

**COURT No.3**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**OA No.78/2016**

**Ex GDR Rajender Singh** ... **Applicant**  
**Versus**  
**Union of India and Ors.** ... **Respondents**

**For Applicant** : Mr. S.S. Pandey, Advocate  
**For Respondents** : Mr. Shyam Narayan, Advocate  
Mr. H.S. Tiwari, Advocate

**CORAM**

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)**  
**HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA praying to direct the respondents to grant him disability element of pension @ 40% rounded off to 50% with effect from the date of discharge of the applicant.

**BRIEF FACTS**

2. The facts of the case in brief are that the applicant was enrolled in the GRENADIERS Regiment of the Indian Army on 10.01.1995. He was on 13 days casual leave (from 11.05.1999 to 23.05.1999) when on 14.05.1999 he met with an accident and sustained severe injury. The applicant was

evacuated to Civil Hospital, Charkhi Dadri and further transferred to Base Hospital, Delhi Cantt on 19.05.1999 and got discharged from the hospital on 23.08.1999. He was diagnosed "**Compound Fracture Tibia and Fibula (RT) OPTD S-823**" and placed in Low Medical Category (LMC) A3 (Temporary) wef 27.11.1999 and on subsequent review he was placed in Low Medical Category (LMC) (Permanent) w.e.f 27.11.2002. Despite being placed in Low Medical Category, the applicant was retained in service against Sheltered Appointment in public interest.

3. The Release Medical Board dt. 07.09.2011 held that the applicant was fit to be discharged from service in composite low medical category S1H1A2(P)P1E1 for the disability - "**Compound Fracture Tibia and Fibula (RT) OPTD S-823**" assessed @ 40% for life while the qualifying element for disability pension was recorded as 'NIL' for life on account of disability being treated as 'neither attributable to nor aggravated' (NANA). Subsequently, the applicant was discharged on 31.01.2012 on completion of Terms and Engagement under Army Rule 13(3) Item III (I) after rendering 17 years 21 days of qualifying service. He was granted Service Pension from his date of discharge from service rejecting his

initial claim for grant of disability pension considering his disability as neither attributable to nor aggravated by military service (NANA) by the Grenadiers Records vide letter dt. 29.02.2012, with instructions to file an appeal before the Appellate Committee on First Appeal within six months in case of any dissatisfaction with the findings of the RMB. The first appeal filed by the applicant on 19.03.2012 was rejected and the same was communicated to the applicant vide Grenadiers Records letter dt. 24.07.2014. He further filed Second Appeal on 03.11.2014 and since no action had been taken on the same, the applicant has now filed this OA 78/2016.

#### **CONTENTIONS OF THE PARTIES**

4. Preliminary objection has been raised by the respondents regarding maintainability of this Original Application on the ground that the applicant approached the Hon'ble Tribunal without exhausting the remedies available to him. Second Appeal filed by the applicant on 03.11.2014 against rejection of his claim for disability element of pension had already been processed to the Second Appellate Committee and OA cannot be admitted till finalization of Second Appeal of the applicant by the Competent Authority.

5. The objection regarding maintainability is overruled as the case is pending before this Court since, 2016 hence, instead of dismissing it on the ground of availability of alternate remedies, we deem it appropriate to decide it on merits.

6. Learned counsel for the applicant argued that the applicant met with an accident and sustained severe injuries on 14.05.1999 when he was on Casual Leave. Even while on Casual Leave, the applicant would be deemed to be on "active service and any disability incurred during that period would be attributable to service as per Entitlement Rules 2008. Further, it was also submitted that in the Injury Report dt. 29.05.2000, injury of the applicant was recorded as attributable to military service.

7. Learned counsel for the applicant placed reliance on the verdict given by the Hon'ble Supreme Court of India in the case of **Joginder Singh v. Union of India, 1996(2) SLR 149, Madan Singh Shekhawat v. Union of India & Ors. JT 19999 (6) SC 116** and the verdict given by Hon'ble High Court of Punjab and Haryana in the case of **Krishan Dahiya v. Union of India and Anr. 1996-3(114) PLR 468: 1997(1) SLR 607** and a Division Bench Judgment of this Court in

**Chatroo Ram v. Secretary Defence and Ors. 1991(1) SLR**

**678** to contend that Army personnel on casual leave is treated to be on duty.

8. *Per contra* learned counsel for the respondents submitted that the applicant was discharged from service under Army Rule 13(3) Item III (I) on fulfilling the conditions of his enrolment. As per the Injury Report dt. 29.05.2000, the applicant met with a road accident on 14.05.1999 while he was on 13 days casual leave and not while on the way from duty station to his native place. It is further pointed out that nowhere in the injury report, it is mentioned that the injury sustained by the applicant is attributable to military service as contended by the applicant. The Commanding Officer also agreed with the opinion of the Court and mentioned that the injury sustained by the applicant was not connected with military service.

