ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH AT CHANDIMANDIR

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OA 1201 of 2014

Sadiq Masih …… Applicant
Vs
Union of India and others …… Respondents

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For the Applicant (s) : Mr Navdeep Singh, Advocate
For the Respondent(s) : Mr Vishal Taneja Central Government Counsel.

CORAM:
HON'BLE MR JUSTICE MS CHAUHAN, MEMBER (J)
HON'BLE LT GEN MUNISH SIBAL, MEMBER (A)

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ORDER
15 September 2017

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Question involved:

This Original Application involves a small but very important question – Does a disability suffered by an army personnel while on sanctioned casual leave entitles him to disability pension?

Fact situation:

02. Applicant, who was enrolled in the Indian Army on 11 October 1977, was invalidated out with effect from 31 May 2005 because while on sanctioned casual leave from 15 October 1984 to 29 October 1984 he had suffered "***Dislocation of Left Elbow (Operated)with Posterior Interrosious Nerve Injury***" and consequent disability assessed at 30% for life, on account of injuries sustained by him on 24.10.1984 due to fall from a two wheeler scooter which he was driving to attend to certain urgent domestic chores, after sunset to avoid encounter with terrorists (as the State of Punjab during those days was facing extreme terrorist violence). The initial categorisation Medical Board held on 21 December1984 had placed him in medical category "CEE(T)" for six

months (Annexure R-11) but the Review Medical Board held on 17 January 2004 recommended the applicant to be continued in low medical category "S1 H1 A2 (Permanent) PE" with effect from 10 January 2oo4 to 09 January 2006 while holding percentage of disability as 30% (Annexure R-12). As the applicant was required to be discharged, a Release Medical Board was held on 21 June 2005 which held the disability 30% for life and attributable to service but not aggravated by service. A similar opinion was given by the Court Of Inquiry (COI). Ultimately, the applicant was discharged from service on 31 October 2005 on completion of term of engagement of service under Rule 13(3) item 1(i) (a) of Army Rules, 1954 (here-in-after referred to as the Rules). The disability claim of the applicant was rejected on the ground that the applicant had sustained the injury while he was on casual leave and, thus, the disability was neither attributable to nor aggravated by military service. First appeal filed by the applicant against rejection of his claim for disability pension was rejected vide order dated 19 September 2007 (Annexure R-4). When the applicant preferred second appeal an Appeal Medical Board (AMB) was held on 27 July 2009 whereby the 30% disability for life was held to be neither attributable to nor aggravated by military service but percentage of disability qualifying for disability pension was said to be nil, and based upon its opinion applicant's second appeal came be rejected vide order dated 11 January 2010 (Annexure A9/ Annexure R-5) stating that the disability having been acquired while on casual leave, was not covered by rule 12 of Entitlement Rules for the Casualty Pensionary Awards 1982 (for short, the Entitlement Rules). Forced by the situation, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (55 of 2007) with a

prayer that the respondents be directed to grant disability pension for 30% disability for life, as also the arrears accruing on that account together with interest and the orders rejecting his claim be quashed.

Respondents' response:

03. In their joint response, the respondents have not disputed factual matrix but have come out with a plea that in terms of Entitlement Rules the disability having been earned by the applicant while on casual leave, is neither attributable to nor aggravated by military service and percentage of disability qualifying for disability pension is Nil for life and, as such, his claim for disability pension has rightly been rejected. The respondents have, therefore, sought dismissal of the application.

Submissions made on behalf of the parties:

04. Learned counsel for the parties have been heard at considerable length and record available on the file has been closely scrutinized.

05. To bring home his point that the applicant while on casual leave has to be deemed to be on duty for all intents and purposes and the disability acquired by him while on casual leave deserves to be held as attributable to and aggravated by military service entitling the applicant to disability pension, learned counsel for the applicant has taken us through **Madan Singh Shekhawat v. Union of India**, *1999(6) SCC 459,* ***Gurmit Singh Butter v. Union of India****, 2000(3) RSJ 327,* **Union of India v. Khushbash Singh,** *2010(2) S.C.T. 805,* **Nand Kishore Mishra v. Union of India,** 2013(10) JT 467, **Barkat Masih v. Union of India,** 2014(3) S.C.T. 781, **Union of India versus Vishal Raja**, Original Application No. 652 of 2010 decided by this Tribunal on 07 April 2014, **Pension Sanctioning Authority, PCDA (P), Allahabad & Others versus M.L. George,** (2015) 15 Supreme Court Cases 399, **Ex. HMT Rajinder Singh versus Union of India,** Original Application No. 652 of 2010 decided by the Principal Bench of this Tribunal on 18 March 2015,

and **Ex. Sep. Vipin Choudhary versus Union of India,** Original Application No. 3751 of 2013 decided by the Regional Bench, Srinagar, of this Tribunal on 19 May 2017, while, to controvert applicant's plea and to reinforce their contention that the disability having been earned by the applicant while on casual leave, cannot be said to have any causal connection with the service and cannot be used to grant disability pension to the applicant, learned Government counsel has relied upon para 173 of the Pension Regulations, 1961, paras 12 and 13 of the Entitlement Rules and a judgment of the Hon'ble Supreme Court rendered in the case of **Union of India and Others versus Vijay Kumar**, (2015) 10 Supreme Court cases 460.

