SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
O.A. No. 52 of 2015

THIS DAY 14th MARCH, 2016

CORAM
HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S) DEBASISH GHOSH, Soldier No. 15684353M, Signal Man (Dvr MT) of 14 WEU, C/O 56 APO

Versus

RESPONDENT(S)

1. **The Union of India** through the Defence Secretary, Army HQ. Defence HQ, New Delhi, PIN-110 011.
2. **Chief of the Army Staff,** Army HQ. Defence HQ. New Delhi, PIN 110 011.
3. **The Senior Record Officer,** Armoured Corps, Records, Pin : 900 476, C/O 56 APO
4. **The Officer-in-Charge,PCDA(P),** Allahabad (U.P.), PIN - 211 014.

For the Applicant(s) : Mr. Rajmohan Chattoraj
For the Respondent(s) : Mr. Sauvik Nandy

O R D E R

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

1. This is an application under section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as Act of 2007) which pertains to the admissibility of disability pension to the applicant. The facts of the case, in brief, are as follows :

2. No. 15684353M Signal Man Debasish Ghosh (applicant) was enrolled in the Indian Army, Corps of Signal on 01.03.2003. He was sanctioned 20 days casual leave from 15.03.2005 to 03.04.2005. On 16.03.2005 the applicant reached his home in Krishnanagar, West Bengal. On 21.03.2005 the applicant was travelling from his home town to Sealdah (Kolkata) by 3104 DN Bhagirathi Express for booking his ticket for his return journey. While

travelling in the train due to excessive rush he was pushed out of the train compartment and fell down between the running train and the platform which resulted in the wheels of the train crushing his legs. He was evacuated to JNM Hospital, Kalyani where both his legs were amputated and primary treatment given. On 23.3.2005 he was evacuated to Command Hospital, Eastern Command, Kolkata and was given further treatment. Subsequently, in the years 2005-2006 he was admitted to Artificial Limb Centre, Pune for rehabilitation training and was invalidated out of the Indian Army on 13.7.2006 with an assessed disability of 100% (life long).

3. Earlier, on occurrence of the injury a Court of Inquiry (COI) was ordered on 27.04.2005 to investigate into the circumstances under which the applicant met with the train accident on 21.03.2005. The findings and the opinion of the COI are as under :

"FINDINGS OF THE COURT

1. No.15684353M Sigmn (Dvr MT) Debasish Ghosh of 14 Wireless Experimental Unit C/O 56 APO was granted 20 days Casual Leave for the year 2005 from 15 March 2005 to 03 Apr 2005.

2. The individual had left the unit on 10 Mar 2005 and reached 213 Transit Camp on 13 Mar 2005 via 216 Transit Camp. He left 213 Trasnsit Camp on 14 March 2005 (AN) and arrived his home at about 1200h on 16 March 2005. His 20 days Casual Leave was started wef 15 March 2005.

3. While on leave, the individual was going to Sealdah from Krishnanagar by 3104 DN (Bhagirathi Exp) for return journey reservation met with accident at Kanchrapara railway station on 21 March 2005 at 0926 hours. (Accident report dated 21 Mar 2005 issued by Station Master Kanchrapara is att as annexure I).

4. The train was very rush and the individual was pushed down by one of the co-passengers which he did not recognize. No 15684353M Signalman (Dvr MT) Debasish Ghosh was fallen down in the gap between platform and the running train. He was seriously injured and evacuated to railway hospital Kanchrapara, where first aid was given to the individual.

5. The individual was evacuated to JNM Hospital, Kalyani where his both legs were amputed and primary treatment was given on 21 March 2005 (JNM Hospital, Kalyani Memo No 1770 dt 13 May 2005 att as Annexure II).

