

**A F R**

**(SEE RULE 102(1))**  
**ARMED FORCES TRIBUNAL, KOLKATA BENCH**

**O. A. NO. 02/2012**

**THIS 24TH DAY OF JULY, 2015**

**CORAM**

**HON'BLE JUSTICE DEVI PRASAD SINGH, MEMBER**  
**(JUDICIAL)**

**HON'BLE LT GEN GAUTAM MOORTHY, MEMBER**  
**(ADMINISTRATIVE)**

**APPLICANT(S)**

Sri Ashoke Kumar Tarafdar  
No.Ex14246144(F)NK, son of Late Radha  
Pada Tarafdar, aged about 47 years and  
retired as Corps of Signals (Time Scale  
Naik) in the office of Fort William, Eastern  
Command Signal Regiment and residing at  
Village & Post Dharampur, P.O. Gaighata,  
Dist. 24 Parganas(N).

**-versus-**

**RESPONDENT(S)**

1. The Union of India, service through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi, Pin -110 011.
2. The Additional Director General, Personnel Services, Adjutant General's Branch, Army Head Quarters, DHQ, P.O. – New Delhi -110 011.
3. The Principal Controller of Defence Accounts(P), Allahabad.
4. The OIC Records, Signal Abhilekh Karyalaya, Signals Records, Post Bag No.5, Jabalpur (MP) -482 001.

5. The Major/Captain, Adjutant, Eastern Command, Signal Regiment, Red Road Camp, Kolkata -700 021.

**For the petitioner(s)** : Mr. S. K. Choudhury, Advocate

**For the respondent(s)** : Mr. S. K. Bhattacharyya, Advocate

## **ORDER**

### **PER HON'BLE JUSTICE DEVI PRASAD SINGH, MEMBER (JUDICIAL)**

1. This is an application under Section 14 read with 15 of the Armed Forces Tribunal Act, 2007 ( in short 'Act') for grant of disability pension on account of injury sustained during annual leave. Relevant facts are discussed hereinafter. Applicant was appointed in the Indian Army on 16.08.1982. While continuing in service he had gone on annual leave for 64 days with effect from 01.10.1992 to 03.12.1992. During the period of leave while going to purchase vegetables on 08.10.1992 he suffered with an accident. In consequence thereof, he suffered disability namely, "DEGLOVING INJURY LT FOREARM (OPTD)". After serving 17 years 29 days in the Army he became eligible to receive service pension. On 30.09.1999 after completion of service he was discharged from Army under Army Rule 13 (3) item III (i) read with sub-rule 13(2A). According to the respondents discharge was on completion of service/age limit. At the time of discharge the applicant was permanent low category personnel. He has been granted regular

service pension by P.C.D.A.(P), Allahabad vide P.P.O. dated 21.07.1999.

2. At the time of discharge, Release Medical Board (RMB) was held on 15.03.1999 at Command Hospital, Calcutta. Release Medical Board regarded his disability as “DEGLOVING INJURY LT FOREARM (OPTD)” which neither attributable to nor aggravated by Military service at 20% for five years.

3. Claim of disability pension was forwarded to P.C.D.A.(P), Allahabad which has been rejected by an order dated 22.08.2000 and the fact was communicated to the applicant vide letter dated 26.09.2000 with an advice to prefer an appeal to Signals Records.

4. While approaching the Tribunal in 2011 the applicant prayed for the following relief(s) :

“In view of the above facts and circumstances stated in para 4 above the applicant prays for the following relieves :

- a) To issue direction upon the respondent and their men and agents to cancel set aside and quash the impugned order dated 03.02.2003, 06.05.2003 forthwith.
- b) To issue further direction upon the respondents to grant the disability pension w.e.f. 01.10.1999 and also other consequential benefits along with 10% interest forthwith.
- c) To issue appropriate necessary direction upon the respondents to grant disability pension according to the benefit of the judgment in TA No.89/2010 and the judgment of Full Bench of Hon’ble High Court of Punjab & Haryana dated 31.03.2010 forthwith.
- d) To issue appropriate necessary direction for production of records at the time of hearing.

e) Any other order or orders as the Hon'ble Tribunal deem fit and proper.”.

5. Though the applicant has approached the Tribunal after lapse of almost eight years but since the delay has been condoned by the Tribunal, we proceed with the controversy on merit. Regulation 173 of the Pension Regulations for the Army deals with disability pension.