06. No other or further point has been urged on either side.

Findings:

07. As noticed in the earlier part of this order, there is no dispute as regards the fact situation. Still it may be recapitulated that the applicant, a resident of Village Chak Mehra, District Hoshiarpur (Punjab), was on sanctioned casual leave from 15 October 1984 to 29 October 1984 - a period when terrorism was at its peak in the State of Punjab. The respondents, while admitting this fact, have added that the area was declared as "Field Area". On 24 October 1984 he was called upon to attend to some domestic chores and had to drive a two wheeler scooter for the purpose. To avoid a possible encounter with the extremists he chose to drive after sunset. However, as ill luck would have it, he met with an accident and sustained "***Dislocation of Left Elbow (Operated)with Posterior Interrosious Nerve Injury***". It needs no reiteration that the disability so acquired by the applicant was assessed at 30% for life and it led to applicant's discharge from service with effect from 31October 2005. Release Medical Board held on 21 June 2005 held the disability 30% for life and attributable to but not aggravated by service. A statutory Court Of Inquiry also declared the disability as attributable to service. Appeal Medical Board held on 27 July 2009, however, opined that the 30% disability for life was neither attributable to nor aggravated by military service and percentage of disability qualifying for disability pension was nil.

08. Before setting out to dissect various aspects involved in the matter, in our quest to find an answer to the question posed at the outset, let's be reminded that it is the duty of the Court to interpret a provision, especially a beneficial provisions, as the pension regulations are, liberally so as to give them a wider meaning rather than a restrictive meaning which would negate the very object of the provision. To support this approach we may refer to ***Seaford Court Estates Ltd. v. Asher***, *1949(2) All England Reporter 155*, wherein Lord Denning L.J. (as he then was) observed:

> "*When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament .... and then he must supplement the written word so as to give "force and life" to the intention of the legislature ..... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."*

09. This rule of construction has been approved by the Hon'ble Supreme Court of India in **M. Pentiah v. Muddala Veeramallappa**, *1961(2) SCT 295* and was also referred to in **Bangalore Water Supply & Sewarage Board v. R. Rajappa,** *1978(3) SCT 207* and in **Hameedia Hardware Stores, represented by its Partner S. Peer Mohammed v. B. Mohan Lal Sowcar,** *1988(2) SCC 513*.

Causal connection:

10. Regulation 173 of Regulations relates to the primary conditions for the grant of disability pension. It reads as follows:

> *"**Regulation 173**. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over.*
> *The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."*

11. A bare perusal of Regulation 173 makes it clear that disability pension in normal course is to be granted to an individual (i) who is invalidated out of service on account of a disability which is ***attributable to or aggravated by military service*** *a*nd (ii) who is assessed

at 20% or over disability unless otherwise it is specifically provided. Whether a disability is `attributable to or aggravated by military service' is to be determined under the Entitlement Rules.

12. Rule 8 of the Entitlement Rules says that attributability /aggravation should be conceded if causal connection between death/disability and military service is certified by appropriate medical authority. This rule, as is evident, gives primacy to the opinion of medical board as regards cause of attributability/aggravation. Rule 8 reads as under:

> *"Attributability/aggravation shall be conceded, if causal connection between death/disablement and military service is certified by appropriate medical authority."*

13. It is apparent from Rule 9 that onus to prove his entitlement to disability pension is not on the claimant and benefit of reasonable doubt has to be allowed to him. The Rule also says that pensionary benefits are to be given more liberally to the claimants. Rule 9 reads as follows:

> *"**Rule 9**. ONUS OF PROOF- The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."*

14. Rule 12, relied upon by the respondents, defines "duty" and is germane to the interpretation of the terms “attributability” and “aggravation” of disability to and/or by military service. This rule is important for another reason - it contemplates that a person is on duty not merely by marking his attendance in the register and is deemed to be on duty in various situations even when the individual is away from the place and nature of his actual duty, viz. participation in sports tournament as a member of service team, mountaineering expedition, travel from his duty station to his leave station etc. And if he sustains a disability in the circumstances enumerated in rule 12, it, perforce, has to be taken as a disability attributable to or aggravated by military service and no question would require to be asked regarding the causal connection between the disability and military service. Rule 12 reads as under:

