

**E-court****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No. 207 of 2019**Wednesday, this the 28<sup>th</sup> day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

1/1. Smt Aneeta Goswami, wife of Late Ex Gunner Ajay Kumar Goswami (Army No 14416642H).

1/2. Miss Kum Kum Goswami (Minor) daughter of Late Ex Gunner Ajay Kumar Goswami (Army No 14416642H).

1/3. Sumit Goswami (Minor) son of Late Ex Gunner Ajay Kumar Goswami (Army No 14416642H)

(Under the guardianship of her natural mother Smt Aneeta Goswami).

**.... Applicants**Ld. Counsel for the: **Col BP Singh (Retd)**, Advocate.  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South block, New Delhi-110011.

2. Chief of the Army staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.

3. Officer-in-Charge, Arty Records, Nasik Road Camp.

4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

**... Respondents**Ld. Counsel for the: **Shri RC Shukla**, Advocate  
Respondents. Central Govt Counsel.

**ORDER (Oral)**

1. Being aggrieved with denial of disability pension, Ex-Gunner Ajay Kumar Goswami had filed this O.A. for grant of disability pension under Section 14 of the Armed Forces Tribunal Act, 2007 vide which he had sought the following reliefs:-

- (i) Issue/pass an order or direction to the respondents to quash/set-aside the impugned orders dated 31.12.2002, 19.05.2004 and 07.02.2006 (Annexure No A-2 and A-3) passed illegally and without application of mind by the respondents.
- (ii) Issue/pass an order/direction to the respondents of appropriate nature to give the disability of 40% as recommended by the Release Medical Board and also to grant the benefits of 'rounding off' of the disability pension benefits to the applicant by granting 50% disability pension with effect from 01.05.2002 as a matter of right as provided vide Government of India, Ministry of Defence letter No 1(2)/97/D(Pen-C) dated 31.01.2001 (Annexure No A-6) supported by the position held by the Supreme Court.
- (iv) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (v) Allow this application with costs.

2. Brief facts of the case are that having been enrolled in army on 25.10.1995, Ex Gnr Ajay Kumar (now late) Goswami was granted 60 days annual leave w.e.f. 07.04.1997. On 18.05.1997, while on leave he was proceeding to Shyamgarh (Rajasthan) to attend his friend's marriage. While trying to get other side of the

platform, he climbed over the ladder of a goods train stationed there, he could not notice the high tension electric wire on roof of train thereby sustaining 60% burn injuries. He was downgraded to low medical category 'BEE (permanent)' w.e.f. 20.07.2000 for disability 'POST BURN SCAR HYPER TROPHIC'. Being placed in low medical category, he submitted his willingness dated 15.09.2001 to continue in service at sheltered appointment in terms of para 2 (a) of Army Order 46/80. Since sheltered appointment commensurate with his disability was not available in unit, Commanding Officer took up a case with Records to discharge him from service. Accordingly his discharge order was issued vide letter dated 10.11.2001 and he was discharged from service w.e.f. 30.04.2002 (AN). Prior to discharge, he was brought before Release Medical Board (RMB) held on 05.04.2002 which assessed his disabilities '(i) POST BURN SCAR HYPER TROPHIC, (ii) GENERALISED SEIZURE (348) and ORGANIC AFFECTIVE DISORDER (294)' (composite assessment) @ 40% for two years neither attributable to nor aggravated by military service. Disability pension claim was rejected vide order dated 31.12.2002. Against rejection of disability pension he filed statutory appeal dated 19.05.2003. Meanwhile Gnr Ajay Kumar Goswami (now late) filed a writ petition No. 28289 of 2003 in the Hon'ble High Court of judicature at Allahabad for issuing directions to decide his statutory appeal which was heard on 09.07.2003 and direction was issued to decide statutory appeal within six months. On the directions of the Hon'ble High Court his

statutory appeal was rejected vide order dated 19.05.2004 with an advice to prefer first appeal. Accordingly, appeal was preferred which was rejected vide order dated 07.02.2006. Feeling aggrieved, he filed CWMP No. 47744 of 2006 in the Hon'ble High Court of judicature at Allahabad for grant of disability pension, which was further transferred to this Tribunal and registered as T.A. No. 356 of 2010. The said T.A. was dismissed vide order dated 17.01.2018 with liberty to applicant to file fresh petition. This O.A. has been filed for grant of disability pension. During pendency of this O.A. Gnr Ajay Kumar Goswami died on 04.06.2019 due to cardiac arrest and his legal heirs have been substituted vide order dated 24.11.2020.