For convenience, the same is reproduced as under :-

**“Primary conditions for the grant of disability Pension**

**\*173.** Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 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.”.

6. A plain reading of the aforesaid provisions reveals that disability pension may be granted in case it is attributable to or aggravated by Military service. In the present case, admittedly the applicant was on annual leave and during leave he suffered with the accident with physical injury. He preferred a claim petition under the Motor Vehicles Act whereby he was awarded compensation to the tune of rupees one lakh. It has been argued by the respondents' counsel that the accident and consequential injury suffered by the applicant as well as payment of compensation by Motor Vehicles Tribunal was officially never communicated to the Army, hence the applicant is guilty of indiscipline/misconduct under D.S. Regulations. It has been further submitted by the respondents that in no way the accident in question may be attributable to Army service or duty.

7. Ld. counsel for the applicant has relied upon a judgment of **Punjab and Haryana High Court reported in 2011 Vol.2 SLR 224 – Union of India through Secretary, Ministry of Defence, New Delhi & Ors. v. Khushbash Singh**. The Full Bench judgment relied upon by the ld. counsel for the applicant seems to extend no help in case judgment is read in its totality. The Full Bench in Para.18 held as under :-

“The decision of the Medical Board in examining the physiological injury or the psychological impacts of military service would obtain primacy and the Court shall normally be guided by such scientific medical opinion. However, in cases where the injury that results in disability is due to an accident, which is not due to natural, pathological, physiological or psychological causes of the personnel, the question that has to be asked is whether the activity or conduct that led to the accident was the result of an activity that is even remotely connected to Military Service. An activity of an independent business or avocation or calling that would be inconsistent to Military Service and an accident occurring during such activity cannot be attributable to Military Service. Any other accident, however, remotely connected and that is not inconsistent with Military Service such as when a person is returning from hospital or doing normal activities of a military personnel would still be taken as a disability attributable to Military Service.”.

8. From the proposition of law which emerges from Full Bench judgment it appears that disability pension may be paid only in case the accident remotely connected and is not inconsistent with Military Service. In the present case petitioner's departure from house to purchase vegetables and suffering with accident does not seem to be remotely connected with Military Service. In a case reported in **2012 Vol. 2 SCC (L&S) 11 – Union of India and Another v. Talwinder Singh**, Hon'ble Supreme Court after considering the Army Pension Regulations in an identical situation held that disability sustained

while on annual leave that too at home town in a road accident could not be held that injuries could be attributable to or aggravated by Military Service. Relevant portion of the judgment of the aforesaid case is reproduced as under :-

“11. This Court recently decided an identical case in *Union of India v. Jujhar Singh*<sup>9</sup>, and after reconsidering a large number of earlier judgments including *Ministry of Defence v. A.V. Damodaran*<sup>10</sup>, *Baljit Sing* and *ESI Corpn. v. Francis De Costa*<sup>11</sup>, came to the conclusion that in view of Regulation 179, a discharged person can be granted disability pension only if the disability is attributable to or aggravated by military service and such a finding has been recorded by Service Medical Authorities. In case the medical authorities record the specific finding to the effect that disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that the Medical Board is a specialized authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual.

12. 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. This view stands fully fortified by the earlier judgment of this Court in *Ministry of Defence v. Ajit Singh*<sup>12</sup>.

9. In O. A. No.73/2011 (*Fool Jahan Ara v. Union of India & Ors.*) while considering the right to receive special family pension on account of death due to gun-shot injury during Muharram, after considering various pronouncement of Hon'ble Supreme Court we have held that the incident has got no nexus with the Army service/duty, hence special family pension cannot be awarded. In view of catena of judgment of the Hon'ble Supreme Court cited hereinabove reliance placed by the Id. counsel for the applicant on an

earlier order dated 10.05.2013 of this Tribunal in O. A. No.7/2012 does not seem to extend any help. Judgment of the Hon'ble Supreme Court is the law of land and has got over-riding effect on all the orders and judgments of subordinate forum including Tribunal or High Court.

10. In the case of Fool Jahan Ara we have considered the meaning of duty as well as service. We have considered the Full Bench judgment of Delhi High Court in the case of Nk Dilbagh Singh v. Union of India & Ors. whereby their Lordships had reiterated the principle that for the purpose of payment of disability pension the incident must have some nexus with the Army service. Since the incident in question whereby the applicant suffered with injury does not have even remotest nexus with Army service/duty, the applicant does not seem to be entitled to disability pension.

11. In view of the above, the application lacks merit and hence rejected. Cost made easy.

(LT GEN GAUTAM MOORTHY)  
Member (Administrative)

(JUSTICE DEVI PRASAD SINGH)  
Member (Judicial)