"***12. Duty***
A person subject to the disciplinary code of the Armed Forces is on duty:-
a. While 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 movement.
c. During the period of participation in recreating and other unit activities organised or permitted by service authorities and during the period of traveling in a body of single by a prescribed or organised route.
Note.
a. Personnel of the Armed Forced participating in -
i. Local/National/International sports tournament as member of service team, or
ii. mountaineering expeditions/gliding organised by service authorities with the approval of service Headquarter will be deemed to be ON DUTY for purpose of these rules.
iii. Personnel of the Armed Forces participating in the abovenamed sports tournaments or in privately organised mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will 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 2.
The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional courses or exercises for the Defence Service for the purpose of the grant of disability/family pension on account of the disability/death sustained during the courses.
d. When proceeding from his duty station to his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional vouchers, on cash TA is (irrespective of whether railway warrant/cash T.A. is admitted for the whole journey of for/a portion only), in Government transport or when road mileage is paid/payable for the journey.
e. When journeying by a reasonable route from ones quarter to and back from the appointed place of duty, under organised arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available.
f. An accident which occurs when a man is not strictly On Duty as defined may also be attributable to service, 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. Thus for instance, when a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed On Duty at the relevant time. This benefit will also be given more liberally to the claimant in case occurring on active service as defined in the Army/Navy/Air Force Act."

15. Rule 13, another rule relied upon by the respondents, states that injuries sustained by a member of Armed Forces while on duty, as

defined, are deemed to have resulted from military service except in cases of injuries due to serious negligence of misconduct of the individual concerned. The rule, it may be noted, does not restrict definition of duty to its meaning as given in rule 12 (ibid). It reads as under:

> *"In respect of accidents or injuries, the following rules shall be observed:*
> *a) Injuries sustained when the man is "on duty" as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/ misconduct the question of reducing the disability pension will be considered.*
> *b) In cases of self inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered."*

16. An Army personnel on casual leave is deemed to be on duty unless he comes under any of the exceptions enumerated under Rule 11(a) of the "Leave Rules for the Services, Volume-I (Army). Rule 10, does not make an exception with regard to rule 12 of the Entitlement Rules. The relevant extract of the Rules is reproduced under:-

> ***"Casual Leave***
> *10. 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 failing in the latter year will be debited against the casual leave entitlement of that year.*
> ***Annual Leave***
> *11.(a) Annual leave is not admissible in any year unless an individual has actually performed duty in that year. For purposes of this rule, an individual on casual leave shall not be deemed to have actually performed duty during such leave. The period spent by an individual on the 'Sick List Concession', shall however, be treated as actual performance of duty.*
> *(b) Annual leave, for the year may at the discretion of the sanctioning authority, be extended to the next calendar year without prejudice to the annual leave authorised for the year in which the extended leave expires, but further annual leave will not be admissible until the individual again performs duty.*
> *(c) Annual leave may be taken in instalments within the same year.*
> *(d) The annual leave year is the calendar year, viz 1st January to 31st December"*

17. It is also not disputed that during leave, the personnel of Armed Forces are liable to maintain discipline and are governed by the provisions of the Army Act and the Rules framed there-under and in case of any misconduct are liable to be proceeded against and are also liable to be recalled from leave, should the exigencies of service so require. Being on leave, casual or annual, cannot and should not result in cessation of relationship of employer and employee between the armed forces and the individual. If the personnel of the Armed Forces are amenable to discipline and control of the Army Act even during the period they are on leave, there is no reason that the Armed Forces should not take care of their personnel when they are on leave.

18. Dealing with rejection of claim for disability pension for the disability acquired by an army personnel while on leave in the case of **Madan Singh Shekhawat** (supra), Hon'ble Supreme Court, after noticing that rule 10 provides that "Casual leave counts as duty except as provided for in Rule 11(a).", observed:

> *"7. As per this rule when an army personnel is on casual leave, same is counted as duty unless he comes under any one of the exceptions under Rule 11(a) of the rules. It is not the case of the respondents that the appellant comes under any such exceptions. Therefore, as per Rule 10(a), the appellant was on duty at the time of the accident."*

18-A. We may refer with advantage to the dictum ***of Lance Dafadar Joginder Singh v. Union of India***, *1995(Sup3) SCC 232: 1996(2) SLR 149*. In this case Hon'ble Supreme Court ruled as follows:

> "*5. 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."*

19. A similar view has been expressed by the Hon'ble Supreme Court in **Nand Kishore Mishra v. Union of India** CA No. 377 of 2013 decided on 8.1.2013.

