

**ARMED FORCES TRIBUNAL, CHANDIGARH  
REGIONAL BENCH AT CHANDIMANDIR**

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TA 48 of 2011 (arising out of CWP 14927 of 2004)

<b>Rishi Parkash Kaushik and another</b>	.....	<b>Petitioner(s)</b>
<b>Vs</b>		
<b>Union of India and others</b>	.....	<b>Respondent(s)</b>

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For the Petitioner (s) :	Mr. RS Panghal, Advocate
For the Respondent(s) :	Mr. SK Sharma, Sr. PC.

**Coram: Justice Prakash Krishna, Judicial Member.  
Air Marshal (Retd) Naresh Verma, Administrative Member**

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**ORDER  
13.02.2014**

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The parents of late Flying Officer Anil Kaushik who expired in a road accident in the morning of 20.1.2002 at about 0500 hours at Tezpur (Assam) have filed the aforesaid writ petition No. 14927 of 2004 before the Punjab and Haryana High Court at Chandigarh claiming the Special Family Pension by setting aside the findings dated 20.5.2002 as contained in Annexure P-9 to the extent that the death of Flying Officer Anil Kaushik, is not attributable to Air Force service as he was not on duty and for further quashing the orders dated 8.10.2002 (Annexure P-11) and 28.7.2003 (Annexure P-12), along with all consequential reliefs.

The background facts may be noticed in brief. Late Flying Officer Anil Kaushik joined the Indian Air Force in the Flying Pilot Branch on 17.6.2000 as Commissioned Officer and was posted to the unit namely MOFTU, Air Force C/o 99 A.P.O. He along with his friend S. Arora, Flying Officer went out of Camp Area on 20.1.2002 on a motor-cycle which belonged to Flying Officer D. Dahiya on which these officers were riding, had hit a stationary truck from back

on the right side of the rear wheel. As a result, the Flying Officer Anil Kaushik expired and his companion received serious injuries. Flying Officer Anil Kaushik was a bachelor at the time of his death and left behind him no other legal heirs except the petitioners. The Incharge Traffic Tezpur Police Station carried out the enquiry and issued a certificate dated 22.1.2002 and the body was handed over to Air Force authorities after conducting the post-mortem and due formalities. A Court of Inquiry was conducted in pursuance of the order passed by Air Officer Commanding to enquire into the circumstances under which Flying Officer Anil Kaushik died and Flying Officer S. Arora got injured due to accident on 20.1.2002 at 5.00 AM. The Court of Inquiry recorded the statements of various witnesses and examined the site of the accident. They queried the Civil Police Officer who reported that the two officers had gone beyond city limits. The purpose of the duo's visit beyond city limits at such an hour was ascertained from the surviving officer Flying Officer S. Arora. The Court of Inquiry was informed that as the officers were preparing for examination throughout the previous evening and well beyond sleep time, they might have felt the urge to invigorate by sipping some hot beverages and/or drawing in some fresh air. Hence the visit. While returning, their motorcycle dashed against a stationary truck. The driver and cleaner of the truck who were sleeping, woke up due to sudden jolt/noise and they reported the matter to the civil police beat patrol.

On the basis of the facts as found by the Court of Inquiry, the respondents concluded that at the time of the accident, Flying Officer

Anil Kaushik was not 'on duty' and therefore, no Special Family Pension is payable to his heirs. Feeling aggrieved, the above writ petition has been filed.

In reply, the respondents have come out with the case that the officer died in a road accident in the morning at about 0500 hours on 20.1.2002 on National Highway-37(A) near village Bhujkhowe, about 6 Kms. away from Tezpur town and about 18 Kms. away from Air Force Station, Tezpur. The finding of the Court of Inquiry is that the cause of the death of the officer was recorded as neither attributable to nor aggravated by Air Force service. Accordingly, the decision was conveyed to the petitioners who carried the matter to the First Appellate Committee viz. DDG(Pens.) and DFA (Pens.) who dismissed the appeal. In the present case, the petitioners are not entitled to Family Pension as their total income is more than Rs. 2500/- per month and they are also not entitled for Special Family Pension as the death of the officer is neither found to be attributable to or aggravated by Air Force Service. The reliance has been placed on certain decisions referred to in the respondents' written statement.

On establishment of Armed Forces Tribunals, the High Court has transferred the file of the above mentioned case under Section 34 of the Armed Forces Tribunal Act to this Tribunal.

