SEE RULE 102 (1)

IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, KOLKATA

APPLICATION : O. A. No - 146/2017

DATED : THE DAY OF MAY 2019

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
HON'BLE MEMBER (ADMINISTRATIVE)

APPLICANT(S) : Smt. Sumi Hansda
Wife of Jhareswar Hansda and Mother Of
No. 15200836N Late GNR (DMT)
Guru Pada Hansda
residing At Village – Jalabindu,
P.O. – Kundalpal, Tehsil – Kharagpur,
District – Paschim Medinipur
(W. B) PIN – 721 140

VERSUS

RESPONDENT (S) :

1. Union of India,
Service through The Secretary, Ministry Of
Defence, South Block, New Delhi – 110001

2. The Secretary, Department Of Ex-Servicemen
Welfare & Pension, Ministry Of Defence,
South Block, New Delhi - 110011

3. The Principal Controller of Defence Accounts
(Pension) Draupadi Ghat,
Allahabad, Pin – 211001 (U.P.)

4. The Officer-In-Charge, Artillery Records,
Nasik Road Camp,
PIN – 908802, c/o 56 APO

5. Army Group Insurance Fund,
AGI Bhawan, Rao Tula Ram Marg,
Vasant Vihar, New Delhi – 110057

6. Smt. Mithu Das, Wife of No. 15200836N
Late GNR (DMT) Guru Pada Hansda,
R/O Village – Hannan, P.O. – Ruinan
Tehsil - Kharagpur, District – Paschim Medinipur,
(W.B.) PIN – 721 140

Counsel for the Applicant(s) : Mr. Aniruddha Datta, Ld. Advocate

Counsel for the Respondent(s) : Mr. Ajay Chaubey (Resp. No. 1-4)
Mr. Rajib Mukherjee (Resp. No. 5)
Miss Anindita Banerjee (Resp. No. 6)

ORDER

PER LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)
MEMBER (ADMINISTRATIVE)

1. This Original Application (O.A. No.–146/2017) has been filed by Smt. Sumi Hansda (wife of Jhareswar Hansda); mother of Late No. 15200836N Late Gunner (Operator) Guru Pada Hansda under Section 14 of the Armed Forces Tribunal Act, 2007 (In Short – The Act) claiming the equal division of pensionary award (Special Family Pension) and all other admissible benefits after the death of her only deceased son between herself and her daughter-in-law.

2. Earlier, an application (M.A. No. 111/2017) was filed for condonation of delay of 3 years and 06 months in filing the above O.A. The said M.A. has been disposed of vide this Tribunal Order dated 30th January, 2018.

Brief Facts the Case

3. From the Affidavit-in-Opposition filed, it is very clearly stated that the death of the applicant's son was recorded as Attributable to Military Service by the Competent Authority based on the Court of Inquiry held, and accordingly the widow of the applicant was ab initio entitled to Special Family Pension (Para 4 (b) of the Affidavit-in-Opposition refers). However, the PCDA (P), Allahabad rejected the claim for Special Family Pension and notified that only Ordinary Family Pension in favour of the widow was due and accordingly issued P.P.O. No.

F/NA/011314/2013 (ARMY) dated 28th June, 2013 for Ordinary Family Pension. Grant of Special Family Pension was rejected on the grounds that the applicant's son died due to road accident while on leave. Hence, PCDA (P) concluded that the death of the applicant's son was not in any way related to the military duty and hence the same is to be treated as non-attributable to military service. Therefore, the Respondents stated that the claim for division of Special Family pension in favour of mother and widow of the deceased soldier in the ratio of 50:50 could not be entertained since only Ordinary Family Pension was granted and that Ordinary Family Pension cannot be divided between the widow and the parents as per the policy in vogue. Therefore, the applicant was not eligible to any pension whatsoever.