20. A similar question has been answered by the High Court of Punjab & Haryana in the case of **Gurmit Singh Butter v. Union of India,** *2000(4) S.C.T. 907*, thus:

> *"4. After considering the rival contentions of the parties, I am of the considered opinion that the submission raised by the counsel for the respondents is devoid of any merit. In the opinion of this Court, casual leaves, annual leave, furlough or medical leave etc. are the incidents of service and these types of leaves are permissible to the Government employees. In these circumstances, the defence of the respondents appears to be without any basis when it was argued by the learned Counsel for the respondents that the petitioner suffered the injury/disability when he was on annual leave. While on annual leave the petitioner has never severed his relationship with his employer, who granted the annual leave to the petitioner according to rules. The leave will remain as a leave and casual leave, long leave, medical leave and furlough are the different branches of leave. This view of this Court can be looked into from another angle. Supposing an Army personnel while on long leave/casual leave/furlough commits an offence, is it not governed by Army Rules? The answer is in the affirmative. Supposing after availing annual leave such employee does not return to his unit, can he not be prosecuted departmentally? Again the answer is in the affirmative. If such situations are there, how it can be said that an Army personnel when on long leave suffers disability that disability is not attributable to the Army Service."*

21. In view of the above nothing remains to doubt that when the accident occurred, the applicant though was on casual leave but was still amenable to army discipline and did not severe his relationship with the army. As such, the applicant is deemed to be on duty at the time of the accident. Therefore, applicant's claim for disability pension cannot be negatived only because he suffered the disability while on casual leave.

22. The question in **Madan Singh Shekhawat's** case (supra) was of a Armed Forces Personnel travelling to his home at his own expense when on leave. Rule 48 of the Defence Service Regulations contemplated that he would be considered to be on duty when proceeding to his leave station or returning to his duty from his leave station at public expense. The Hon'ble Supreme Court observed that a beneficial provision has to be liberally interpreted so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the provision. The Hon'ble Supreme Court held to the following effect:-

> *"15. Applying the above rule, we are of the opinion that the rule makers did not intend to deprive the army personnel of the benefit of the disability pension solely on the ground that the cost of journey was*

> *not borne by the public exchequer. If the journey was authorised, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself.*
> *16. We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even an army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorised to avail the leave for leaving the station of posting, an army personnel uses what is known as "travel warrant" which is issued at public expense, same will not be issued if person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly. Meaning thereby if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised."*

23. In **Nand Kishore Mishra's** case (supra), the appellant had received injury when he was coming to join his duty. It was asserted that injury was not due to any neglect or misconduct on his part. Considering the judgment of the Hon'ble Supreme Court in **Balbir Singh v. State of Punjab,** (1995) 1 SCC 90 and the notification dated 29.11.1962, authorities were directed to consider the case of the appellant under Medical Category SHAPE-II and to grant him the Commission in terms of the aforesaid notification.

24. A Full Bench of the High Court of Punjab & Haryana in **Khushbash Singh's** case (supra) dealt with two cases involving injuries suffered by the army personnel in accidents during their leave periods. The Full Bench ruled as under:-

> *"14. The focus of attention in cases of disability arising out of accidents weans us away from medical opinions only to see whether the activity is prohibited or incompatible to military service. It has to be only seen whether the accident would have been occurred when an Army Personnel had been in Military Service. A travel from a hospital towards home by motor-cycle or cycle or even as a pedestrian could well be consistent with the conduct of a Army Personnel undertaking such an activity even if he had been at the duty station. The fact that a person had been away from the duty station on casual leave or annual leave would not, therefore, make any difference so long as the activity could not be seem to be an unmilitary activity, if we may use such an expression. We have already seen in the Leave Rules 10 and 11 regarding casual leave and annual leave, both of which situations will have to be taken only as on duty. If only the casual leave or the annual leave has continued at a time, when in that year, the Army Personnel had not been on duty at all, such a leave could not be treated as on duty. Any other leave could not take away the character of a person as on duty. If, therefore, an accident takes place by a person*

> *riding a cycle or a motor-cycle when he was performing an act which was not inconsistent with an act of a Military Personnel, then a disability that arises from such an act, would always be only a disability attributable to Military Service.."*

25. In **Barkat Masih's case** (supra), a Division Bench of the High Court of Punjab & Haryana, while dealing with the case of an army personnel for grant of disability pension on account of injuries/disability suffered by him when the two wheeler scooter he was riding whilst on casual leave, was hit by a military truck and his case was rejected by saying that the disability suffered by him was neither attributable to nor aggravated by military service. After examining the relevant rules and judgments cited on both the sides, the Division Bench held the petitioner entitled to disability pension. Following observations of the High Court are of great assistance:

