

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 547 of 2017**Wednesday, this the 23rd day of January, 2019**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)

Shailendra Singh Tomar, No. 02999781-F, Ex Sep, S/o Prakash Singh Tomar R/o Vill – Sheelnagar, House No. 490, Sagar Tal Road, Bahodapur, Gwalior (MP) – 474003

..... **Applicant**Ld. Counsel for the Applicant : **Shri V.K. Pandey**, Advocate

Versus

1. U.O.I. through Secy MoD, South Block, R.K. Puram, New Delhi.
2. The OIC, Records The Rajput Regiment, PIN-900427, C/o 56 APO
3. PCDA (P), Draupadi Ghat, Allahabad (U.P.)

..... **Respondents**Ld. Counsel for the Respondents : **Ms. Appoli Srivastava**,
Addl Central Govt Counsel.**ORDER****“Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought the following reliefs:-

“(i) *That this Hon'ble Tribunal may kindly be pleased to quash the impugned rejection order dated 08.03.2016, passed by opposite party no. 2, as contained annexure no. 1 to this original*

application, and direct the opposite parties to pay the disability pension from 31.05.2015 to for life with rounding off @ 50%, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment.

- (ii) *That this Hon'ble Tribunal may kindly be pleased to award the cost of Rs. 20,20,000/- (Rupees Twenty Lac and Twenty Thousand Only) to the applicant against the opposite parties and allow the same.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant."*

2. Brief facts of the case are that the applicant was enrolled in the Army on 23.07.1999 and was discharged in low medical category on 16.03.2015. The facts which led to the discharge of the applicant as mentioned in para 4.6 of the O.A., are reproduced as under:-

"That the applicant was granted 08 days CL on 10.12.2002 and on 12.12.2002, applicant was going back to his home from Kailarus Mandir and was injured by three persons of his village at the outskirts of village Kailarus in Murena district and sustained multiple injuries on both the hands and on the head. Thereafter applicant lodged a FIR at Kailarus Police Station in Murena district and later on applicant was admitted in Hospital and placed under Low Medical Category A3 (T-12) on 10.02.2003 by the Medical Board and a Court of Inquiry assembled on 27.03.2003 at 14 RAJPUT. Copy of the finding of the Court of Inquiry is being filed herewith as ANNEXURE NO. 4 to this original application."

Thus, admittedly, the applicant has received injuries in his village while he was attacked by some persons. The applicant was admitted in Military Hospital, Gwalior. A Court of Inquiry was conducted regarding the cause of the injuries. The applicant has brought on record the findings of the Court of Inquiry, which may be reproduced as under:

"1. No. 02999781-F Sep Shailendra Singh of 14 RAJPUT was out on 08 days CL on 10 Dec 2002 (witness No. 1 & No. 2.)

2. On 12 Dec 2002 he was going back to his home from Kailarus Mandir (witness No.1)

3. At 1830 hrs on 12 Dec 2002, he was injured by three persons of his own village at the outskirts of village Kailarus in Murena district (Witness No. 1)

4. No. 02999781-F Sep Shailendra Singh sustained multiple injuries on both the hands and on the head (witnesses No.1).

5. *The indl was admitted to MH Gwalior on 12 Dec 2002 at 2130 hrs and later on transferred to CH Lucknow on 18 Dec 2002.*

6. *No. 02999781-F Sep Shailendra Singh was placed under low med cat A3 (T-12) after a board which was held on 10 Feb 2003.”*

3. On behalf of the respondents it has been argued that the disability with which the applicant suffered due to the assault while he was on casual leave had no causal connection with army duties and, therefore, there is no illegality or irregularity in rejecting the claim of the applicant for grant of disability pension.

4. Learned counsel for the applicant has argued that the applicant was on casual leave and an individual during casual leave, under the Rules, is presumed to be on duty and, therefore, the injuries sustained by the applicant must be deemed to be result of army duty. In support of his submissions, learned counsel for the applicant has placed reliance on the following decisions:-

- (i) O.A. No. 201 of 2011, *Sep Govind Singh (Retd) vs. Union of India and others*, decided on 30.03.2017 by Armed Forces Tribunal, Regional Bench Lucknow, and
- (ii) O.A. No. 10 of 2018 *Ex Sub Dhaneswar Saikia vs. Union of Indian and others* decided on 07.08.2018 by Armed Forces Tribunal, Regional Bench Guwahati.

5. On behalf of the respondents it has been argued that Hon'ble Apex Court in a catena of decisions has clarified that for grant of disability pension arising out of injury, an individual must establish causal connection between the army duty and the injury sustained. It is submitted that in the present case, there is absolutely no causal connection of the injury with army duty.