6. On 23 Mar 2005, No 15684353M Sigmn Debasish Ghosh was evacuated to Command Hospital (Eastern Command) from JNM Hospital, Kalyani and reported there (CH (EC)) at about 2100h same day. He had right sided syme's amputation (through ankle-rt) and left above Knee amputation. He had several other lacerated would but his general condition was stable. He was admitted to Surgical ward No 1 on same day. Later he was shifted to Surgical Ward No 7 in Command Hospital (Eastern Command) for further treatment (Command Hosp (EC) admission card dated 23 Mar 2005 (Photocopy) is attached as Annexure III).

Presiding Officer : Sd/- xx xx xx xx xx xx
RC-882M Maj PK Naik)
(15 WEU C/O 99 APO)

Members *1.* *: Sd/- xx xx xx xx xx xx*
SS-38778H Capt B Bharanidharam)
(1872 Lt Regt C/O 99 APO

2. *SD/- xx xx xx xx xx xx*
: JC-307183Y Sub R Chandrasekar
(261 BD Coy C/O 99 APO)

OPINION OF THE COURT

1. No 15684353M Signalman (Dvr MT) Debasish Ghosh of 14 Wireless Experimental Unit C/O 56 APO was granted 20 days Casual Leave from 15 Mar 2005 to 03 Apr 2005 and reached his some 16 Mar 2005.

2. While on leave the individual was going to Sealdah by 3104 DN train on 21 Mar 2005 for return journey reservation and met accident at Kanchrapara railway station at about 0926 hours.

3. The accident was occurred due to heavy rush in the train and the individual was pushed down by one of the co-passengers, to whom he did not recognize, hence the individual is not to be blamed.

4. The injury is attributable to military service.

Presiding Officer *SD/- xx xx xx xx xx*
RC-882M Maj PK Naik
15 WEU C/O 99 APO

Members *1.* *SD/- xx xx xx xx xx*
SS-38778H Capt B Bharanidharan
1872 Lt Regt C/O 99 APO

2. *SD/- xx xx xx xx xx*
JC-307183Y Sub R Chandrasekar
261 BD Coy C/O 99 APO"

4. The counsel for the applicant stated that although the COI attributed the applicant's injury to military service which was seconded by the medical authorities while invalidating him out of service, the claim for disability pension was turned down by the authorities (PCDA(Pension) Allahabad) stating that the injury viz. *'Crush injury both lower limbs (i) Amputation above Knee (LT) (ii) Amputation Symes (RT) was sustained during casual leave. The injury sustained by an individual during casual leave is not attributable to military service as per Entitlement Rules to Casualty Pensionary Awards to Armed Forces Personnel, 1982 and Army HQ letter No B/41052/AG/PS-5 dt. 15.11.2006'.* The applicant then appealed to the Appellate Committee of First Appeal (ACFA) which was rejected by the authorities on

22.10.2008. Subsequently, he preferred a second appeal on 12.2.2009 which was again rejected by the concerned authorities on 10.4.2015 on the following grounds :

> *"As per Court of Inquiry the individual was gtd 20 days Casual Leave wef 15 Mar 2005 to 03 Apr 2005. On 21 Mar 2005, while he was going to his native place Sealdah by train for getting his rail reservation done for return journey, he met with an accident at Kanchrapara Railway station. The accident occurred due to heavy rush in the train while the indl was pushed down by the co-passenger. Since, the individual sustained injury during on Casual Leave, there is no causal connection between military service and sustaining his injuries. Hence, both the IDs are considered as not attributable to military service as per Para 09 of Entitlement Rules 2008"*

5. The learned counsel for the applicant referred to section 2 (1)(2) of the Army Act, 1950 which states as follows :

> *"Every person subject to this Act under the clauses (a) to (g) of sub-section(1) shall remain so subject until duly retired, discharge, released, removed, dismissed or cashiered from service."*

