applications, if any, are disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 23.09.2021

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