

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA No. 647 of 2015 with MA 696/2015**

**Ex Nk Satyendra Kumar**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Ms. Archana Ramesh, Advocate**

**For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**

**HON'BLE LT GEN PM HARIZ, MEMBER (A)**

**ORDER**

The applicant vide the present O.A 647/2015 instituted on 27.08.2015 has made the following prayers:-

*“(a) Issue directions to quash and set aside the Sikh Regt Records Letter dated 11 Aug 2014 placed as Annexure A-1 being contrary to the Pensionary Regulations on the subject.*

*(b) Issue directions to declare the injury suffered by the Applicant as attributable to military service in the light of the judgment of the Hon'ble Armed Forces Tribunal, dated 30 June 2014 in OA No 72/2011 in Re Havildar Mahavir Kumar Versus Union of India placed as Annexure A - 8 as also to grant Disability Pension @ 70% for life duly broad banded to 75% with all consequential fiscal benefits including AGIP in the light of the judgment of the Hon'ble Punjab and Haryana High Court in Re Paramjit Kumar Versus Union of India dated 12 Feb 2008 which has been upheld by the Hon'ble Supreme Court vide dated 04 April 2011 placed as Annexure A - 9 (Colly)*

*(c). Issue directions to grant Ex Gratia payment to the Applicant in the light of the Government of India, Ministry of Defence Letter dated 26 Dec 2011 along with the*

*Judgment of the Hon'ble Armed Forces Tribunal in Re Chatru Gujjar Versus Union of India dated 24 Sep 2013 placed herein as Annexure A - 10 (Colly)*

*(d). Issue directions to grant LPG Agency to the Applicant as the Disability Pension is quantified more than 20% as per the Army HQ Policy Letter on the subject placed herein as Annexure A - 11*

*(e). Pass such other and further orders/directions to the Respondents for an adequate exemplary compensation as may be deemed just and proper by the Hon'ble Armed Forces Tribunal in the attendant genuine circumstances of the case."*

2. Vide order dated 09.03.2016 it was indicated that the respondents submitted that the PPO had been issued granting relief and the issue that remained for adjudication was the grant of Ex-gratia payment as per order dated 26.12.2011. Vide order dated 09.03.2016 it was observed as under:-

*"Learned counsel for the respondents states that PPO granting relief to the applicant has already been issued. The only issue left for adjudication is grant of ex-gratia payment as per Govt. of India order dated 26.12.2011 The petitioner is entitled to ex-gratia payment in terms of Para 3 of the above referred letter. Learned counsel for the respondents is not able to controvert this position.*

*2. In view of the above, ex-gratia payment may be granted to the petitioner as entitled, based on the composite disability of 75%. The fact that the disability is attributable to military service has been accepted by the respondents in their pleading.*

*3. Accordingly the above petition is disposed off having become infructuous.*

*4. Learned counsel for the respondents has made an oral request for grant of leave to appeal before the Hon'ble Supreme Court. We find no substantial question of law of general public importance involved in the matter. Hence, the request for leave to*

*appeal before the Hon'ble Supreme Court is rejected.  
No order as to costs."*

3. Vide order dated 12.08.2016 however RA 45/2016 in OA 647/2015 had been filed by the UOI seeking review of the order dated 09.03.2016 in relation to grant of Ex-gratia payment for the disability suffered by the applicant which was assailed by the respondents submitting that there is an error apparent in the order of this Tribunal. Vide order dated 12.08.2016, the review application RA 45/2016 filed by the UOI was allowed and the order dated 09.03.2016 disposing of the OA was set aside, directing the restoration of the OA. The order dated 12.08.2016 observes as under:-

*"1. The respondents in the OA have moved the above application for review of the Order dated 09.03.2016 by which the claim of lump- sum compensation for ex-gratia payment for disability suffered by the applicant was upheld by this Tribunal. There is error apparent or mistake in the order passed by the Tribunal is the case of the respondents to seek for review of that Order.*