> *"8. We have heard learned counsel for the parties and find merit in the claim of the petitioner. The members of the Armed Forces are entitled to annual leave of 60 days whereas the officers are entitled to casual leave for 20 days whereas Junior Commissioned Officers (JCOs) and the officers of the other rank are entitled to casual leave for 30 days. We find that grant of such leave has dual purpose. Firstly, to give time to the personnel of the Armed Forces to attend to their domestic chores which in their absence while on active service, family members may not be in position to handle. The second is that after arduous nature of duties, some time is required to rejuvenate the Armed Forces Personnel while they are in touch with the civil society. It prepares them for further active duty. In the absence of leave which is necessary for maintaining mental equilibrium, the grant of leave is necessary for discharge of their duties in an efficient manner. With these dual objective in mind, leave is granted to all Armed Forces Personnel be it the officers or the other ranks. The grant of leave is a necessity to keep the personnel of the Armed Forces in good mental shape. The personnel of the Armed Forces are entitled to periodical breaks to provide mental stimulus, and psychological upliftment. Therefore, without grant of leave, one cannot imagine that somebody can discharge duties continuously 24 x 7 x 365 days of a year.*
>
> *9. In fact the leave is basic human right even recognised by the United Nations "Universal Declaration of Human Rights 1948" to which India is signatory. Article 24 of such declaration is that "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay". In* ***CESC Ltd. v. Subhash Chandra Bose, 1992(2) S.C.T. 239 : (1992) 1 SCC 441****, the Supreme Court examined international covenants and held that the health and strength of a worker is an integral facet of right to life. Though the said case pertains to workers in an industrial establishment and that the applicability of the fundamental rights to the Armed Forces can be restricted in terms of Article 33 of the Constitution but we find that the personnel of the Armed*

Forces are entitled to rest and leisure as a basic human right. The Court in the aforesaid case observed as under:-

"30. Article 25(2) of Universal Declaration of Human Rights, 1948 assures that everyone has the right to a standard of living adequate for the health and well being of himself and of his family including medical care, sickness, disability . Article 7(b) of the International Convention on Economic, Social and Cultural Rights, 1966 recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, safe and healthy working conditions. Article 39(e) of the Constitution enjoins the State to direct its policies to secure the health and strength of workers. The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers, the civil and political rights are `mere cosmetic' rights. Socio-economic and cultural rights are their means and relevant to them to realise the basic aspirations of meaningful right to life. The Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights recognise their needs which include right to food, clothing, housing, education, right to work, leisure, fair wages, decent working conditions, social security, right to physical or mental health, protection of their families as integral part of the right to life. Our Constitution in the Preamble and Part IV reinforces them compendiously as socio-economic justice, a bedrock to an egalitarian social order. The right to social and economic justice is thus a fundamental right."

10. It is also not disputed that during leave, the personnel of Armed Forces are liable to maintain discipline and are governed by the provisions of the Army Act, 1950 or the Rules framed there under and in a case of any misconduct, liable to be proceeded against. If the personnel of the Armed Forces are entitled to discipline and control of the Army Act 1950, the corresponding duty of the Armed Forces is to take care of their personnel when on leave. It is necessary commitment of the Army."

26. A bunch of Original Applications (with **Bhagwan Singh versus Union of India and Others**, Original Application No. 49 of 2011 in the lead) came up for hearing before this Tribunal. In all these cases the applicants had received injuries in accidents while they were on authorised leave, without their fault or unlawful activities. Release Medical Boards had found the disability earned by them 20% or above. After considering a plethora of judgments for and against the proposition involved in the cases, this Tribunal, vide order dated 08 November 2011,

allowed the original applications and directed the respondents to compute the disability pension and release the same in favour of the applicants.

19. Union of India and its co-respondents challenged order dated 08 November 2011 before the Hon'ble Supreme Court by way of Civil Appeal D. No. 6612 of 2014 which was dismissed "both as barred by limitation and on merit" vide order dated 07 April 2014.

Court Of Inquiry:

27. Indubitably Release Medical Board held on 21 June 2005 had held applicant's disability 30% for life and attributable to service but neither aggravated by not connected with service. A statutory Court Of Inquiry also declared the disability as attributable to service. But the Appeal Medical Board held on 27 July 2009, however, opined that the 30% disability for life was neither attributable to nor aggravated by military service and percentage of disability qualifying for disability pension was nil.

