ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
T.A. No. 09 of 2016
(Arising out of O.J.C. No. 3521/1997)

DATED: THE FOURTH DAY OF JULY, 2018

CORAM :**HON'BLE DR.(MRS.) JUSTICE INDIRA SHAH,MEMBER (J)**
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

Sudhansu Sekhar Mohapatra,
Aged about 33 years, s/o Lokanath
Mohapatra, resident of 3rd Co-
Operative Colony, P.O. Berhampur,
Dist – Ganjam.

..... Applicant

By Adv. Mr. Mritunjoy Halder

Versus

1. Union of India, represented through its Secretary, Ministry of Defence New Delhi.
2. Accounts Officer-in-charge, Air Force Record Office, Subroto Park, New Delhi-10.
3. Commanding Officer, 15 Squadern, (A.F.) C/o 56, APO.

Respondents.

By Adv. Mr. Arunava Ganguly.

ORDER

Per Lt Gen Gautam Moorthy, Hon'ble Member (A):

1. Heard the learned counsel appearing for the parties.
2. This case has been transferred from the High Court of Orissa at Cuttack and has been registered as TA No. 9/2016 arising out of OJC No. 3521 of 1997.
3. In this case a counter affidavit as well as rejoinder affidavit had been filed earlier in the High Court at Orissa.

4. Although no supporting documents have been filed by either side, some personal occurrence details and letters have been filed by the applicant which are not controverted by the respondents in their counter affidavit.

5. The case in brief is that the applicant was enrolled on 22.11.1982 and was medically boarded out of service on 9.3.1993 under the provisions of Air Force Rules, 1969 Chapter III, Rule 15 clause 2 (c) i.e. *"On having been found medically unfit for further service in the IAF"* on account of head injury of (a) Dementia (b) Post Traumatic seizure (N-854 & E-813,345 (V-67). The medical board had assessed his disability at 80% for life. The applicant had met with a road accident on 17.11.90 at 1900 hours in Bhuj where he was posted. The injuries were found neither attributable nor aggravated by Air Force Service and, accordingly, he was discharged with the above remarks and also with the remark 'unfit for civil employment'. The applicant put up an application requesting disability pension. However, Air Force Record Office vide the letter No. RO/2714/676446 P.W.(D.P.-3) Dt. 8. July 1994 rejected his claim stating as follows:

> *"1. It has been decided by PCDA(P) Allahabad that the disability from which you suffered during your service in the Air Force and on which your disability pension is based:*
>
> *(a) is not attributable to Air Force service*
>
> *(b) Does not fulfill the following conditions namely that if existed before/around during your Air Force service and has been remained aggravated thereby.*
>
> *(c) is attributable aggravated by service and assessed at less than 20% for years from to*
>
> *Accordingly no disability pension is admissible to you under the rules vide CDA(AG) New Delhi letter No-DCA/PEN/OP/129/94 dt 5.7.94".*

6. The applicant then put up a representation to the Secretary, Ministry of Defence vide his letter of 18.11.1994 requesting for disability pension. This too was turned down by the Government of India, Ministry of Defence, vide their letter No. 7(278)/95/D(Pen-A and A.C.) dated 29th August, 1996 on the following grounds :

> *"1.xxxxxxxxxxxxxx.*

2. You were invalided out of service on account of ID-Head injury effect of (i) Demantia and (ii) Post Traumatic Seizure. On perusal of your medical/service documents, it has been found that you had sustained head injury on 17. 11.1990 at 1900 hrs in a Road Traffic accident. You were hospitalized and later developed the effects in the form of Dementia and Post Traumatic seizures. You were not on duty at the time of accident. As the ID Dementia and post Traumatic Seizures are a sequel to head injury, the same are not considered attributable to service. Hence, your disablement in such circumstances is not related to your duties of Military service.

3. It is, therefore, regretted that your request cannot be acceded to."

7. The applicant then vide his letters dated 1.8.94 and 26.8.94 requested for providing him photo copy of injury report, the relevant rules and the Court of Inquiry proceedings. It appears that none of them have been provided to him.