*2. Invoking the jurisdiction of this Tribunal for grant of rounding off benefits on the percentage of disability element of his disability and also for ex-gratia payment for the disability suffered, the applicant filed the above O.A. Pending adjudication of the OA rounding off benefits claimed was allowed and, accordingly, PPO was issued. What survived for consideration was only his claim for ex-gratia payment of compensation for his disability. Tribunal stating that the applicant is entitled to ex-gratia payment of compensation in terms of para 3 of the Government of India letter dated 26.12.2011 (Annexure-A-10 in the OA) expressed the view that he has to be granted such compensation as entitled to. In forming such a view the Tribunal took*

*into account that the disability suffered by the applicant was attributable to military service, and, further, the learned counsel for the respondents was not able to controvert the entitlement of the applicant to have ex-gratia compensation as under para 3 of the Government letter referred to.*

*3. In the counter to the OA the respondents have specifically disputed the claim for ex-gratia payment of the applicant and the non applicability of para 3 of the Government letter in his case, but it was brushed aside by the Tribunal stating that the counsel for the respondents 'could not controvert the claim canvassed by the applicant', according to the respondents. There was no decision on the disputed question with reference to para 3 of the Government letter adjudging the claim of the applicant for ex-gratia payment, and the view expressed solely on the premise that the counsel for the respondents could not controvert the claim of the applicant to uphold his claim is an error apparent or mistake in the Order calling for review, is the case presented for annulling the order and re-hearing of the case to have a decision over the claim of ex-gratia payment of the applicant on merits.*

*4. We have heard Mr. S.P. Sharma learned Central Government Counsel appearing for the respondents in the OA and also Ms. Archana Ramesh learned counsel appearing for the applicant in the OA.*

*5. Previous to Government to letter No.2(2)/2011/(Pen)/Pol). (Ministry of Defence), dated 26.12.2011 ex-gratia lump-sum compensation was provided only to the families of the Defence Service Personnel who died in performance of their duties. By virtue of the above Government letter the benefits of ex-gratia lump-sum compensation was extended to Defence Service Personnel "who are disabled, incapacitated in the performance of their bonafide duties under various circumstances and are boarded out from service on account of disability/war injury attributable or aggravated by military service." Para 3 of the Government letter that spells out over and above boarding out from service on account of disability war injury attributable to or aggravated by military service, to claim the benefit of ex-gratia payment of compensation it should be further shown that the*

*defence service personnel was disabled, incapacitated in the performance of his 'bonafide official duties under various circumstances'. When that be so, it is apparent that the view taken by this Tribunal that the applicant in the OA is entitled to ex-gratia payment of lump-sum compensation for the reason that his disability suffered was attributable to military service is not correct. Further more, the disputed question involved in the OA over the entitlement of the applicant to claim ex-gratia compensation challenged by the respondents called for adjudication, and, it cannot be decided taking a view that his entitlement to the claim was not controverted by the counsel for the respondents.*

*6. We are satisfied that there is an error apparent on the face of the order over the view expressed by the Tribunal in respect of para 3 of the Government letter involved, and as such in the interests of justice call for review of the order disposing the OA.*

*Allowing the review petition, we set aside the order dated 09.03.2016 disposing the OA and direct for restoring the OA on the file of the Tribunal. Post the OA for rehearing on 07.10.2016. Parties are directed to suffer their costs.”*

4. The applicant has submitted that in as much as that he sustained an injury when he was coming back to the AF Station and on his way to hospital in a car to meet his son which injury was sustained by him on 16.05.2011 when he was on 12 days casual leave with effect from 16.05.2011 to 27.05.2011 and which was diagnosed as ‘ Fracture Clavicle’(Left) which as per the Attributability certificate dated 12.10.2011 issued by the respondents stated that the injury was attributable to military service, in terms of Rule-12(c) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces

Personnel, 1982, coupled with the factum that the Court of Inquiry proceedings dated 08.08.2011 found that the injury sustained by the applicant on 16.05.2011 whilst he was going to MH Meerut was purely accidental and no one was to be blamed for the same and that the applicant was injured whilst he was on 12 days casual leave, the injury was attributable to service, which was approved by the Commanding officer on 30.09.2011 and thus it is submitted on behalf of the applicant that in as much as the applicant is in receipt of the disability element of pension @75% for life, the applicant in terms of GoI, MoD letter dated 26.12.2011 is entitled to the grant of the Ex-gratia fund at the rate of 70% of Rs. 9,00,000/- as being injury which has been held to be attributable to military service. The applicant further submits that his military service was also cut short due to lack of sheltered appointment.