28. Section 8 of the Act defines the source of power to be exercised by officers in certain situations. It reads as under:

> *"(i) Whenever persons subject to this Act are serving under an officer commanding any military organisation, not in this section specifically named and being in the opinion of the Central Government not less than a brigade, that Government may prescribe the officer whom the powers, which under this Act may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons be exercised. (2) The Central Government may confer such powers, either absolutely or subject to such restrictions, reservations, exceptions and conditions, as it may think fit."*

29. Para 520 of the Defence Services Regulations, Volume-I (DSR) prescribes the procedure for investigation of facts leading to receipt of injury by an Army Personnel. It reads as under:

> *"520. Injury to a Person Subject to army Act- (a) When an officer, JCO, WO, OR or nurse, whether on or off duty, is injured (except by wounds received in action), a certificate on IAFY-2006 will be forwarded by the medical officer in charge of the case to the injured person's CO as soon as possible after the date on which the patient has been placed on the sick list, whether in quarters or in hospital. In the case of injuries which are immediately fatal, a report of the court of inquiry proceedings referred to in sub-para (c) (i) will take the place of IAFY-2006.*

(b) If the medical officer certifies that the injury is of a trivial character, unlikely to cause permanent ill-effects, no court of inquiry need be held, ;unless considered necessary under subpara (c) (ii),(iii, (iv) or (v). In any event, however, IAFY-2006 will be completed and in all cases except those of JCOs, WOs and OR will be forwarded through the prescribed channels to Army Headquarters, Org Dte in the case of non-medical officers and Medical Dte in order cases, a copy being retained at command or other headquarters. In the case of a JCO, WO or OR, IAFY- 2006 will be forwarded to the officer i/c records for custody with the original attention, after the necessary entry, stating whether he was on duty and whether he was to blame, has been made by the CO in the Primary Medical examination report (A FMSF-2A).

(c) In the following cases a court of inquiry will be assembled to investigate the circumstances :-

(i) In the injury is fatal or certified by the medical officer to be of a serious nature. Where an inquest is held, a copy of the coroner's report of the proceedings will be attached to the court of inquiry proceedings.

(ii) If, in the opinion of the CO, doubt exists as to the cause of the injury.

(iii) If, in the opinion of the CO, doubt exists as to whether the injured person was on or off duty at the time he or she received the injury.

(iv) If, for any reason, it is desirable thoroughly to investigate the cause of the injury.

(v) If the injury was caused through the fault of some other person.

In cases where the injured person is a JCO, WO or OR, the court may consist of one officer as presiding officer, with two JCOs, WOs or senior NCOs as members.

(d) The court of inquiry will not give an opinion, but the injured person's CO will record his opinion on the evidence, stating whether the injured person was on duty and whether he or she was to blame. When no evidence as to the circumstances attending the injury beyond that of the injured person is forthcoming it should be stated in the proceedings. The proceedings will then be sent to the brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander who will record thereon his decision whether disability or death was attributable to military service and whether it occurred on field service. After confirmation, the medical officer will, in all cases except those of JCOs, WOs and OR, record his opinion in the proceedings as to the effect of the injury or the injured person's service. the proceedings will then be forwarded by the CO through the prescribed channel to Army Headquarters, Org Dte in the case of non-medical officers and Medical Dte in other cases, a copy being retained at command or other headquarters. In the case of a JCO, WO or OR a record will be made in the primary medical examination report (AFMSF- 2A) by the CO that a court of inquiry has been held, and also as to whether the man was on

duty and whether he was to blame. The primary medical examination report will then be passed to the medical officer who will record his opinion as to the effect of the injury on the man's service. The proceedings of the court of inquiry will then be forwarded to the officer i/c records for enclosure with the injured person's original attestation (see subpara (b) above), except in the case of a court of inquiry under sub-para (c) (v) above, in which case the proceedings, together with a copy of the medical opinion as to the effect of the injury of the man's service, will be forwarded without delay to Army Headquarters.

(e) When an officer, JCO, WO, OR or nurse, not on duty is injured in any way by or through the fault of a civilian or civilians, and receives compensation from such civilian or civilians, in lieu of any further claim, this will be recorded in the proceedings of the court of inquiry.

(f) A court of inquiry need not necessarily be held to investigate deaths or injuries sustained through taking part in organized games, sports and other physical recreations as defined in para 271. In all cases where a court of enquiry is not held, IAFY- 2006 will be completed with the statements of witnesses as required by item 4 thereon and when applicable, the CO will certify that the games, sports, or physical recreations were organized ones.

(g) The injury report will be submitted to the brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander only if the injury is severe or moderately severe or if a court of inquiry to enquire into the causes of injury has been held. The brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander will record on the form his decision whether or not the injury was attributable to military service, and whether it occurred on field service. in all other cases, the CO will record his opinion.