Heard Mr R.S. Panghal, learned counsel for the petitioners and Mr S.K. Sharma, Sr.P.C. learned counsel for the respondents.

The only point urged by the learned counsel for the petitioners is that the death of the officer occurred while he was 'on duty'. Elaborating the argument, he submitted that the officer was busy in the

preparation of the examination relating to Air Force. He studied the subject throughout night and in the morning he went out of the camp area to have a cup of tea or any such like other beverages and while returning to the base camp, road accident occurred and therefore in view of Para 12 of the Entitlement Rules 1982, at the time of death of the officer, the officer was 'on duty'.

The learned counsel for the respondents on the other hand submitted that by no stretch of imagination, it can be said that the officer was on duty at the time of the said accident which caused the death of the officer. The accident took place about 18 kms. away from Air Force Station. A Court of Inquiry was held and the evidence was collected. The recorded statement of witnesses, the attending facts and circumstances of the case and the nature of the accident would show that the accident in which the motorcycle hit the static truck from behind at the rear right side took place due to poor visibility due to fog and failure of the driver of the motorbike to see the civil truck parked on the left side of the road.

Heard learned counsel for the parties and perused the record. The first and foremost question for consideration is, whether the deceased officer who died in the accident can be said to be 'on duty' or the accidental death of the officer can be said to be attributable to Air Force service.

Before proceeding further by way of clarification, it may be noted that the petitioners' counsel advanced the arguments in support of plea for grant of Special Family Pension only. This position was clarified by him who made a statement that the scope of the present

writ petition/T.A. is with regard to grant of Special Family Pension only, presumably the petitioners are not entitled to get the Family Pension as per Air Force Act, Rules and Regulations.

During the course of the arguments, the learned counsel for the parties supplied a copy of the proceedings of Court of Inquiry for our perusal. The Court of Inquiry examined as many as seven witnesses to come to the conclusion. Flying Officer D. Dahiya was examined as Witness No. 1 who deposed that they were preparing for AEB Examination scheduled to be held on 21.1.2002. They studied late night till 0200 hours on 20.1.2002. He went to bed. Thereafter Flying Officer Anil Kaushik came and requested for lending motor-cycle. On query put by him, Flying Officer Anil Kaushik replied that it was morning and he just wanted to go outside the gate and would be back soon. Saraswati M, Corporal has been examined as witness No. 2 who stated that he was performing his night duty on 19.1.2002 at main gate from 1900 hours to next day 0700 hours on 20.1.2002 and at about 0400 hours on 20.1.2002, these two officers approached at the main gate to go out. He stopped both the officers and enquired the reason for going out at an odd hour. They informed that they have got some urgent job to go outside. Watchman Man Singh has been examined as witness No. 3 who deposed that he did tell them not to go outside as it was very dark. Sqn Ldr S Chauhan has been examined as witness No. 4 who after getting the information about the accident rushed to the Civil Hospital where Flying Officer S Arora was lying in critical condition. He also visited the accident site and collected the driving licences of both the officers. To a question put by the Inquiry Court,

he has stated that officers had no official duty. The questions and answers are reproduced below :-

“Q 1.What was the nature of duty, both the officers were on ?

Ans. Officers had no official duty. As being a weekend they were off duty.

Q2. Did they take permission of weekend/leave ?

Ans. No/leave/weekend permission was asked by both officers.

Q3. Did they have permission to drive vehicle in the camp and valid driving licences ?

Ans. Both the officers had valid driving licences issued by civil authorities. Fg Offr A Kaushik had the permission to drive vehicle inside the camp.”

Witness No. 5 is Sqn Ldr TJA Khan who was informed about the accident. The following two questions were put to him :-

“Q1. What was the nature of duty, both the officers were on?

Ans. Officers had no official duty. As being a weekend they were off duty.

Q2. Did they take permission of weekend/leave ?

Ans. No/leave/weekend permission was asked by both officers.”

Witness No. 6 is Flying Officer S. Arora being with the Flying Officer Anil Kaushik as a co-rider on the motorbike, thus, his statement is crucial. He came out that he does not remember anything about the road accident which happened on 20<sup>th</sup> Jan 2002 at about 0500 hours. There is no eye-witness to the accident except Flying

Officer S. Arora and Flying Officer, S. Arora for reasons best known to him, has taken the shelter of not remembering anything with regard to the accident in question. His statement assumes great importance. For the sake of convenience, his entire statement and questions put to him are reproduced below :-

“Q.No. 1. What time you have gone out with whom and where?