6. The learned counsel also referred to Defence Service Regulations, Leave Regulations Rule 10 of which is as under:

> *"Casual Leave counts as duty except as provided for in Rule 11(a)"*

7. Besides, the learned counsel for the applicant vehemently argued that since the injury sustained by the applicant was correctly treated as attributable to military service both by the COI as well as by the Release Medical Board, the PCDA (Pension) erred gravely in rejecting the claim of disability pension by ignoring both these findings only on the ground that the injury sustained could not be treated as attributable to military service because the applicant suffered the injury while being on casual leave. Besides, the counsel for the applicant relied upon a number of decisions, primary among them being the case between **Lance Dafadar Joginder Singh vs. Union of India and others** in Civil Appeal No. 4257 of 1993, decided on 16.8.1993 reported in 1995 Supp (3) SCC 232, wherein a similarly placed combatant soldier was denied disability pension. The relevant portion of the order of the Hon'ble Supreme Court is reproduced as under :

> *" Leave granted.*
>
> *The appellant was serving as a Lance Dafadar in regular Army. He served for more than 17 years as a combatant soldier and had served in the operational area during the 1965 and 1971 Indo-Pak wars. On 14.2.1976 he was proceeding on casual leave from Babina, his duty station to his home in district Faridkot (Punjab). While boarding the train at Babina Railway Station he got involved in an unfortunate accident as a result of which he fell down from the train and suffered severe injuries. His right leg came under*

the wheels of a moving train and as such he was crushed below the knee. The leg was amputated at the military hospital, Jhansi on 17-2-1976. He was discharged from Army in December 1976 and he is being paid the pension due to him.

A court of inquiry was held which came to the conclusion that the journey was being performed on a concession voucher and the appellant being on casual leave was deemed to be on duty. The Commanding Officer, Lt Col KK Deva agreed with the findings of the inquiry and found that the injury was sustained by the appellant while he was on casual leave which under the Rules is treated as on duty.

Although the appellant was given Army pension but he was denied disability pension under the Pension Regulations. The disability pension was denied to the appellant on the ground that the injury was not attributable to military service. The appellant challenged the denial of disability pension by way of a writ petition before the Punjab and Haryana High Court. The High Court dismissed the petition in limine on the ground of delay.

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.

We, therefore, set aside the order of the High Court dated 15.12.1992. The disability of the appellant has already been adjudged by the respondents as 60%. We direct the respondents to grant disability pension to the appellant from the date when he was discharged from the Army treating him to have incurred 60% disability. The respondents shall finalise the disability pension case of the appellant within three months from the receipt of this order. The appellant shall be further paid all the arrears of the pension within a further period of three months thereafter. In case the arrears of disability pension are not paid to the appellant within the period of six months from the receipt of this order, then the appellant shall be entitled to 12% interest from the date on the amount due.

The appeal is allowed. No costs."

8. The Hon'ble Supreme Court in another Civil Appeal No. 1987 of 2011 quoting from a judgment of the Armed Forces Tribunal, Chandigarh Bench held as follows :

" The Tribunal has painstakingly examined a conspectus of decisions on the issue of disability pension and having carefully analysed those decisions has summed up the legal position as under :

To sum up in our view the following principles should be the guiding factors for deciding the question of attributability or aggravation, where the disability or fatality occurs during the time the individual is on authorized leave of any kind :

(a) The mere fact of a person being on'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability or disability/death. There has to be a relevant and reasonable casual connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. The conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.

(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the permissible approach

to generalize the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

In our view, the Tribunal has rightly summed up the legal position on the issue of entitlement to disability pension resulting from any injuries, etc. and it has correctly held that in both cases there was no causal connection between the injuries suffered by the appellants and their service in the military and their cases were, therefore, clearly not covered by Regulation 173 of the Regulations. The view taken by the Tribunal is also supported by a recent decision of this Court in Union of India v. Jujhar Singh.

For the reasons stated above, we find no merit in these civil appeals. These are, accordingly, dismissed. No costs."

9. Although in the above cases, the Supreme Court dismissed the civil appeals, the Hon'ble Judges endorsed the legal position as summed up by AFT Chandigarh (supra) on the issue of entitlement of disability pension resulting from any injuries, etc.