(h) In case where the injury report on IAFY-2006 is prepared in addition to the court of inquiry proceedings and the brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander his recorded his opinion on the court of inquiry proceedings or adjudicated the case, it will not be necessary for him to do so again on the injury report (IAFY- 2006) which may be signed by a senior staff officer on his behalf. The senior staff officer will however, clearly state that eh decision given is as recorded by the brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander on the court of inquiry proceedings.

(j) IAFY-2006 or the proceedings of the court, so endorsed, as the case may be well accompany the pension claim when submitted to the pension sanctioning authority, who will either accept the decision of the brigade commander, or if in doubt will submit the pension claim for the orders of the Central Government. The medical board or the medical officer, who furnishes a death certificate will not express any opinion in

such cases in regard to attributability to service except on purely medical grounds which should be clearly specified."

30. From a reading of para 520 as quoted above, it is clear that when a matter is reported to the appropriate authority that an individual in service has suffered injury in accident of specified nature, a Court of Inquiry is ordered. The Court of Inquiry collects evidence and places all materials before the Commanding Officer without recording its own opinion. Clause (d) of para 520 restrains the Court of Inquiry from giving an opinion and it is for the Commanding Officer to examine the evidence collected by the Court of Inquiry and based on it to record his opinion whether the injured person was on duty and whether he was to blame for the injury. The proceedings are then sent to the rigade commander or the officer who has been authorised under Section 8 of the Act to exercise the legal and disciplinary powers of a Brigade Commander who will record thereon his decision whether disability or death was attributable to military service and whether it occurred while on field service.

31. Though in the Original application it is averred that the Court Of Inquiry had opined that the disability earned by the applicant is attributable to military service but there is a presumption that official acts are regularly performed (per **State Govt. of NCT, Delhi v. Sunil & ors**., *(2000) 1 SCC 748*). Therefore, it is presumed that, on the basis of the evidence collected by Court of Inquiry, the Competent Authority recorded its finding that applicant's injury is attributable to military service. The finding, alongwith the pension claim was required to be sent to the Pension Sanctioning Authority. The Pension Sanctioning Authority in view of sub para (j) of the para 520 of DSR could have, either accepted the decision of the competent authority or if it entertained any doubt the pension case should have been submitted for the order of the Central Government. In this entire process, there is no role of the Appellate Medical Board. It may be added that medical authority neither has jurisdiction nor has reason to know about the individual's job profile, the assignment of job at a particular time, as well as issue relating to rights of the individual during the period the individual was on leave, as also the circumstances in which the individual suffered the injury and its

connection with individual's service. It is for this reason that the regulation quoted above does not assign any role to the medical authority for determining the question pertaining to connection of the injuries with service. The service officer in service alone can take decision on the basis of evidence collected by the Court of inquiry and such facts cannot be placed before the Medical Board either for taking final decision pertaining to the job profile, the nature of duty, the circumstances under which the accident occurred and its relation with the military service. The Appellate Medical Board thus, neither could sit in appeal over the decision of Court of Inquiry nor could it over-rule order of the Commanding officer or Brigade Commander, as the case may be.

32. In **Ex. HMT Rajinder Singh' case** (supra), Principal Bench of this Tribunal, vide order dated 18 March 2015, disapproved of the intervention of medical authorities in the decision of service authority. It may be added that this case had arisen out of injuries sustained by the applicant therein while riding a motorcycle whilst on casual leave. The service authority, on the basis of evidence collected by the Court Of Inquiry had concluded that the injury was attributable to military service but the medical board had overturned the decision of the service authority. Principal Bench observed as follows:

> *"19. From the above provisions which were referred in detail above, it is clear that the relevant provisions empowered only the service authorities to decide about the issue pertaining to the reasons for the disability and its connection with individual's service which includes taking a decision with respect to all circumstances which may have bearing for finding out that whether the injury suffered by individual is attributable to or aggravated by the military service. None of the provisions have been shown to us by the respondents which directly or indirectly indicate that the Medical Board can inquire into the conditions of service of an ind+- ividual, the circumstances in which he suffered injury and whether the injury has connection with military service. The role of the Medical Board as per various provisions made in the Pension Regulations 1961 and by other orders are confined to disease and the percentage of disability including in case of injury), the duration of the disability (even in case of injury) etc. It will be appropriate to mention here that the injury can be suffered not only because of the road accident and not only when the individual is in any type of leave. Injury can be suffered when a person is in actual service and injury may be due to various accidents during various service activities. Finding of CO and higher officer about the attributability or aggravation of the of injury is the final opinion that can not be overturned by the Medical Board."*

33. In **Ex. Sep. Vipin Choudhary's case** *(supra)* the applicant, was on casual leave. He, by cutting short the period of leave, set out for his Unit but met with an accident on the way. The Court of Inquiry did not blame him for the accident and held the injury attributable to military service. Medical Board opined otherwise. Srinagar Bench of this Tribunal set aside the decision based on such opinion of the Medical Board and ruled as under:

> *"It is unfortunate that the matter has been handled without the required amount of care and attention at the level of IMB and the binding decision of Court Of Inquiry and the Brigade Commander has been brushed aside without legal authority. The opinion of IMB declaring the injury of petitioner as neither attributable to nor aggravated by Military Service, cannot be supported and sustained in the given circumstances, The same is liable to be set aside."*

34. Order passed ***in Ex. HMT Rajinder Singh's case*** *(supra)* and **Ex. Sep. Vipin Choudhary's case** *(*supra) are not shown to have been set aside or reversed in appeal.