6. The solitary point which arises for determination in the facts and circumstances of the present case is whether injury sustained by the applicant which was result of attack by some miscreants while the applicant was on casual leave at the outskirts of his village while coming back from a temple can be said to have any causal connection with army duty. The two pronouncements of co-ordinate Benches of the Armed Forces Tribunal on which reliance has been placed by learned counsel for the applicant have virtually interpreted that army personnel on casual leave shall be presumed to be on duty and on this basis, the co-ordinate Benches of the Armed Forces Tribunal in aforesaid decisions have granted disability pension.

7. Thus, the moot question for our consideration is whether a Army personnel who is on casual leave, if he sustains injury for reasons not having even the remotest connection with army duty; whether the injury so sustained can be treated to be attributable to or aggravated by Army service? This issue was examined by the Full Bench 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 reported in (2008) 106 DRJ 865 (Del), 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 Supreme 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 Supreme 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 Supreme 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."

8. The aforesaid view expressed by Full Bench of Hon'ble Delhi High Court was considered by Hon'ble Supreme Court in the case of ***Union of India & ors vs. Jujhar Singh***, reported in (2011) 7 SCC 735.

In *Jujhar Singh's* case (supra) Hon'ble Apex Court has concluded in

Para 18 as under:-

“18. In N.K. Dilbagh v. Union of India, a Full Bench of Delhi High Court had an occasion to consider a similar issue and eligibility of disability pension by the armed forces personnel. After advertng to various decisions of this Court as well as of the High Courts, it concluded thus: (DRJ pp 880-81,para 24)

*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)

9. Thus the view expressed by the Full Bench of Hon'ble Delhi High Court *in* the case of *Ex Nk Dilbag Singh* (Supra) has been duly approved by Hon'ble Apex Court.

10. Adverting to the facts of the case in hand, it may be observed that the first and foremost criteria to hold whether the injury is attributable to military service or not, is whether its performance or its non-performance would make such an Army personnel liable to any disciplinary punishment or it would amount to an offence under the Army Act, Air Force Act or Navy Act. Admittedly, the applicant while on casual leave was assaulted by some miscreants while coming back from a temple. This factum of receiving injury by the applicant while coming back from the temple, by no stretch of imagination, can be said to have any causal connection with military duty. To go to temple was not a part of army duty.

11. In a latest decision on this point, in the case of *Union of India & ors vs. Ex Naik Vijay Kumar*, in Civil Appeal No. 6583 of 2015 (arising out of CAD No. 13923 of 2014), decided on 26.08.2015 Hon'ble the Apex Court has observed that there should be some nexus between the Military duty and the incident resulting in the injury to a person subject to Military Act, and if there is no causal connection between the Military duty and the accident which resulted into injury, then the injury sustained cannot be treated to be result of Army duty. In para-19 of the case of *Ex Naik Vijay Kumar (supra)*, Hon'ble Apex Court 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.”

12. Hon’ble Apex Court in the case of ***Sukhwant Singh vs Union of India & Ors***, (2012) 12 SCC 228 had an opportunity to consider this point and it was held by their Lordships 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*.”

13. Thus, Hon’ble Apex Court has confirmed the view taken by the Armed Forces Tribunal. By the said judgment, Hon’ble Apex Court had 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).

14. 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 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.”

15. 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.” [

16. Thus, from the aforementioned legal position propounded by Hon’ble High Court and approved by Hon’ble Apex Court, the settled law on the point is that if during leave period any injury is sustained by Army personnel which led to his disability but has no causal connection with military duty, then in such circumstances, such Army personnel will not be entitled for disability pension.

17. Similar view was taken by the Bench of this Tribunal of which both of us were Members in O.A. No. 426 of 2017 *Surendra Singh Negi vs. Union of India and ors*, decided on 03.07.2018. In said case, applicant Surendra Singh Negi during continuance of casual leave had met with an accident at his home while driving a motorcycle. Considering the facts and circumstances of said case and in view of pronouncements of Hon’ble Apex Court, it was held that the applicant could not make out a good ground to the effect that the applicant’s injury due to accident during casual leave had any causal connection with Army duty.

18. In view of aforesaid legal position, it is clear that view expressed by the co-ordinate Benches of Armed Forces Tribunal (surpa) without considering the earlier pronouncements of Hon’ble Apex Court (supra) are per incuriam and have no binding force. Apart from it, the Armed Forces Tribunal, Regional Bench Chandigarh in O.A. No. 3690 of 2013

Baldeo Singh vs. Union of India & ors has considered this issue in detail and vide order dated 02.03.2016 has concluded as under :-

“20. The legal position thus follows is that mere fact of a person being on duty or otherwise at the place of posting or on leave is not sole criteria for deciding attributability of disability/death. The act, omission or commission which results in injury to the member of the force and consequent disability/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. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service. What ex facie seen in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions.”

19. A perspective of our discussions made hereinabove is that the claim of the applicant for grant of disability pension was rightly rejected and, therefore, this O.A. has no merit and deserves to be dismissed.

20. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: January, 2019
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