10. The learned counsel for the respondents, on the other hand, while not disputing the facts as quoted by PCDA(P), Allahabad (supra) stated that as the injury was sustained during casual leave it is not attributable to military service in terms of Entitlement Rules to Casualty Pensionary Awards to Armed Forces Personnel 1982 in terms of Army Headquarters letter dated 15.11.2006. The respondents have also stated that both the appeals, i.e. the first and second appeal have been rejected by the competent authority, i.e. Appellate Committees on the plea that

the disabilities of the *"individual sustained injury during on Casual Leave, there is no causal connection between military service and sustaining his injuries. Hence, both the IDs are considered as not attributable to military service as per Para 09 of Entitlement Rules 2008"* Hence, the counsel claimed that due to policy constraints the applicant was not entitled to disability pension.

11. The respondents too have relied on a decision dated 22.8.2008 of the Hon'ble Delhi High Court in WP(C)6959/2004 and CM Nos. 6869/04 and 10898/04 in the case of Ex Nk Dilbagh Singh vs. UOI and others In this judgment the learned Judges of the said Hon'ble Court held as follows :

> *"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 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."*

12. We have perused the entire records as well as the decisions cited and relied on by both the parties. Essentially, three aspects need to be decided in this impugned case. Firstly, whether the individual was on duty or not. Secondly, whether there was a causal connection between the injuries sustained and the duty and thirdly, whether the injury was attributable to military service or not.

13. Starting with the third point, the COI held to investigate the cause of the accident very clearly opined that the injuries were attributable to military service. The same was not only not controverted by the Release Invalidating Medical Board but they also opined the disability at 1 100% (life long). Now, the second aspect whether there was a causal connection between the

injury and duty. Reference may be made to this Bench judgment and order in OA No. 2 of 2014 delivered on 25.01.2016 wherein judgment delivered on 19.10.2006 by the Hon'ble Delhi High Court in the case of **Jitendra Kumar vs. Chief of Army Staff and others** has been dealt with. It was held in the case of Jitendra Kumar (supra) that attributability/aggravation shall be considered if causal connection between death/disablement and military service is certified by the appropriate medical authority. Herein, extracts of the judgment are set out below :-

"12. (a) xxxxxxxxxxxxxxxxxx
(b) xxxxxxxxxxxxxxxxxxx
(c) xxxxxxxxxxxxxxxxxxx
(d) xxxxxxxxxxxxxxxxxxx
(e) xxxxxxxxxxxxxxxxxxx
(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***.(Emphasis added) *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.*"

" 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.

With reference to above provisions, the respondents contended that causal connection between disablement and military service is an essential prerequisite, which has to be definite and directly connected with military service. Clause 12 of Appendix II relates to a person, subject to disciplinary code of armed forces, who unless is on duty and suffers an injury covered under any of the clauses 12 and 13 specifically and on their strict construction, would not be entitled to claim disability pension.

At the very outset, we may notice that the principle of strict construction or limited construction on a plain reading of the provisions can hardly be applied to such provisions. These provisions have to be construed liberally and upon proper analysis of the legislative intent behind these provisions and particularly the fact that these are welfare provisions. In the case of Madan Singh Shekhawat (supra), the Supreme Court in unambiguous terms has held that rule of liberal construction should apply to these two provisions rather than strict construction. Strict construction of these provisions is bound to defeat the intent of Regulation 173 and giving unreasonable restricted meaning to the clauses of this Appendix II, would hurt the very object of these provisions. Clauses 5, 6, 9 and more particularly 10 and 19 to 22 reasonably exhibit and demonstrate the legislative intent to enlarge the scope of these rules tilted towards grant of relief, rather than rejection of claim."(Emphasis added)

14. On the aspect of whether there was a causal connection between the injuries sustained in the accident by the applicant on casual leave at his home town, paragraphs 15, 16, 17, 18 and 19 of the said judgment(supra) quoted as under are relevant.