Ans. I don't remember.

Q. No. II. What was the reason of going out ?

Ans. No. I don't remember.

Q.No. III. Would like to give any information about the accident ?

Ans. I have no idea about the accident.”

Witness No. 7 has given the details of the injuries received on the person of Flying Officer S. Arora.

The Court of Inquiry has found that the officers were on off duty. They left Guard Room at about 0400 hours on 20.1.2002 and while returning met with an accident at 0500 hours on National Highway No. 37-A near village Bhujkhowe, about 6 Kms. away from Tezpur town towards Kaliabhomora bridge and death of Flying Officer Anil Kaushik is not attributable to Air Force Service as he was not 'on duty'.

The question which now boils down as to whether in the facts and circumstances of the case that at the time of the road accident, the unfortunate officer who has died, was 'on duty' ?

Both the learned counsel referred Para 12 of the Entitlement Rules 1982 which defines “duty”. It is reproduced below :-

“Duty:-

12. A person subject to the disciplinary code of the Armed Forces is 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 activities organized for permitted by service authorities and during the period travelling in a body or singly by a prescribed or organized route.

Note:- 1

(a) Personnel of the Armed Forces participating in

(i) Local/National/International sports tournaments as member of service terms, or

(ii) Mountaineering expeditions/gliding organised by service authorities, with the approval of service Hqrs., will be deemed to be ‘on duty’ for purposes of these rules.

(b) Personnel of the Armed Forces participating in the above named sports tournaments or in privately organized mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be ‘on duty’ for purposes of these rules, even though prior permission of the competent service authorities may have been obtained by them.

(c) Injuries sustained by personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, or with the approval of the local service authority, and death or disability arising from such injuries, will continue to be regarded as having occurred while ‘on duty’ for purposes of these rules.

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 Services for the purpose of the



grant of disability/family pension on account of disability/death sustained during the courses.

(d)When proceeding from 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 voucher on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or 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 one's 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, where 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 be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act."

The petitioners' counsel submits that the present case falls under Clause (d) of Note 2. The submission is that an Air Force man is supposed to be on duty for 24 hours. He left the duty station and went beyond the Air Force Station gate and met with the accident while returning to duty. The AEB Examination was scheduled to be held on the very next day and he was busy in preparing for said examination till late night. He felt need for hot beverage and therefore went outside Air Force Station. This is the total length and breadth of the petitioners' argument in support of his plea that the officer was 'on

duty' at the time of accident, therefore, the accident is attributed to Air Force service.

Regulation 423 explains attributability to service which is reproduced below:-

"423. Attributability to Service:

(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. All evidence both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of "duty" in armed forces. In case of injuries which were self inflicted or duty to an individual's own serious

negligence or misconduct, the Board will also comment how far the disability resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the armed forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a medical board or by the medical officer who signs the death certificate. The medical board/medical officer will specify reasons for their/his opinion. The opinion of the medical board/medical officer, in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the C.O. unit will furnish a report on:-

(i) AFMS F-81 in all cases other than those due to injuries.

(ii) IAFY-2006 in all cases of injuries other than battle injuries.

(g) In cases where award of disability pension or reassessment of disabilities is concerned, a medical board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular medical board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a medical board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air)".

The learned counsel for the respondents invited our attention to the Regional Director E.S.I. Corporation Vs Francis De Costa and another, AIR 1997 SC 432, a case under the Employees State Insurance Act. There the Court was called upon to interpret the "Employment Injury". In that connection, the Apex Court observed that employee has to prove that he sustained the injury while he was on his way to the factory where he was employed. A road accident can happen any where at any time. But such accident cannot be said to have arisen out of employment unless it was shown that the employee was doing something incidental to his employment. The submission of the respondents' counsel is that unless an employee can establish that the injury was caused or had cause in the service, he cannot lay claim based on employment injury. On the analogy, he submits that in the case on hand, the accident had taken place on National Highway about 18 kms. away from Air Force Station Tezpur or 6 kms. away from Tezpur Town. On the own showing, the officer had not gone out for some work connected with his duty or related to the Air Force. He had supposedly gone on pleasure trip to have some hot beverage and that

too at odd hour when the visibility was poor due to fog. It was submitted that 20.1.2002 being Sunday, the officer was off the duty. The witnesses examined by Court of Inquiry also stated that the officer was 'off duty'. There is no contrary evidence on the record, submits the respondents' counsel.