9. It is further stated that as per the provisions of the Pension Regulations for the Indian Army, 2008 (Part-I), the primary condition for grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Military Service and is

assessed @ 20% or more. The disability of the applicant was however, assessed as “*neither attributable to nor aggravated*” as the injuries sustained due to the accident were not attributable to service conditions as the applicant was not on a service related duty, when he met with the accident.

### **Analysis**

10. Having heard the learned counsel for the parties and on the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 53 of the Pension Regulations for the Indian Army, 2008 (Part-I). Now, the only question that arises in the above backdrop is whether the disability suffered by the applicant was attributable to or aggravated by Army Service.

11. It is undisputed that the applicant suffered injury due to a road accident while he was on casual leave. To consider what acts are covered by the term 'duty', we may like to make reference to Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, Clause 9 which defines

the word duty, which for convenience sake may be reproduced as under:

**9. Duty: For the purpose of these Rules, a person subject to the disciplinary code of the Armed Forces shall be treated on 'duty':**

- (a) When performing an official task or a task failure to do which would constitute an offence, triable under the disciplinary code applicable to him.**
- (b) When moving from one place of duty to another place of duty irrespective of the mode of movement.**
- (c) During the period of participation in recreation and other unit/sports activities organized or approved by service authorities and during the period of traveling in relation thereto.**

**Note: Personnel of the Armed Forces participating in local/national/international sports tournaments as members of service teams; or mountaineering expeditions/gliding organized by service authorities, with the approval of Service HQs, shall be deemed to be 'on duty' for the purpose of these Rules.**

**Note 2: Personnel of Armed Forces participating in sports tournaments or in privately organized mountaineering expeditions of indulging in gliding as a hobby in their individual capacity, shall not be deemed to be 'on duty' for the purpose of these Rules, even though prior permission of the competent service authorities may have been obtained by them.**

**Note 3: Injuries sustained by personnel of the Armed Forces in impromptu games and sports which are organized by or with the approval of the local service authority and death or disability arising from such injuries, will be regarded as having occurred 'on duty' for the purpose of these Rules**

**Note 4: The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling and other similar institutes shall be treated at par with personnel attending other authorized professional courses or exercise for the Defence Services for the purpose of grant of disability/family pension on account of disability/death sustained during the courses.**

*(d) When proceeding on leave/valid out pass from his duty station to his leave station or returning to duty from his leave station on leave/valid out pass*

*Note 1: An Armed Forces personnel while traveling between his place of duty to leave station and vice-versa is to be treated on duty irrespective of whether he has availed railway warrant/concession vouchers/cash TA etc of not for the journey. This would also include journey performed from leave station to duty station in case the individual returns early.*

*Note 2: The occurrence of injury should have taken place in reaching the leave station from duty station or vice versa using the commonly available/adopted route and mode of transport.*

*(e) When traveling by a reasonable route from one's official residence to and back from the appointed place of duty, irrespective of the mode of conveyance (whether private or provided by the Government)*

*(f) Death or injury which occurs when an individual is not strictly 'on duty' e.g. on leave, including cases of death/disability as a result of attack by or action against extremists or anti social elements may also be considered attributable to service, provided that it involved risk which was due to his belonging to the Armed Forces and that the same was not a risk faced by a civilian. Death and disability due to personal enmity is not admissible.*

*Note: For the purpose of these Rules, leave shall include casual leave. Leave/casual leave shall not be treated as 'duty' except in situations mentioned above.*

12. A perusal of the aforesaid clause signifies clearly that only where an individual of armed forces is moving from one place to another within the duty area or while travelling from duty station to leave station and vice-versa, it shall be construed as 'duty' within the ambit of Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 and death or injury which occurs when an individual is

not strictly on duty may be considered attributable to service provided, it is a result of attack or action against extremist or anti-social element and involved risk which is due to his belonging to the Armed Forces and the same was not a risk faced by a civilian. The issue regarding the attributability, with respect to an accident that happened while the individual was on casual leave has been settled by the judgement of Hon'ble Supreme Court in **Secretary, Ministry of Defence v. Dharambir Singh [Civil Appeal No. 4981/2012; Date of decision: 20.9.2019]** which observed as under:

