

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 434 of 2018**Monday, this the 30<sup>th</sup> day of September, 2019**“Hon’ble Mr. Justice Virender Singh, Chairperson**  
**“Hon’ble Air Marshal BBP Sinha, Member (A)”**Smt. Vimlesh, Wife of No.1477873-P,  
Ex Nk Late Devendra Singh,  
R/o Village Batrauli,  
Post- Janta Inter College, Nauner,  
District- Manpuri- 205001, State- U.P.

..... Applicant

Counsel for the : **Shri P.K. Shukla, Advocate**  
Applicant

Versus

1. Union of India through Secretary Ministry of Defence (Army), South Block, New Delhi 110010.
2. Chief of the Army Staff, IHQ MoD (Army) South Block, New Delhi.
3. The Officer-in-Charge, Bengal Engineers Group, PIN-908779, C/o 56 APO
4. PCDA (Pension) Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the : **Mrs. Anju Singh, Advocate**  
Respondents. Central Govt. Counsel

**ORDER****Per Hon'ble Air Marshal BBP Sinha, Member (A)**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

*(a) To issue/pass an order to set-aside/ quash the order dated 14.08.2007 and 21.11.2017 passed by respondents.*

*(b) To issue/pass an order or directions to the respondents to grant disability element of disability pension of the applicant's husband to the applicant from the date of discharge i.e. 31.08.2007 to date of death 10.06.20016 in light of Hon'ble Apex Court judgment and Government letter dated 31.01.2001.*

*(c) To issue/pass an order or directions to the respondents for rounding off the disability pension from 40% to 50% along with interest @ 9% per annum.*

*(d) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*

*(e) To allow this original application with costs.*

2. The brief facts of the case as borne out from the pleadings of the parties are that applicant's husband was enrolled in Indian Army on 12.08.1985 and discharged from service on 31.08.2007 under Rule 13 (3) (III) (i) in low medical category A3 (P). It is the case of the applicant that during service her husband while on casual leave met with an accident in which he sustained knee injury. At the time of discharge during Release Medical Board (RMB) he was found suffering from "FRACTURE LATERAL CONDYLE OF FEMORAL CONDYLE LT WITH SECONDARY OSTED ARTHRITIS" and his disability was assessed at 40% for life but neither attributable to nor aggravated by military service as it was sustained during a road transport accident during leave and not on military duty. The

disability claim was rejected by PCDA (P), Allahabad vide order dated 14.08.2007. Applicant's husband died on 10.06.2016, where upon the family pension was granted to the applicant vide order dated 18.08.2016. On coming to know that the disability pension is being granted in such type of cases, applicant preferred an appeal on 17.10.2017 but the same was rejected on 21.11.2017. The case of the applicant is that her husband met with the accident while he was in service though on casual leave and therefore he was entitled to disability pension. Hence feeling aggrieved by denial of disability pension to her husband, applicant has preferred this O.A.

3. The delay in filing of Original Application has been condoned vide order dated 14.09.2018.

4. The respondents have filed their counter affidavit denying the claim of the applicant. It has been pleaded by the respondents that the applicant's husband, while on casual leave, met with an accident while travelling on a motor cycle with his cousin brother. It has also been pleaded that a Court of Inquiry (C of I) was held at 59 Engineer Regiment, which opined that "the injury sustained by No.1477873E Nk Devendra Singh, while the individual was on casual leave, is not attributable to the Military services." The C of I has been concurred by the Officiating Commanding Officer. The claim of the applicant's husband was also examined by the competent authority and the same was rejected after due examination in consultation with the competent medical authority and in accordance with the relevant rules. In the aforesaid background it has been claimed that the disability with which applicant's husband was found suffering is not attributable to military

service and accordingly the claim of the applicant for disability pension is liable to be dismissed.

5. 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.*

6. 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 the army duty.

7. The solitary point which arises for determination in the facts and circumstances of the present case is whether injury sustained as a result of an accident while applicant's husband was on casual leave 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.

8. Thus, the moot question for our consideration is whether an 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."*

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)*

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

11. In view of the settled law on the matter of attributability of an injury during casual leave the case of the applicant who was on casual leave for 06 days w.e.f. 02.12.2007 to 07.12.2007 and was going from Mainpuri to Bhind on a motor bike along with his cousin brother as a pillion rider on 03.12.2007 and met with a road accident and sustained injuries including knee fracture. This injury turned into disability, assessed at 40% by the RMB. Thus,

this factum of receiving injury by the applicant while on a private visit, cannot be said to have any causal connection with military duty.

12. In a latest decision on this point, in the case of ***The Secretary, Govt of India & Ors vs Dharambir Singh*** in Civil Appeal No 4981 of 2012, decided on 20.09.2019. In this judgment their Lordship has set aside the decision of AFT, Regional Bench, Chandigarh in which the applicant met with a road traffic accident while going on scooter while on casual leave and the same was held as attributable to military service and granted disability pension. This decision has been set aside by the Hon'ble Supreme Court on the grounds that causal connection with military duty has to be there for assigning attributability to military service.

The concluding para of the judgment is quoted below:-

*“37) In view of the above discussion and the conclusions drawn by the Tribunal in T.A. No 61 of 2010, we find that the order of the Tribunal is not sustainable. Consequently, the appeal is allowed. The order passed by the Tribunal is set aside and the Original Application filed by the respondents is dismissed.”*

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

14. It is accordingly **dismissed**.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated : September 2019  
gsr

**(Justice Virender Singh)**  
**Chairperson**