Union of India versus Vijay Kumar:

35. Now a word about **Vijay Kumar 's** case (supra). In this case on 25th February 1989, the respondent therein was granted thirty days annual leave. During the leave period, he went from Himachal Pradesh to Jalandhar Cantt where his sister was residing. At the house of his sister, which was on second floor, at about 8.00 p.m., while the respondent was climbing stairs to go to the roof of the house for smoking, lights went off and due to darkness he slipped accidentally and fell down from the stairs and sustained multiple injuries. He was brought before the Release Medical Board, wherein the RMB opined that respondent should be released from military service in Permanent Low Medical Category A-3 for six disabilities he sustained. The Release Medical Board assessed the disabilities at 60%. After due procedure, the respondent was invalidated from service with effect from 28th February 2006 after completion of seventeen years of service but his claim for disability pension was rejected. Hon'ble Supreme Court upheld decision of the defence authorities rejecting respondent's claim for disability pension saying that "the accident resulting in the injury to the respondent was not even remotely connected to his military duty and it falls in the domain of an

entirely private act...". This judgment, in our view cannot be used to deny to the applicant herein the claimed relief, firstly because the Hon'ble Supreme Court has not laid down here-in a general rule of universal application and secondly because order dated 07 April 2014 passed in **Union of India & Others versus Vishal Raja**, Civil Appeal D. No. 6612 of 2014 upholding order dated 08 November 2011 passed by this Tribunal in **Bhagwan Singh** , **Barkat Masih**, **Balbir Singh** , **Nand Kishore Mishra**, **Lance Dafadar Joginder Singh**, **Madan Singh Shekhawat** *and* **Khushbash Singh's** *cases* (supra) were not brought to the notice of and were not considered by the Hon'ble Supreme Court.

Result:

36. Reverting to the case in hand, it is admitted case of the parties that the applicant suffered has "***Dislocation of Left Elbow (Operated)with Posterior Interrosious Nerve Injury***" and his disability has been assessed by the Release Medical Board as 30% disability for life. By the Release Medical Board as also by the service authorities the disability has been declared as attributable to military service based on the evidence collected by the Court of Inquiry, presumably because nothing came to the fore that could put the blame on the applicant. The applicant was invalidated out of service 31 October 2005. His first appeal was dismissed vide order dated 19 September 2007 (Annexure R-4) and second appeal came be rejected vide order dated 11 January 2010 (Annexure A9/ Annexure R-5). The applicant approached this Tribunal on 07 August 2014.

37. As a consequence of the foregoing discussion we hold the applicant entitled to disability pension at the rate of 30% with effect from the date of discharge i.e. 31 October 2005 as also the benefit of rounding off to 50% as per directions of the Hon'ble Supreme Court of India rendered in the case of **K.J.S. Buttar v. Union of India**, 2011(11) SCC 429 and **Union of India v. Ram Avtar,** Civil Appeal No. 418 of 2012, decided on 10.12.2014 read with judgment of this Tribunal **Labh Singh v. Union of India and others,** OA No.1370 of 2011 decided on 22.12.2011, and **Ved Parkash v. Union of India and others**, OA No.1960

of 2012, decided on 03.08.2012. We, accordingly quash/set aside dated 19 September 2007 **(Annexure R-4**) and order dated 11 January 2010 (**Annexure A9/ Annexure R-5**), as also the findings of the Appeal Medical Board, Annexure R3 and direct the respondents to compute the disability pension payable to the applicant and release the same to him together with arrears within **four months** from the date of receipt of a copy of this order by the learned Government counsel failing which the arrears of disability pension shall carry interest @8% per annum from the date these fell due or three years immediately preceding the presentation of this Original Application, whichever is later. Arrears of disability pension payable to the applicant, however, are restricted to a period of three years immediately preceding the presentation of this Original Application.

38. Original Application is allowed in the afore-stated terms leaving the parties to bear their own costs.

(Munish Sibal)
Member (A)

(MS Chauhan)
Member (J)

15.09.2017
'pl'/okg