***“10) In view of the provisions reproduced above, we find that the following questions arise for consideration:***

***(i) Whether, when armed forces personnel proceeds on casual leave, annual leave or leave of any other kind, he is to be treated on duty?***

***(ii) Whether the injury or death caused even if, 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?***

***(iii) What is the effect and purpose of COI into an injury suffered by armed forces personnel?***

***Answer to Question No. 1***

***11) In terms of Section 3(i) of the Act, the active service means time during which a person who is subject to the Act, is attached to, or forms part of, a Force which is engaged in operations against an enemy engaged in military operations in, or is on the line of march to, a country or place wholly or partly***

*occupied by an enemy, or is attached to or forms part of a Force which is in military occupation of a foreign country. The present is not the case covered by the definition of Section 3(i) of the Act.*

*12) Section 9 of the Act empowers the Central Government to declare that any person or class of persons subject to the Act, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, will be deemed to be on active service within the meaning of the Act. In pursuance of such provision, the Central Government has notified that all persons who are subject to the Act shall, wherever they may be serving, be deemed to be in active service within the meaning of the Act and of any other law for the time being in force.*

*13) Still further, in terms of leave rules, the casual leave and annual leave count as duty. However, in terms of Rule 11(a) of the Leave Rules for the Services, Volume-I (Army), an individual on casual leave is not deemed to actually perform duty during such leave. 1982 Rules provide that a person is on duty when he is proceeding from his leave station or returning to duty from his leave station. Still further, in terms of clause (f) of Rule 12 of the 1982 Rules, an accident can be said to be attributable to service when a man is not strictly 'on duty' as defined, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Therefore, a person if killed or injured by another person for the reason he belongs to the Armed Forces, he shall be deemed to be 'on duty'.*

*14) Thus, it is held that when Armed Forces personnel is availing casual leave or annual leave, is to be treated on duty.*

*Answer to Question No.2*

*15) The 1982 Rules give expansive definition to the expression 'duty' being undertaken by the personnel of the Armed Forces. It includes the period when Armed Forces personnel is proceeding from his leave station or returning to duty from his leave station. It includes even an accident which occurs when a man is not strictly on duty provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of*

*his service and that the same was not a risk common to human existence in modern conditions in India. However, as per Regulation 423 of the Medical Regulations, such injury has to have causal connection with military service or such injury is aggravated by military service.*

*16) In Regulation 423(a) of the Medical Regulations, it has been specifically mentioned that it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service or active service area or under normal peace conditions, will be deemed to be duty. Regulation 423(a) mandates that it is essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to individual. For the sake of repetition, the said clause reads as under:*

*“a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions...”*

*17) Clause (b) of Regulation 423 of the Medical Regulations presumes that disability or death resulting from wound or injury, will be regarded as attributable to service if the wound or injury was sustained during actual performance of ‘duty’ in Armed Forces. This is in contradiction to “deemed to be duty” as per Rule 12(f) of 1982 Rules, as the Rule is when a man is not strictly on duty.*

*However, the injuries which are self-inflicting or due to individual’s own serious negligence or misconduct even in the cases of active duty, are not to be conceded unless, it is established that service factors were responsible for such action.*

*18) The question whether a disability or death is attributable to or aggravated by military service or not, is to be decided by the Medical Board. The opinion of Medical Board with regard to actual cause of disability or death and the circumstances under which it originated will be regarded as final in terms of Rule 17 of 1982 Rules which is to the*

*effect that at initial claim stage, medical views on entitlement and assessment shall prevail for decisions in accepting or rejecting the claim.*

*19) Regulation 423(d) provides that the question whether a disability or death is attributable to or aggravated by service or not, will be decided as regards to its medical aspects by a Medical Board/ medical officers. Such opinion of the Medical Board insofar as it relates to the actual cause of disability or death and the circumstances in which originality will be regarded as final. The Commanding Officer has to record his opinion as to whether injured person was on duty and whether he or she was to blame in a COI. Therefore, the scope of COI is to examine the conduct of the injured person to determine whether the person has made himself liable to be proceeded against departmentally. In respect of the injury, causal connection of injury to the army service is not final in the COI proceedings.*