5. The proceedings dated 04.07.2012 of the Invaliding Medical Board Proceedings stated to the effect:-

***“6. Brief circumstances under which injury occurred including general area of operations.***

***(a) Nk Satyendra Kumar was enrolled in the Territorial Army on 03 Mar 1997. The NCO has 10 years and 147 days of embodied service as on date out of total 15 years and 143 days service. The indl was granted 12 days CL wef 16 May 2011 to 27 May 2011. On 16 May 2011, while he was going to MH Meerut to see his son admitted in the hosp, a car came from rear and hit him, as a result, he fell down***

*and got some minor injuries. After walking some distance he felt that he could not move his left hand. The NCO immediately called up his nephew who accompanied him to MH. He was admitted at MH Meerut on 16 May 2011 and got disch from there on 23 May 2011. The injury was diagnosed as FRACTURE CLAVICLE LT. After availing four weeks sick leave, he was again admitted at MH Meerut on 20 Jun 2011 and got disch from there on 27 Jun 2011. On 24 Jun 2011, the NCO was downgraded to low med cat SIH1A3(T-24) PIE1 wef 24 Jun 2011 to 08 Dec 2011 for the disability of FRACTURE CLAVICLE (LT).*

*(b) On 29 Nov 2011, the NCO reported at Base Hosp Delhi Cantt for review of his med cat. On 04 Apr 2012, the NCO was tfr to R&R Hosp and got admitted there for the disability of BRACHIAL PLESUS INJURY and was disch from there on 04 May 2012. After availing 28 days sick leave, the NCO again reported at Base Hospital Delhi Cantt on 01 Jun 2012. On review of the cat at Base Hosp, Delhi Cantt on 09 Jun 2012, he was downgraded to low med cat A2 (Permt) for two years wef 08 Dec 2011 to 08 Dec 2013 for disability No 1 i.e. FRACTURE CLAVICLE (LT) and A3 (T-24) for six months wef 09 Jun 2012 to 28 Nov 2012 for disability No 2 i.e. BRACHIAL PLESUS INJURY. As the indl sustained disability No 1 at his native place while on casual leave, the Court of Inquiry has classified it as "Attributable to Mil Service"*

**7. Whether certificate of willingness to continue in service attached.**

Yes

**8. Whether sheltered appt**

Sheltered appointment is not available in

available or Not.

*the unit as disability aspect of the indl did not come under purview of the policy contained in Govt of India, Min of Def letter No 34456/GS/TA-3/374/GS/D(GS-III)/2008 05 May 2008.* ”

6. The applicant submits that he be paid Ex-gratia Lump sum compensation in terms of the Government of India, Ministry of Defence letter no. 2(2)/ 2011/(Pen/Pol) dated 26.12.2011. Para-3 of the said letter states to the effect:-

*“3. The President is pleased to decide that such Defence Service Personnel, who are disabled, incapacitated in the performance of their bonafide official duties under various circumstances and are boarded out from service on account of disability/war injury attributable to or aggravated by military service, shall be paid Ex- gratia lump-sum compensation amounting to Rs. 09 Lakhs for 100% disability. For disability/war injury less than 100% but not less than 20%, the amount of Ex-gratia compensation shall be proportionately reduced. No ex-gratia compensation shall be payable for disability/war injury less than 20%. The proportionate compensation would be based on actual percentage of disability as certified by the Invaliding Medical Board, without applying broad -banding provisions as contained in Para 7.2 of this Ministry's above mentioned letter dated 31.01.2001.”*

7. On behalf of the respondents, however it was submitted vide their Counter Affidavit dated 27.11.2015 that since, the applicant was discharged from service on 06 Apr 2013(AN) under TA Rule 14(b)

