

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI**

TA No.356/2009

[WP (Civil) No.9136/07 of Delhi High Court]

Ex Gnr Munshi Ram

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh.S.M. Dalal, Advocate

For respondents: Sh.Rajat Gaur, Advocate

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
16.12.2009**

1. The present petition was transferred from Hon'ble Delhi High Court to this Tribunal on its constitution.

2. Petitioner by this writ petition had prayed to issue a writ of certiorari quashing the order dated 26.07.2007 and 04.10.1996 vide which the petitioner's claim for disability pension was rejected.

3. Petitioner was enrolled in Army on 27.09.1982 where he served with utmost dedication till he was invalided out from service on 01.12.1995. Petitioner was on casual leave from 21.09.1992 to 10.10.1992 to attend the marriage of his sister at Hissar when he met with an unfortunate accident on 27.09.1992 while going to market to buy certain essential items on his Moped (Luna) which collided with a civil truck, resulting in severe injuries to him. Petitioner was suffering from 'compound comminuted fracture Tibia Fibula (RT). Petitioner was placed in a low medical category (Permanent) and was thereafter invalided from service on 01.12.1995. After release from Army, petitioner requested for disability pension which was rejected and against that he preferred an appeal before the Central Government which was also rejected. Hence, petitioner approached by filing writ petition before Hon'ble Delhi High Court and Hon'ble Delhi High Court has

transferred the matter to this Bench after constitution of Armed Forces Tribunal.

4. A written was filed by respondents and respondents have taken the position that petitioner is not entitled to disability pension as petitioner was not on duty and therefore the injury received by petitioner in accident cannot be attributable to military service.

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

6. There are no two opinion that petitioner met with an accident and received Compound Comminuted Fracture Tibia Fibula and this is also fact that petitioner was on sanctioned leave for the aforesaid period. From these facts a question arises, whether petitioner is entitled to disability pension or not. In this connection learned counsel for the petitioner has invited our

attention to Rule 10 of Defence Services Regulations (Leave Rules). Rule 10 reads as under :-

"Casual Leave : *Casual leave counts as duty except as provided for in Rule 11 (a).*

It cannot be utilised to supplement any other form of leave or absence except as provided for in clause (A) of Rule 72 for personnel participating in sporting events and tournaments.

Casual leave due in a year can only be taken within that year. If, however, an individual is granted casual leave at the end of the year extending to the next year, the period falling in the latter year will be debited against the casual leave entitlement of that year.

7. As per Rule 10, a person on casual leave shall be treated on duty except as provided in Rule 11 (a). Rule 11 (a) deals with the annual leave and we are concerned only with casual leave. Petitioner was on casual leave and he has to be treated on duty. Learned counsel for the petitioner also invited our attention to Regulation 520 of the Defence Services Regulations for the Army Volume-I, 1987 (Revised Edition) and as per Regulation 520, a detailed procedure has been laid down that Medical Incharge will forward the report to the Brigade Commander and the Brigade Commander after considering the matter endorse the same to the competent authority for sanction

of the pension and sanctioning authority can accept the decision of the Brigade Commander or if they have any doubt they will submit pension claim for orders of the Central Government. Therefore, a detailed procedure has been prescribed in case of injury how the matter has to be dealt with. The opinion of the Brigade Commander is to be considered in correct perspectives. In the case of petitioner, Brigade Commander recommended the case of the petitioner and took the view that it is attributable to military service as incumbent was on the duly sanctioned casual leave, therefore, he will be treated on duty. But when the matter went to sanctioning authorities, sanctioning authorities did not accept the recommendations of the Brigade Commander and rejected the claim of the petitioner for disability. Hence, petitioner approached before the Central Government and Central Government by the order dated 29th July, 1998 rejected the claim of the petitioner. The order passed by the Central Government reads as under :-

Registered
No. 7 (337)/97/D (Pen. A&AC)
Government of India
Ministry of Defence
New Delhi, the 29th July, 1998

To
Ex. Gnr. Munsiram S/o
Shri Ram Kishan

Vill. & PO – Niyana
Distt. – Hisar (Haryana)

Subject : Appeal against rejection of disability pension in
respect of Ex. Gnr. Munsiram (No.14367135)
of Arty.