> *"15. The expression 'causal' appearing in clause 8 of Appendix II to Regulation 173 on which heavy reliance was placed by the respondents, is capable of varied meanings. 'Causal' has been defined in Cambridge International Dictionary of English as 'No causal relationship has been established between violence on television and violent behavior (=Violent behavior has not been shown to be a result of watching violent television programmes). BLACK'S LAW DICTIONARY explained this expression 'Causal' as "1. OF, relating to, or involving causation a causal link exists between the defendant's action and the plaintiff's injury. 2. Arising from a cause a causal symptom. Cf. CAUSATIVE"*
>
> *16. According to the respondents, 'Causal' is to be given again a strict interpretation so as to establish a restricted and direct nexus between the act causing injury to the person belonging to the force and his military service. Once this relationship is not satisfied on strict construction, then the claim of disability has to be declined. According to Law Lexicon, the Encyclopaedic Law Dictionary by P Ramanatha Aiyer, 1997 Edition, 'Causa' means 'Remote cause; A cause operating indirectly by the intervention of the other causes." Further, Law Lexicon The Encyclopaedic Law Dictionary by P Ramanatha Aiyar, 1997 Edition states 'Causal Relation' as under :*
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> *Causal relation means that the plaintiff should prove that the breach of duty by the defendant was the legal cause of the damage complained of by him. Link in the chain of causation, relation between cause and the effect/result.*
>
> *17. The BLACK'S LAW DICTIONARY also give meaning to the word 'Causal' as 'Occurring without regularity; Occasional.*
>
> *18. Casual could also be said to be accidental or fortuitous. Anything which can be expected or foreseen, may not be casual.*
>
> ***19. The expression 'Causal' may not be equitable strictly to the expression 'Casual' but it may include in its ambit the expression 'casual'. A person proceeding on casual leave may meet with an accident, which is not foreseen by him, and suffers an injury. Such injury would be attributable to military service as that person is on duty in terms of Rule 10 of the Leave Rules for Army, which deals with the matter relating to casual leave***."(Emphasis added)

15. Further in para 20 of this judgement (supra) too, the Hon'ble Judge has defined what duty is . Para 20 is reproduced as under :-

> *"20**. The duty itself is an expression of wide 'connotation' and would be incapable of being defined strictly, particularly when a member of the armed force is on leave, duly sanctioned by the authorities. While a person is on leave whether casual, annual or sick, it is not expected of him to perform or discharge his regular military duties as if he was present in a unit. He is expected to live a normal life, which a member of the force is expected to live while on duty. The acts and deeds which are relatable and are part of the normal living of a member of the Force, during which he suffer an injury or death, would normally be attributable to the military service. Unless such an act or deed was entirely beyond the scope of normal behavior or member of the***

> ***Force and had no nexus or even a casual nexus between the act and military force, in such circumstances, the injury suffered may not be attributable to the service. For e.g., a person on casual leave may suffer an injury while going to or coming from his leave station to his unit, by public or private transport, while performing his normal functions while on leave like dropping his children to school, going to the market to buy items of day-to-day needs, going to booking office for booking his train ticket for his travel and while doing so being hit by a vehicle on the road, would be attributable to the military service.*** *While on the other hand, if he is performing the acts or deeds which have no relation to his military service and attempts to do acts for his personal gain or benefit of others like participating in some business, doing agricultural activities, wheat thresher and other agricultural appliances, the same may not be attributable to or aggravated by military service as has also been held by this Court in recent judgments of this Court of even date in the cases of Ex. AC Somveer Rana v. Union of India and Ors. WP© No. 2418/2004 and Ex.Hav(AEC) Bhup Singh v. Union of India and Ors. WP© No. 2325/2002*".(Emphasis added)

16. In another judgment in the case of **Yadvinder Singh Virk v. Union of India & Ors** in Civil Writ Petition No. 6066 of 2007 (2009 SCC Online P & H) before Hon'ble Mr. Justice Ajai Lamba, the Hon'ble Judge quoted an earlier judgment in the case of Ex Naik Kishan Singh v. Union of India, 2008 (3) SLR 327.