(iv) before completion of terms of engagement, his case was termed as deemed to have been invalidated out of service in terms of Regulation 95 of the Pension Regulation for the Army 2008(Part-I) and that he is entitled to Disability Pension with benefit of rounding off Disability Element @75% per month wef 07 April 2013 for life in terms of Para-7.2 of Govt of India, Ministry of Defence, letter No. 1(2)/97/D(Pen-C) dated 31 January 2001, and accordingly, his claim was adjudicated as attributable to military service by OIC Records. It was also submitted that a sum of Rs.5,25,000/- towards payment of Disability Cover under AGI Scheme has already been credited in his Bank Account No 32407328024 at the State Bank of India, Kotana Branch, Baghat as intimated vide AGIF New Delhi letter No TA/DS/1739480 dated 20 Dec 2013 and a sum of Rs. 82,806/- towards Regular Maturity amount as intimated vide AGIF New Delhi letter No TA/MA/1734347 dated 26 Nov 2013. The respondents however submitted that the Ex-gratia award is not admissible to the applicant as it does not meet the qualitative requirement as mentioned in letter no. 20(1)/98/D(Pay/Services) dated 22.09.1998 and letter no. 20(5)/2009/D(Pay/Services) dated 04.06.2010.

8. It was further submitted by the respondents that the letter no. 20(1)/98/ D(Pay/Services) issued by the Government of India,

Ministry of Defence dated 22.09.1998, relates to the Ex-gratia Lump Sum compensation to families of the Defence Service personnel who dies in harness and thus is not applicable in the instant case.

9. Inter alia, reliance was placed on behalf of the respondents on the letter no. 20(1)/98/ D(Pay/Services) issued by the Government of India, Ministry of Defence dated 21.10.2008 which also relates to the grant of Ex-gratia lump sum compensation to the families of the Defence Service personnel who die in harness and submit that the same does not relate to the facts of the instant case.

10. Reliance was placed on behalf of the respondents on the letter no. 20(5)/2009/D(Pay/Services) issued by the Government of India, Ministry of Defence dated 04.06.2010 to submit that the same also relates to grant of special benefits in cases of death and disability in service payment of Ex-gratia lump sum compensation to families of defence service personnel who dies in harness and thus the said letter is also not applicable to the facts of the instant case.

#### *ANALYSIS*

11. The relevant policy letter applicable in the instant case is that on which reliance was placed by the applicant in letter no. 2(2)/2011/(Pen/Pol) dated 26.12.2011, the contents of which have been adverted to herein above and of which Para-3 thereof makes it

apparent that it is the Defence Service Personnel, who are **disabled, incapacitated in the performance of their bonafide official duties under various circumstances** and thus boarded out from service on account of disability/war injury attributable to or aggravated by military service, who are to be paid the Ex- gratia lump-sum compensation amounting to Rs. 09 Lakhs for 100% disability proportionate reduction in the percentage of disablement. In the facts of the instant case thus in as much as the records eloquently speak to the effect that the injury sustained by the applicant was **not in the performance of the bonafide official duties** though the injury of the applicant has been held by the Court of Inquiry conducted in the instant case dated 30.09.2011 to be attributable to military service, **in as much as the injury sustained by the applicant was on his way to MH Meerut to see his son who was admitted in the hospital, when the applicant was hit by a Car from the rear on 16.05.2011 when the applicant was on 12 days Casual leave w.e.f. 16.05.2011 to 27.05.2011.** The said incapacitation of the applicant cannot thus be held to be in the performance of bonafide official duties in terms of para-3 of the letter no. 2(2)/ 2011/(Pen/Pol) dated 26.12.2011 nor in terms of verdict of the Hon'ble Supreme Court in *The Secretary,*

*Government Of India & Ors. Vs. Dharambir Singh* in Civil Appeal  
No. 4981/2010, dated 20.09.2019.

**CONCLUSION**

12. The prayer made by the applicant seeking grant of Ex-gratia payment as prayed vide prayer clause-8(c) cannot be granted. During the course of the hearing on 02.07.2024, learned counsel of the applicant has already submitted that Prayer clauses-8(a) and (b) have since been redressed and that prayer clause-8(d) is not pressed.

13. The OA 647/2015 is disposed of accordingly.

Pronounced in the open Court on the 15 day of August, 2024.

[LT GEN PM HARIZ]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/