Sir,

I am directed to refer to your appeal dated 26.10.96 on the above subject and to inform you that the same has been carefully considered by the First Appellate Committee.

2. You were discharged from service on account of Invaliding Disease (ID) – Compound Communitied Fracture Tibia Fibula.

3. On perusal of your medical/service documents, it has been found that you had sustained injury on 27.9.92 in a road accident during casual leave from 21.9.92 to 10.10.92 at your hometown. Since you were not on 'duty' at the material time of accident, ID is not attributable to military service in terms of RER-1982. Hence, your disablement in such circumstances is not related to your duties of Military Service.

4. It is, therefore, regretted that your request cannot be acceded to.

Yours faithfully,

Sd/-.

(Daulat Ram)

for Under Secretary to the Government of India

8. The Central Government after perusal of the record has observed that though the petitioner was on casual leave from 21.09.92 to 10.10.92 at his hometown, he cannot be treated on duty at the time of accident. Hence, they rejected the petition for grant of disability.

9. Learned counsel for petitioner has also invited our attention to the decision of the Apex Court given in case of Lance Dafadar Joginder Singh Vs. Union of India – 1995 Supp (3) Supreme Court Cases 232. In that case identical situation, their Lordships has taken a view that where appellant was in regular Army and he was on casual leave, he was treated on duty. Therefore, the disability is attributable to military service. Their Lordships have observed as under :-

“The question for our consideration is whether the appellant is entitled to the disability pension. We agree with the contention of Mr. B. Kanta Rao, learned counsel for the appellant that the appellant being in regular Army there is no reason why he should not be treated as on duty when he was on casual leave. No Army Regulation or Rule has been brought to our notice to show that the appellant is not entitled to disability pension. It is rather not disputed that an army personnel on casual leave is treated to be on duty. We see no justification whatsoever in denying the disability pension to the appellant.”

10. Therefore, learned counsel for the petitioner submitted that in view of the clear decision of Hon'ble Supreme Court, petitioner who was although on leave should be treated as on duty and is entitled to all the benefits. Learned counsel for petitioner

also invited our attention to the decision of Hon'ble Delhi High Court in the case of Hony. Capt. Vardip Singh & Another Vs. Union of India & Others – 109 (2004) DLT 536 and submitted that the fact of Regulation 520 was considered by Division Bench and they have taken the view that once the recommendation of the Brigade Commander is received then there is no reason to disbelieve that recommendation and it should be in normal course accepted. As against this learned counsel for respondents has invited our attention to the decision of Full Bench of Hon'ble Delhi High Court in case of Ex. NK Dilbagh Vs. UOI in CWP No.6959/2004 and Ex. NK Ramesh Kumar Vs. Union of India in CWP No.20348/2005. In that case the Full Bench after considering all the decisions relevant on subject including the judgment of Hon'ble Supreme Court has taken the view that benefits cannot be extendable. However, Hon'ble High Court had no occasion to consider Regulation 520 and consequently it was pointed out by learned counsel for petitioner that in that case petitioner did not plead that the injury is attributable to in military service. Be that as it may the fact remains that when there is a decision of the Apex court in an identical matter in which man is on casual leave, met with an accident, their Lordships have

treated that he is on duty then there is no other law in the country which can override the decision of Hon'ble Supreme Court, it is law of the land and it has to be accepted without any demur. We have already quoted the decision of Hon'ble Supreme Court above and this decision is last word on the subject. So far as the order passed by the Central Government in 1998 is concerned, it suffers from illegality that the Central Government has erroneously not treated a person on casual leave on duty whereas the Regulation 10 mandates it. Regulation 10 clearly says that person on casual leave should be treated on duty. Therefore, the reason given by the Central Government in the order that petitioner cannot be treated on duty, de-horse the law. Consequently, we set aside the order dated 29th July, 1998 and the order of authority rejecting pension dated 04th October, 1996. The matter is remitted back to the Central Government to decide the matter in the light of the decision discussed above. Since the incumbent has retired long back in the year 1992, matter should be decided expeditiously. Whatever benefits flow from the order passed by the Central Government, should be released forthwith. Petition is accordingly allowed. No order as to costs. The cost

24

which has been earlier awarded by Hon'ble Delhi High Court has been given to counsel for petitioner in the court today.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 16, 2009