> *"No doubt, when the petitioner met with an accident, he was on annual leave, but the accident was beyond control of the petitioner who was not performing any act he ought not to have done.* ***In view of the settled law by the Apex Court, a person on casual/annual leave is deemed to be on duty and there must be apparent nexus between normal living of person subject to military law while on leave and injuries suffered by him.*** *A person on annual leave is subject to Army Act and can be recalled at any time as leave is at discretion of authorities . This was so held by a Division Bench of Delhi High Court in Ex-Sepoy Hayat Mohammed's case (supra). In that case, the petitioner was on leave at his home town. While he was in his house, a huge steel beam and a cemented stone fell on the petitioner from the roof of the house, which was being repaired. This resulted in total paralysis of three fingers of his right hand and amputation of left hand. The petitioner was treated and was placed in permanent low medical category 'EEE'. He was discharged from military service and rejected disability pension. His writ petition was allowed and the respondents were directed to consider and grant disability pension to the petitioner. With advantage, we may also refer to the authority reported as Madan Singh Shekhawat v. Union of India, 1999(66) A.I.R.(SC) 3378 : (1999(4) SLR 744 (SC)) where* ***the Hon'ble Supreme Court held that any army personnel is deemed to be on duty when he is on any type of authorized leave during travelling to or from home or while on casual leave.***"(Emphasis added)

17. Further in the same judgment the learned Judge stated : **"*The petitioner sustained injury/disability during his service engagement although being on annual leave, and the disability would be deemed to be attributable to and aggravated by military service*.** *In this view of the matter, we hold that the petitioner will be deemed to have been invalidated out of service and is entitled to disability pension as is admissible to defence personnel who are invalidated out of service".*

> *Reference may also be made to a Division Bench of Delhi High Court in Ex. Sepoy Hayat Mohammed v. Union of India, 2008(1) SCT 425, wherein reference has been made to catena of judgments and various aspects of the matter have been considered. Para-2 of the judgment reads as under :-*

> *2. The case of the petitioner is that irrespective of the fact that petitioner was on leave, he would continue to be subjected to military law and the injury of the petitioner in view of Section 2(2) of the Army Act* ***should not be viewed myopically a 'not on military duty at that point of time' but viewed in a broader spectrum of 'being in military service'***."(Emphasis added)

18. **From a plain reading of the judgments (supra) it is apparent that the Hon'ble Judges extended the concept of duty to cover bona fide activities undertaken by a military person even while on any kind of leave in his hometown.** In this case too it is evident from the circumstances leading to this unfortunate accident that the applicant who was proceeding by train to Sealdah to make his return journey reservation to join his unit was on bonafide duty and the grievous injury caused to him which resulted in 100% (life long) disability are indeed attributable to military service as brought out in the COI as there exists a clear causal connection between these injuries and the nature of the duty that he was performing.

19. We find no reason for PCDA (P) to reverse the opinion of the COI and the Release (Invalidating) Medical Board for the reasons mentioned in paragraph 10(supra). In this connection, the following decisions highlighting the over-reach of the PCDA(P) Allahabad are appended below :