*20) In view of Regulation 423 clauses (a), (b) and (d), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury or death must be connected with military service howsoever remote it may be. The injury or death must be intervention of armed service and not an accident which could be attributed to risk common to human beings. When a person is going on a scooter to purchase house hold articles, such activity, even remotely has no causal connection with the military service.*

*21 to 23... xxx xxx xxx xxx*

*24) Having considered the provisions of the statutes, rules and regulations, we now refer to the judgments referred to by the learned counsel for the parties.*

*25) The judgments in Madan Singh Shekhawat, Pension Sanctioning Authority, PCDA(P), Allahabad & Ors. v. M.L. George, Ex. SGT, Nand Kishore Mishra v. Union of India & Ors. and Union of India & Anr. v. Surendra Pandey, are the cases where the Armed Forces personnel have suffered injuries while returning from or going on leave. In terms of Rule 12 Note 2 (d) of 1982 Rules read with Regulation 423(a), any injury or death while returning from or going to duty has a causal connection with the military*

*service and, thus, such injury or death is considered attributable to or aggravated by military service.*

*26) The Full Bench judgment of Punjab and Haryana High Court in Khushbash Singh has devised a new expression 'unmilitary activity'. Since the rules and regulations framed under the Act provide for disability pension only if there is causal connection of injuries with the military service, thus warranting a positive finding. The 'unmilitary activity' is not an expression used in the rules or regulations and is based on negative proof. What is unmilitary activity is vague, indefinite and is based upon surmises and conjectures. Therefore, we find that in terms of the provisions of the Act, Rules and instructions keeping in view the policy decisions of the appellants, the disability pension is admissible only if injury is either attributable to or aggravated by military service and not that any activity which is unmilitary activity.*

*27) Mr. Sehgal has relied upon Division Bench judgment of Delhi High Court in Vardip Singh & Anr. v. Union of India & Ors. It was a case where a Captain saved 150-160 lives in a tragic fire incident in Uphaar Cinema, New Delhi. The High Court has considered it appropriate to grant disability pension to the family of the deceased Major. Said judgment is in the peculiar facts of that case.*

*28) However, the reliance of Mr. Sehgal upon Division Bench judgment in Barkat Masih is not tenable. We find that the judgment is correct to the limited extent that personnel of Armed Forces when on leave are also on duty. However, the subsequent question, whether an injury or death suffered by a personnel has some causal connection with military service, was not examined except referring to Full Bench judgment of that Court wherein, it was held that unmilitary service activity alone will be excluded from the expression 'death' or 'injury' caused by military service or aggravated to military service. We find that such conclusion is not sustainable as per the applicable rules and regulations.*

*29) In Barkat Masih, such Armed Forces person was riding a scooter which was hit by army truck in the cantonment area. Such accident with the army truck has no causal connection with the military service as the deceased was on casual leave. Even a civilian could meet with an accident with the army truck within or outside the cantonment area. Such accident has no causal connection with the military*

**service of an injured or the deceased. Therefore, the Full Bench judgment of Punjab & Haryana High Court in Khushbash Singh and that of the Division Bench of that Court in Barkat Masih are not the good law. It may be noticed that special leave petition in the Barkat Masih order was dismissed but it was dismissed on the ground of delay, therefore, in view of the judgment of this Court in Khoday Distilleries Limited & Ors. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal , it does not amount to merger of the order passed by the High Court with that of this Court.**

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13. In the case in hand, it is undisputed that the applicant had met with a road accident and sustained injuries, but the applicant was not performing any duty or any act which, by any stretch of imagination, is connected with the service. Therefore, we are of the considered view that the injury sustained by the applicant does not have any causal connection, even remotely, with the service and thus, the disability cannot be held attributable to or aggravated by military service.

14. In the instant case, the disabilities of the applicant has rightly been opined by the medical board as ‘neither attributable to nor aggravated by service’ as there is no causal connection established between the injury sustained/disability and the military service. Accordingly,

finding no infirmity in the opinion of the RMB, we dismiss the  
OA.

15. Consequently, the OA 78/2016 is dismissed.

16. No order as to costs.

17. Pending miscellaneous applications, if any, stand  
closed.

Pronounced in the open Court on 15<sup>th</sup> October, 2025.

**(JUSTICE NANDITA DUBEY)  
MEMBER (J)**

  
**(RASIKA CHAUBE)  
MEMBER (A)**

/kt/