Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 648 of 2017

Monday, this the 14th day of January, 2019

"Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"

No.1084261 M Ex Swr Jagbir Singh, son of Sri Dambar Singh resident of Village and Post Kisauli, district Bulandshaher (UP).

…Applicant

Counsel for the applicant: **Sri K.K. Mishra, Advocate**

Versus

1. Union of India through its Secretary, MoD New Delhi.

2. Chief of the Army Staff, Army HQ New Delhi.

3. Officer-in-Charge, Armored Corps Records Ahmed Nagar.

4. CDA (Pension) Allahabad.

…. Respondents

Counsel for the Respondents : **Shri Arun Kumar Sahu**,
Addl. Central Government Counsel

ORDER

"Per Hon'ble Mr Justice SVS Rathore, Member (J)"

1. By means of this O.A. the applicant has made the following prayers:

> *(i) to quash CDA (Pension) Allahabad letter NO.NC C-3/51/67/3/92 dated 2.6.92 (Annexure A-3 to OA) and Armored Corps Records Letter No. 1084261/DP/04/Pen dated 09 July 92 (Annexure A-4 to OA)*
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> *(ii) Direct the respondents to grant 30% disability pension to the applicant duly rounded of to 50% as per the ruling on the subject.*
>
> *(iii) Direct the respondents to pay the arrears of disability pension w.e.f. 19 Feb 1992, i.e. the date of discharge from service, till the date of payment with interest as applicable."*

2. At the very outset, it may be observed that there was a delay of 25 years and 03 days in filing this O.A. Since the matter relates to claim of disability pension which involves recurring cause of action, therefore, the delay in approaching the Tribunal was condoned vide order dated 08.12.2017.

3. In brief the facts of the case are that the applicant was enrolled in the Army on 25.09.1984 and was discharged from service on 19.02.1992 under Rule 13 (3) III (v) of the Army Rules, 1954 after being placed in medical category lower than 'AYE'. It is admitted fact while the applicant's Unit was stationed at Ambala Cantt. he was granted casual leave with effect from 01.04.1989 to 06.04.1989. During the aforesaid period, on 03.04.1989 when the applicant was going to meet his brother in district Bulandshaher, State of Uttar Pradesh, the applicant met with an accident while travelling on a

private bus and sustained injury. He was given treatment in several Military Hospitals. He was placed in medical category BEE (P) by Military Hospital, Ambala Cantt and was discharged from service in low medical category.

4. In the counter affidavit, in paragraphs 6 and 7, the respondents have averred as under:-

> *"6. That during Casual Leave w.e.f. 01.04.1989 to 06.04.1989, the applicant met with an accident while travelling in private bus and sustained severe injuries on left thigh on 03.04.1989. The Court of Inquiry ordered to investigate the matter which has declared the injuries sustained by applicant as* ***'Attributable to military service'*** *and occurrence to this effect has been published vide 20 LANCER part II order no. 0/0082/0003/1990.*
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> *7. That the applicant was downgraded to low medical category BEE (P) by medical board held by Military Hospital, Ambala Cantt due for diagnosis "****FRACTURE SHAFT ON FEMUR (LEFT)****" ON 09.01.1992. Accordingly, the applicant was brought before Invaliding Medical Board, wherein his disability viz. "****FRACTURE SHAFT ON FEMUR (LEFT)****" was regarded as Attributable to military service and degree of disability was assessed at 30% for 02 years by the Invaliding Medical Board dated 09.01.1992. The invaliding medical board proceedings (AFMSF-16) were approved by DADH, Ambala on 22.01.1992."*

5. After discharge from service, the applicant made several representations claiming disability pension which were turned down; hence the instant OA.

6. Submission of learned counsel for the applicant is that once the Court of Inquiry has given a report that the injury sustained by the applicant was attributable to military service and the report of the Court of Inquiry was approved by the competent authority, there was no scope for any other authority to deny disability pension to the applicant or to give any other opinion contrary to the report of the

Court of Inquiry which was duly approved by the competent authority.

7. On behalf of the respondents it has been argued that since the applicant sustained injury while on casual leave and the injury sustained by him had no causal connection with Army duty, therefore, denial of disability pension does not suffer from any illegality or irregularity; rather it is in accordance with law. It has also been argued that report of Court of Inquiry is against the law settled by Hon'ble Apex Court hence it has to be ignored.

8. Thus, the moot question which arises for our consideration is whether a Army personnel who is on casual leave, if he sustains injury while doing absolutely personal work, whether the injury 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."

9. 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 adverting to various decisions of this Court as well as of the High Courts, it concluded thus: (DRJ pp 880-81,para 24)*
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> > *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)

10. 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.

11. 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 going to meet his brother in his native village in district Bulendshaher, State of Uttar Pradesh when he met with an accident while travelling in a private bus. This act by no stretch of imagination can be said to have any causal connection with military duty.

12. 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."*

13. 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 v*s Jujhar Singh."

14. 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.

15. 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."*

16. 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."* [

17. 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. We do not find any substance in the submission of learned counsel for the applicant that the Court of Inquiry has given a report that the injury was attributable to military services and said report of the Court of Inquiry was approved by the competent authority, therefore, a different view cannot be taken by this Tribunal. It is always within the legal competence of the Tribunal to scrutinize the orders passed or reports given by the Army authorities and to decide as to whether the same is in accordance with the law or not. A Court of law cannot blindly follow the order/report which on the face of it is illegal, against the Regulations and precedents laid down by the Hon'ble High Courts and Hon'ble the Supreme Court. If such submission of learned counsel for the applicant is given any

weight, then virtually it would render the Tribunal without any power because every order of discharge, dismissal, denial or grant pension/disability pension, which is passed by the competent authority cannot be scrutinized by the Tribunal on the ground that such an order has been passed by the competent authority. Such an interpretation would be against the settled proposition of law. It is always open for the Tribunal to judge the legality or otherwise of the orders passed by the authorities in matters subject to the Army Act, the Air Force Act and the Navy Act. In the facts of the present case, there is no dispute that the applicant sustained injury while on casual leave when he was travelling in a private bus and was going to meet his brother in his village in district Bulandshaher, State of Uttar Pradesh while the Unit in which the applicant was detailed was stationed in Ambala Cantt. To go to meet his brother, by any stretch of imagination, cannot be presumed to have any causal connection with Army duty.

18. 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.

19. Apart from it none of the parties have filed the copy of Court of Inquiry report. But the admitted fact in which such a report has been submitted is really surprising. How in such an admitted fact situation a report like this can be given and approved. We are of the view that the authority which has rejected the claim of disability pension of the applicant has taken an absolutely correct decision

and there is absolutely no illegality in this order of denial of disability pension.

20. In view of aforesaid discussion, we are of the considered view that the claim of the applicant for grant of disability pension was rightly rejected by the authority concerned and, therefore, this O.A. has no merit and deserves to be dismissed.

21. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : January 14 ,2019.
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