We find that the controversy is no longer res integra. Learned counsel for the respondents has placed strong reliance upon the Apex Court judgment in the case of Union of India and others Vs Jhujhar Singh, (2011) 7 SCC 735. It is also a case of road accident met by an Army personnel at his native place sustaining grievous injuries resulting in permanent disability. In this very case, the Apex Court has referred its earlier judgment given in the case Regional Director, ESI Corporation (Supra). The Apex Court has approved the Full Bench decision of Delhi High Court in Ex. Nk Dilbag Vs Union of India, (2008) 106 DRJ 865.

The conclusion of the High Court is recorded in para 24 of the judgment which has been reproduced by the Apex Court in its judgment of **Jujhar Singh**(Supra), the same is again reproduced here for the sake of convenience:-

“24. To sum up our analysis, the foremost feature consistently highlighted by the Hon'ble Supreme Court, is that it requires to be established that the injury or fatality suffered by the concerned military personnel bears a causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the concerned personnel was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the causal connection

which alone is relevant. Fourthly, since travel to and fro the place of posting may not appear to everyone as an incident of military service, a specific provision has been incorporated in the Pension Regulations to bring such travel within the entitlement for Disability Pension if an injury is sustained in this duration. Fifthly, the Hon'ble Supreme Court has simply given effect to this Rule and has not laid down in any decision that each and every injury sustained while availing of casual leave would entitle the victim to claim Disability Pension. Sixthly, provisions treating casual leave as on duty would be relevant for deciding questions pertaining to pay or to the right of the Authorities to curtail or cancel the leave. Such like provisions have been adverted to by the Supreme Court only to buttress their conclusion that travel to and fro the place of posting is an incident of military service. Lastly, injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death has occurred at the place of posting or during working hours. This is because attributability to military service is a factor which is required to be established.”

In the light of above, we have to find out as to whether on the facts of the present case, can it be said that the deceased officer was on duty.

At the cost of the repetition of the facts which were found by the Court of Inquiry, the accident took place at 0500 AM in the morning and the officer was off duty. It was a road accident and the accident caused fatal injuries to the officer. It has also come on record that the deceased officer had gone out of Air Force Station in foggy night/early hours of the morning to take hot beverage. Obviously, the conclusion drawn by the Court of Inquiry that the officer was not on duty at the time of the accident and the fatal injuries resulting due to accident is not connected or attributable to with Air Force service, is correct. To

put it simply, at the time of the road accident, the deceased officer was not involved, engaged or connected in any manner with the discharge of his Air Force duties and could not stop the motorbike and dashed against a static vehicle, parked on correct side of the road. He had gone on a trip and off the duty. Our view finds support by a subsequent decision of the Apex Court in case **Union of India Vs Talwinder Singh, (2012) 5 SCC 480**. In this case, the person received injury in his eyes when he was on two months leave. He was hit by small wooden piece (Gulli) in the play of children and thus his left eye was seriously damaged. On these facts, the Apex Court held that the individual sustained injuries when he was on annual leave that too at his home town in a road accident, it cannot be held that the injuries could be attributable to or aggravated by military service.

A person claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from such person. As the military personnel sustained disability when he was on an annual leave that too at his home town in a road accident, it could not be held that the injuries could be attributable to or aggravated by military service. Such a person would not be entitled to disability pension.

The above decisions, all by the Apex Court, have held that test is the causal connection which alone is relevant. In view of above, the finding of the Court of Inquiry is legally sound and calls for no judicial intervention. The relied upon decision of this Tribunal in OA No. 49 of 2011 **Bhagwan Singh Vs Union of India and others** decided on

8.11.2011 should be read and understood in the light of the aforesaid judgments of the Apex Court.

Viewed as above, we do not find merit in the submission of the learned counsel for the petitioners that the officer in question was on duty when he succumbed injuries received in the road accident.

Undoubtedly the death of Flying Officer Anil Kaushik, has caused immense pain and limitless suffering to the petitioners. The death of their son has come in its cruellest form, but we can not ignore the cold logic of law. It should be remembered that law is embodiment of all wisdom. The courts are to administer law as they find it, however, inconvenient it may be. (See LIC Vs Asha Ramchandra Ambedkar, (1994) 2 SCC 718.

There is no merit in the petition. The petition is dismissed. No order as to costs.

**(Justice Prakash Krishna)**

**(Air Marshal (Retd) Naresh Verma)**

13.02.2014

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Whether the judgment for reference to be put up on website – Yes/No