> ***"Ram Kumar Singh vs. Union of India, Rajasthan High Court Jaipur, SB Civil WP No. 4904 of 1997 Role of CCDA(P)***
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> *The petitioner was enrolled in Army in Regt of Artillery on 19 Jan 1960 and actually fought INDO PAK wars in 1965 and 1971 and was awarded 8 medals including Samar Seva Star and Paschim Star. On 30 Sep 1965 he sustained injury to his right eye due to splinter by air attack from enemy shelling. He was placed in medical category 'CEE' permanent for 'Medical degeneration right eye'. He was discharged from service on 1 Jun 1978 on his own request on compassionate grounds after completion of 18 years 4 months and 130 days service. The medical board recorded his disability as attributable to service in war zone and assessed as 30% for two years but the recommendations of the medical board were not accepted by Chief Controller of Defence Accounts (Pension) and disability pension claim rejected on the ground that his disability was not attributable to military service. On appeal the President of India decided the disability to be attributable to military service in war zone but the CCDA(P) arbitrarily reduced the disability from 30% recommended by the medical board to 15-19% and rejected his disability pension claim. Disability was once again assessed as 30% by the Medical Board but the CCDA(P) again reduced it to 15-19% in view of Regulation 173 of Pension Regulations for the Army, Part I. The Re-survey Medical Board confirmed permanent disability status with 90% disability but the CCDA(P) reduced the disability from 90% to 50% and granted disability pension @ Rs.225 per month from 19 Dec 1994. In the writ petition he prayed that the disability pension should be recomputed.*
>
> *Held, there was no basis or reason or rationality with the CCDA(P) to disagree with the Reports of the Medical Board and Re-survey Medical Board. There was no justification for the CCDA(P) to reduce the petitioner's disability from 30% to 15-19% from 90% to 50%. The Medical Board consists of specialists in the subject in the field of medical science and their opinion could not have over-ruled by those who had no occasion to make real assessment of the disability of the pensioner.*

It is not in dispute that in calculating the length of qualifying service, fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year and reckoned as qualifying service. The petitioner who got retired after rendering18 years 4 months and 13 days service has actually rendered 18 years and 6 months and his disability pension should be reassessed treating his qualifying service as 18 years and 6 months.

Writ petition allowed and respondents directed inter alia to pay disability pension @ 30% from 1 Jun 1978 to 22 Mar 1987, 90% w.e.f 23 Mar 1987 and 100% w.e.f 12 Dec 1987, to recompute his service element of pension for 18 years and 6 months of service w.e.f 26 Jun 1983 onwards and pay the arrears with 18% interest within four months. Also entitled to cost as Rs. 3000. (Order dated 23 Mar 1999)."

"Surmukh Singh, Ex Hav v. Union of India, 1999(4) SLR 511(P&H).

Authority of CCDA(P)

Having suffered some eye disease, the petitioner, a Havildar, was down graded to medical category CEE for six months. Later, the Invaliding Medical Board boarded him out of military service with disability assessed at 40%. His claim was forwarded to CCDA(P) Allahabad for the sanction of disability pension who rejected it on the ground that the authority had found that the disability was less than 20%, which disentitled him to the award of disability pension.

Held, it was not open to the CCDA(P) Allahabad to review the findings of the Invaliding Medical Board as the opinion of the Board, which had been recorded on a physical examination of the patient, must be accepted. Moreover, it will be seen that the order gives no reason whatsoever as to why the CCDA(P) Allahabad had differed with the opinion of the Board with regard to the extent of the petitioner's disability."

"Mukhtiar Singh, Ex Hav v. Union of India, Delhi CWP No. 2811 of 1993.

Re-assessment

1. Twenty per cent, temporary disability pension was being given to the petitioner after he was assessed having 20% disability during Re-survey Medical Board held on AFMSF-17. Thereafter the proceedings of disability pension claim were sent to CDA(Pension) Allahabad. The latter ignored the opinion of the Re-survey Medical Board and once again assessed the petitioner's disability at eleven to fourteen % and disallowed the pension. The petitioner moved to the High Court.

Held, it was not open to the CDA(P) Allahabad to ignore the Re-Survey Medical Board opinion without any further reassessment by the Re-Survey Medical Board. The CDA(P) Allahabad was directed to pass appropriate orders for payment of disability pension at 20%.

(Petition allowed, order dated 6 Feb 1995)

In another case this Bench in OA No. 105 of 2013 in the case of **Ex-Rect Khageswar Nayak vs. Union of India and 5 others** on 23.7.2014 has ruled as under :

"From the above facts it appears that that PCD(P) or CDA has acted as a superior authority to the Medical Board and overruled the Medical Board's opinion at its sweet will without even bothering to disclose any reason for such decision. This is absolutely illegal and unjustified."