4. After the rejection of the Special Family Pension by the authorities, the widow of the deceased soldier Smt. Mithu Das appealed against the decision. The appeal was considered by the 1st Appellate Committee and was rejected stating that ***"No 15222836N Late Gnr Guru Pada Hansda died on 23.01.2012 due to train accident while on leave-cum-posting at this home town. Since, the circumstances of death are not in any way related to duties of military service, the same is not attributable to military service as per provision of Entitlement Rule 2008".*** Accordingly, the decision of 1st Appellate Committee at Integrated Headquarters of Ministry of Defence (ARMY) (AF/PS-4) was communicated to Smt. Mithu Das vide Artillery Records letter No D/15200836/N/T-5/PC/154/Pen-3(A) dated 14.01.15.

5. Subsequently, Smt. Mithu Das, widow of the deceased soldier again appealed against the decision of rejection of Special Family Pension and the same had been forwarded to Integrated Headquarters of Ministry of Defence (ARMY) (AG/PS-4) vide Artillery Records letter No. D/15200836N/T-5/2nd Appeal/155/Pen-3A dated 26.02.2015. The appeal was carefully considered by relevant rules/instructions on the subject and the same was rejected stating that his fatality *"SEVERE HAEMORRHAGIC SHOCK FROM MASSIVE INJURY TO THE HEAD, NECK, CHEST AND ABDOMEN BLEEDING LEADING TO DEATH (TRAIN ACCIDENT)"* as Neither Attributable to Nor Aggravated (**NANA**) by Military Service on the following grounds:-

> *"Perusal of the enclosed medical/service documents reveals that the individual was on leave cum posting to his onward railway reservation to join duty in new location. At around 1200 hrs, while trying to board a local train, he slipped and fell down and was run over by the train and died on the spot. Since the deceased was not on bona fide military duty and there is no casual connection/service factor available for the FD (fatal disease), the death of the individual is not attributable to military service in terms of ER-2008".*

6. We have observed that there is no doubt that the deceased sepoy was on leave cum posting and was proceeding to make his return railway reservation to join his duty in the new location when he met with his unfortunate and untimely death. Since he was proceeding to make his return journey reservation to join duty, there appears to be a strong causal connection between his death and military service. There are a catena of judgments that cover this case adequately. These are as under:-

A. In WP(C) No. 19839/2005 decided on 19th October, 2006 by the Hon'ble Delhi High Court in the case of **Jitendra Kumar vs Chief of Army Staff and others** it was held that attributability/aggravation shall be considered if causal connection between death/disablement and military service is certified by the appropriate medical authority. Paras 5 to 24 of the judgment are set out as under:-

5. The provisions that grants a right to claim disability pension to an officer or even other members of the force are Regulations 48 and 173 of the Pension Regulations for the Army, 1961 respectively. These are the substantive provisions, which enable an applicant to claim and creates a counter obligation upon the authorities to pay disability pension in the event the claimant satisfies the ingredients of these provisions. There is no ambiguity in the language of Regulation 173 and it clearly spells out its requirements. Regulation 173 reads as under:

> ***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 20 per cent or over.*
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> *The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.*

6. A bare reading of this provision clearly shows that two essential conditions, which a claimant is required to satisfy are that his disability is 20% or over and the disability is attributable to or aggravated by military service in non-battle casualty. Once these two ingredients are satisfied, the claim deserves merits. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix-II. Though Appendix II has been titled as "Entitlement Rules for Casualty Pensionary Awards, 1982", it specifically refers to Regulations 48, 173 & 185 of the Regulations. Appendix II does not determine the grant or refusal of disability pension but reference to this Appendix is essential only for the purpose of answering the question of attributability and/or aggravation by military service. To say that the Entitlement Rule in Appendix II overrides the provisions of Regulation 173 would be offending the known canone of statutory interpretation.

7. Appendix II is a mere supplement to the substantive Regulations 48 and 173 and cannot frustrate what is granted by the substantive provisions. It only indicates as to what kind of factors are to be taken into consideration for determining aggravation/attributability to military service. To lay unnecessary emphasis on this Appendix and its various clauses in depriving what is granted in Regulation 173 would neither be just nor permissible.