8. Learned counsel for the applicant states that in view of the number of judgments in this regard there is no reason to turn down the claim for disability pension in respect of the applicant. The question of granting disability pension to those invalided out of service without completion of terms of engagement and without any compensation is no longer res integra in view of the judgment delivered by the Hon'ble Apex Court on 2.7.2013 in the case of **Dharamvir Singh vs. Union of India in Civil Appeal No. 4949 of 2013 arising out of SLP(C) No. 6940 of 2010**. The relevant portion is set out as under:

> *"The Learned Counsel for the applicant contended that the Entitlement Rules for casualty Pensionary Awards, 1982 have been made effective w.e.f. 1st January, 1982 and the set of rules is required to be read in conjunction with the Guide to Medical Officers (Military Pension), 1980. Referring to Rule 423 (c) it was submitted that the cause of 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. A disease which has lead to an individual's discharge or death will be ordinarily be deemed to have arisen in service if no note of it was made at the time of 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 in service."*

9. In another decision in the case of **Sukhvinder Singh vs. Union of India and others in Civil Appeal No. 5605 of 2010 decided on 25.6.2014,** the Hon'ble Supreme Court observed as follows :

> *"11. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the armed forces; any other conclusion would tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the armed forces requires absolute and undiluted*

protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appear to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, wherever a member of the armed forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

10. Learned counsel for the respondents states that as the applicant was not on duty, he cannot be granted disability pension.

11. In so far as the question of whether the applicant was on duty or not, reference may be made to the decision of this Bench order in **OA 52 of 2015** in the case of **Debasish Ghosh vs. Union of India** and others. The relevant paragraphs of the order is quoted below :

"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 pension 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 NkDilbagh 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 contested by the Release Invalidating Medical Board but they also opined the disability at 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, an extract of paragraph 12 of the said judgment is reproduced below as also the paragraphs 10 to 16 of our judgment in OA 2 of 2014 are set out below :-*

"(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.

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t 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"*
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> *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 RamanathaAiyer, 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 RamanathaAiyar, 1997 Edition states 'Causal Relation' as under :*
>
> *"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 judgment (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 SomveerRana 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 AjaiLamba, the Hon'ble Judge quoted an earlier judgment in the case of Ex NaikKishan 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)"

12. The concept of duty has been further elaborated in OA 2/2014 in the case of **RenuKumari vs. Union of India and others** decided by this Tribunal on 25.01.2016. The relevant portion is set out as under:

"19. Thus the issue of whether an Armed Forces person while living in the barracks and being "off duty" as per the duty roster is still to be considered on duty or not is a moot point for our consideration.

20. It is well understood that a military person cannot be on guard duty or any other such duty 24x7 and that he would need periods of rest and relaxation. ***So to simply ascribe him not being on duty as per the duty roster, as to not being on duty at all, is to undermine the very concept of duty that Armed Forces Personnel perform round the clock in the various stations that they are posted to across the country and abroad".***

13. In this case too although the Court of Inquiry and the original medical documents are not available, there is no doubt that the applicant was invalided out with 80% disability with the remarks that he was unfit for civil employment. There was also no reason for PCDA(P), Allahabad to reduce 80% disability to 20% (para 5, 1(c) supra) without examining the applicant. In this connection, the following observations highlighting the over-reach of PCDA(P) 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)

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)."

"Gurmukh 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)

14. In another case, this Bench in O.A. No. 105 of 2013 in the case of **Ex-RectKhageswarNayak 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."

15. 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 let alone an injury sustained in his duty station. Thus it is evident that the head injury sustained by the applicant at his duty station (Bhuj), was incorrectly not accepted by the authorities as attributable to military service although they granted him 80% disability for life and invalided him out of service.

16. This TA No. 9 of 2016 is, accordingly, allowed without any order as to costs. The respondents are, therefore, directed to grant the applicant 80% disability pension from the date of his discharge up to 31.12.1995 since it was incorrectly denied to him by the respondents and for it to be rounded off to 100% from 1.1.1996 onwards. Arrears will be paid to the applicant within three months from the date of receipt of a copy of this order, failing which interest of 8% per annum will be granted to the applicant.

17. The TA is, thus, disposed of.

18. Let a plain copy of this order, duly counter signed by the Tribunal Officer, be supplied to the parties after observance of requisite formalities.

(LT GEN GAUTAM MOORTHY) (JUSTICE INDIRA SHAH)
MEMBER(ADMINISTRATIVE) MEMBER (JUDICIAL)

ss.