Further, in the same case on 21.8.2015 the Sr. Accounts Officer from PCDA (P), Allahabad Shri Kamalesh Kumar Shukla appeared and stated that the order of 12.7.1951 under which the finding of Medical Board and question of entitlement to disability pension and/or percentage of disability were not considered final and were subject to alteration by CDA(P) Allahabad acting on the advice of his Medical Advisor (Pension), has been withdrawn from 2005. The extracts of the order dated 21.8.2015 are quoted as under :

"It appears that the disability element of pension sanctioned to the applicant by the Medical Board has been stopped by CCDA in terms of an order dated 12.7.1951. We have been confirmed by Shri Kamalesh Kumar Shukla, Sr. Accounts Officer from PCDA(P), Allahabad who appears today that the order of 1951 has now been withdrawn from 2005. From the affidavit filed today, it appears that the opinion of Medical Board has been reviewed by the Medical Advisor, pension to the Record Office. We fail to understand as to how the opinion of Medical Board consisting of 3 to 5 Medical Officers can be reviewed by one Medical Advisor. The decision taken by the Medical Board seems to be final and CCDA has no right to stop the pension. Accordingly as an interim measure, we direct the respondent authorities including the PCDA(P), Allahabad to restart the disability element of pension with effect from August, 2015 and the entire arrear of such pension will be deposited with this Tribunal within one month."

20. Yet, another letter issued by ADG Personnel Services, Adjutant General's Branch, Integrated HQ of MoD (Army) letter No. B/39022/Misc/AG/PS-4(L)/BC dated 25.4.2011 specifically has ordered all Commands of the Army to withdraw from contesting in Court cases where finding of IMB/RMB has been altered by MAP in PCDA(P). Extracts of the letter are as under :

"1. It may be recalled that the institution of MAP in PCDA(P) has now been abolished since 2004. Till such time it was invoked, all med opinions of the IMB/RMB that were recd in PCDA(P) for claims were adjudicated by the MAP (Medical Advisor Pensions) who were considered the final authority to decide on final admissibility of disability pension.

2. These alterations in the findings of IMB/RMB by MAP(PCDA(P)) without having physically examined the indl, do not stand to the scrutiny of law and in numerous judgements. Hon'ble Supreme Court has ruled that the Medical Bd which has physically examined should be given due weightage, value and credence.

3. It is being noticed that despite a settled legal posn such cases are still being contested on behalf of the UOI, which is infructuous and causes undue financial losses to both petitioner as well as the UOI.

4. All Command HQs are requested to instruct all Record Offices under their Comd to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such files be processed for sanction.

5. Record Offices will ensure that only such cases are withdrawn where :-

(a) Subsequent Appeal Medical Boards have not been held and initial findings of RMB/IMB have assessed disability/disabilities to be attributable-or aggravated / or connected with service.

(b) If subsequently, consequent to a Court Order or otherwise on indl's request any Appeal Medical Board which has physically examined the individual, has been held and they too have confirmed the alteration by MAP(PCDA(P)) as NANA or any other assessment which disallows disability pension to an indl, such cases will not be withdrawn.

6. All Record Offices are directed to unconditionally withdraw from all such cases which fulfill the criteria as mentioned in para 5 above."

21. Hence, in view of the judgments, past precedent and the position now finally being taken by the Army HQ we find that the individual is entitled to disability pension at 100% (life long) from his date of discharge, i.e. 13.7.2006 with arrears at 6% interest per annum within three months from the date of receipt of the copy of this order.

22. With the above, the application deserves to be and is hereby allowed without any order as to costs. Accordingly, the application is disposed of.

23. Let a plain copy of this order, duly countersigned by the Tribunal Officer of this Bench, be supplied to the parties after observance of usual formalities.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE N. K. AGRWAL)
Member (Judicial)

ss.