8. While referring to various clauses of Appendix II, the respondents argued that the injuries or death suffered by the claimants in the above writ petitions are not attributable to or aggravated by military service, as such petitioners are not entitled to grant of disability pension. On the other hand, learned Counsel appearing for the petitioners have argued with great vehemence and while referring to various judgments of the Supreme court, this Court and other High Courts that the disability pension is a right and being a welfare legislation, deserves to be construed liberally and once the petitioners were on permissible leave (annual/casual/sick leave), they would be deemed to be on duty and, thus, their injury or death would automatically be attributable to military service. Consideration on these rival contentions of this aspect of the case, we would defer for the time being and would first deal with the question of leave and its bearing on the claim of the petitioners for grant of disability pension.

9. In fact, in view of the stand taken by majority of the counsel appearing for the respondents as well as the clear stand taken by counsel appearing for the respondent in WP(C) No. 19839/2005, the question loses its pertinence but in view of the fact that it was raised by some counsel, it will be suffice to notice direct judgments on these issues as the question of kind of leave and its relation to attributability or aggravation on the basis of `deemed to be on duty' is no more res integra and has been answered by different Courts clearly. We may refer to the judgment of a Division Bench of Punjab & Haryana High Court in the case of Jarnail Singh v. Union of India 1998 (1) SLR 418 wherein after considering various relevant provisions and the judgments on the subject, the Court held as under:

> *5. Firstly we have to consider , whether the period of casual leave of a person subject to Army Act can be termed as period of duty or not? Secondly, whether every injury suffered by such person during the period of his casual leave arising from any kind of act, omission of commission, would necessarily be attributable to or aggravated by military service or not?*
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> *6. With regard to first question there could be hardly any controversy as the matter has been well settled by various pronouncements of the Hon'ble Supreme Court of India as well as of this Court. In the case of Smt. Charanjit Kuar v. Union of India and Ors. 1994-2(107) PLR 663(SC) : 1994 (1) SLR 479 (SC), where the husband of the petitioner who was commissioned as Lieutenant in the Indian Army and was subsequently promoted as Major, had died in mysterious circumstances, the Court while awarding compensation and treating him on duty held as under:*
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> *In the aforesaid facts, the conclusion is, therefore, inescapable that the officer died while in service in mysterious circumstances and his death is attributable to and aggravated by the military service. The responsibility of his death is prima facie traceable to the action of criminal omissions and commissions on the part of the concerned authorities.*

The petitioner is, therefore, entitled to suitable compensation as well as to the Special Family Pension and the Children Allowance according to the relevant rules.

7. The Division Bench of this Court in the case of Shri Krishan Dahiya v. Union of India and Anr. 1996-3(114) PLR 468 : 1997(1) SLR 607 (Pb & Hry.), where a Hawaldar in the Army Medical Corps suffered an injury while on casual leave and he was traveling in private vehicle, was treated to be on duty, after detailed discussion the Court held as under:

"2. It is not disputed on behalf of the respondents that an officer, subject to Army Act, while he is on casual leave is considered to be on duty. Moreover, in view of the judgment of the Apex Court in Joginder Singh v. Union of India 1996(2) SLR 149 and a Division Bench judgment of this Court in Chatroo Ram v. Secretary defense and Ors. 1991(1) SLR 678, it cannot be even disputed that an officer subject to the Army Act while on casual leave is to be treated on duty.

.... If a person subject to Army Act is considered to be on duty while on casual leave, it could not make any difference, whether he travels from duty station to leave station on his own expense or public expense as that cannot be sine qua non for determining whether the person is on duty or not. He referred to a judgment of the Delhi High Court reported as Harbans Singh v. Union of India, through Secretary, Ministry of defense, New Delhi , wherein the officer in that case was to travel from Walong in N.E.F.A., his duty station, to Patiala, his leave station. He had travelled from Walong to Jorhat and from Jorhat to Calcutta by air at public expense. From Calcutta to Ambala Cantt., he travelled on form D and from there, he travelled on road by his own scooter to his leave station Patiala. It was while traveling on scooter from Ambala to Patiala that he met with an accident which resulted in his disability.