3. Learned counsel for the applicants submitted that, admittedly, the deceased soldier was on annual leave when he sustained injury, which ultimately resulted in 40% composite disability because of '(i) POST BURN SCAR HYPER TROPHIC, (ii) GENERALISED SEIZURE (348) and ORGANIC AFFECTIVE DISORDER (294)'. He submitted that since Gnr Ajay Kumar Goswami (now late) was on leave which is presumed as duty, his disabilities ought to be attributable to military service and his heirs be entitled to grant of disability pension. He also submitted that various Benches of AFT, Hon'ble High Courts and the Hon'ble Apex Court, in the matter of disability, have held that if an armed forces personnel suffers with disability during the course of service, which was never reported earlier when he/she was

enrolled/recruited in the Armed Forces, the said disability would be treated to be attributable to or aggravated by military service and he/she should be entitled to the disability pension. Thus, he submitted that applicants' case being fully covered with above, as the deceased soldier also suffered injury while on annual leave which is treated as duty and the same being not reported earlier at the time of his enrolment, applicants are entitled to disability pension. In support, learned counsel for the applicants has placed reliance on the judgment in the cases of **Sukhwinder Singh vs. Union of India & Ors** reported in (2014) STPL (WEB) 468 SC and **Dharamvir Singh Vs. Union of India and Ors** reported in (2013) 7 Supreme Court Cases 316 and submitted that applicants be held entitled to disability pension.

4. Per contra, learned counsel for the respondents submitted that it is not disputed that Gnr Ajay Kumar Goswami (now late) sustained injury resulting in disability, as held in report dated 05.04.2002 of the Medical Board Proceedings, Gnr Ajay Kumar Goswami being on annual leave doing his personal work could be treated on duty as he was not on military duty. However, for grant of disability 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 and military service. He further submitted that unless injury sustained has causal connection with military service, armed forces personnel cannot be allowed disability pension merely on the reason of being on

casual/annual leave. He further submitted that in the given facts and circumstances, Gnr Ajay Kumar Goswami (now late) being on leave met with an accident while crossing other side of platform, there was no causal connection between the injury sustained and military service and, therefore, he is not entitled to disability pension, as is being claimed by his heirs. He pleaded that O.A. be dismissed.

5. We have heard learned counsel of both sides and perused the records.

6. After having heard the submissions of learned counsel of both sides, we find that there are certain facts admitted to both the parties, i.e., Gnr Ajay Kumar Goswami (now late) was enrolled in the Army on 25.10.1995 and discharged from service on 30.04.2002 (AN) prior to completion of terms of engagement. He met with an accident while on annual leave and downgraded to medical category for disabilities '(i) POST BURN SCAR HYPER TROPHIC, (ii) GENERALISED SEIZURE (348) and ORGANIC AFFECTIVE DISORDER (294)' vide AFMSF-16 dated 05.04.2002 and his disabilities were assessed @ 40% (composite) for two years neither attributable to nor aggravated by military service. The disability claim in respect of Gnr Ajay Kumar Goswami (now late) was rejected on 31.12.2002 with advise to prefer an appeal against the rejection order within six months from the date of rejection letter, if not satisfied, but his first and second appeals were rejected vide orders dated 19.05.2004 and 07.02.2006

respectively. Learned counsel for the respondents has also conceded, during the course of hearing, that when Gnr Ajay Kumar Goswami (now late) sustained injury resulting into disability, he was on annual leave.

7. The respondents have denied disability pension to Gnr Ajay Kumar Goswami (now late) for the reason that for getting disability pension, in respect of injuries sustained during the course of employment, there must be some causal connection between the disability and military service, and this being lacking in his case, as there was no causal connection between the disability and military service, he is not entitled for the same.

8. This question 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 also. In a more or less similar matter, **Secretary Govt of India & Others vs Dharamveer Singh**, decided on 20<sup>th</sup> 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 inquiry 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, Personal 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 vs Union of India & Ors**, decided on 17.08.1999 was allowed 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 3 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?*

9. 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, it is to be treated on duty.

10. While deciding the second question the Hon'ble Apex Court held that while deciding the question of admissibility of disability pension, it has to be seen that there must be some causal connection between the injury or death and military service. 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 attributable to risk common to human being. When a person is going on a scooter to purchase household articles, such activity, even remotely, has no causal connection with the military service. In the present case there seems to be no causal connection of accident with military duty.

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

12. 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 vs 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 is to be required to be dealt accordingly. Those guiding factors are reproduced below for 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.”*

13. We have considered the case in hand in view of the above guiding factors and we find that though Gnr Ajay Kumar Goswami (now late) was on annual leave when he met with accident and sustained injuries resulting in disability of permanent nature to the extent of 40% for two years on account of (i) POST BURN SCAR HYPER TROPHIC, (ii) GENERALISED SEIZURE (348) and ORGANIC AFFECTIVE DISORDER (294)', the activity in which injuries were sustained being not connected with his military service in any manner, he is not entitled to the disability pension

for the same as RMB has held that the disabilities in question are neither attributable to nor aggravated by military service. We also find that rulings relied upon by learned counsel for the applicants being either based on different facts and circumstances or are of no help to applicants.

14. We also take note of rejection of disability pension claim letter dated 31.12.2002 and rejection orders of Appellate Authority dated 19.05.2004 and 07.02.2006 wherein it is clearly mentioned that the injuries sustained by Gnr Ajay Kumar Goswami (now late) are not attributable to military service. Since the disabilities with respect of Gnr Ajay Kumar Goswami (now late) have no causal connection with military duty, applicants are not entitled to disability pension.

15. In the result, we hold that disability pension claim in respect of Gnr Ajay Kumar Goswami (now late) has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

16. No order as to costs.

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

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

Dated: 28.07.2021

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