The High Court held that though he was traveling at his own expense and by his own conveyance during the part of his journey from Patiala to Rajpura, he was still to be treated on duty and entitled to disability pension.

.... Can it be said that he is not on duty because he was not traveling at public expense? To our mind the answer has to be that still he would be entitled to be treated as on duty.

Still in another case of Ex. Gnr. Gaj Raj v. Union of India 1996(4) RSJ 17, the Court took the same view and held that the member of armed force while on casual leave can be considered on duty for the purpose of pensionary benefits and in that case held that it is to be attributable to military service. Similar view was expressed by Division Bench of this Court in R.V. Suvaranan v. Union of India and Ors. CWP 2535 of 1995 decided on 11.9.1995 and held as under:

Further the petitioner was going to the Railway Station at the time of accident for the purpose of purchasing return journey ticket to join the duty. Therefore, it cannot be said that the petitioner was not on duty at the time when he met with an accident. We are, therefore, of the opinion that the petitioner was on duty and the injury sustained by him in the course of accident was attributable to military service."

8. Hon'ble Supreme court of India in a very recent case of Joginder Singh v. Union of India 1996(2) SLR 149 wherein the proprietor who was proceeding on casual leave from his duty station met with an accident while boarding the bus at the railway station, held as under:

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.

9. Thus from the consistent view taken by various Courts including the Hon'ble Apex Court, it appears to us that the first question has to be answered against the respondents as it is really no longer res-integra and has been fairly and elaborately answered in the above pronouncements. Therefore, we have no hesitation in holding that a person subject to provisions of the Army Act, even if proceeds on casual leave, would be treated on duty and would be entitled to the benefits accruing there from in accordance with law.

10. Necessary corollary to our afore-mentioned conclusion is that second question posed by us above whether every injury suffered by a member of the Armed forces irrespective of its nature and origin can be termed "attributable to or aggravated by military service." In order to consider this basic question one has to refer and read the above stated provisions objectively while not losing sight of their purpose and object. Constantly regulations 173 and 175 indicate the legislative intention towards a liberal construction of these provisions. The above regulations and the provisions read in their correct perspective certainly imply that rule-making authority intended to give very wider scope to the concept of payment of disability pension.

11. Para 173 afore-mentioned is the substantive enabling provision which provides for grant of disability pension to a member of the force subject to the condition of disability being more than 20 per cent and is attributable to or aggravated by Military service. Para 175 must be read in conjunction with para 173 which is the principal regulation controlling the subject. The scheme of these regulations shows that para 175 is in aid to para 173. The case for claim of disability pension must satisfy the ingredients stated in para 173, it is then alone that para 175 would become operative. Para 175 only elaborates the application of para 173 by providing that even negligence or misconduct on the part of a member of the Armed forces may not frustrate the claim by such person under Rule 173. Upon the harmonious construction of these two provisions meaningful interpretation would be that the remote nexus to the attributability and aggravation of disability by military service even if accompanied by the element of negligence or misconduct on the part of the member of the force would not by itself frustrate the right of the member to raise such a claim. However, the authority in its discretion may apply, cut or reduce the amount of disability pension within the limited scope of para 175.

12. Clause 9 of the Appendix II even does not place onus on the claimant to prove the condition of entitlement and any benefit of reasonable doubt would accrue in favor of the applicant and not against him. The member of the Armed force being on duty would have to satisfy only concept of attributability as explained above, but no strict proof has to be established. Merely some remote nexus to the military service would be sufficient to sustain such a claim. The afore-mentioned provisions certainly indicate the liberal construction has to be afforded to this expression, but equally important is that such liberal construction has to be afforded to this expression, but equally important is that such liberal construction should be in consonance with the

object and purpose sought to be achieved by these provisions. We are of considered view that the injury suffered by a member of the Armed force must be directly or indirectly attributable to or aggravated by military service. May be remotely but it must find its origin from the nature and scope of the duties and discipline of the force. Obviously, a person on causal leave would not be performing his normal duties but in the even which results in infliction of injury to the member of the force must be ancillary to the recognised sphere of military duty and discipline. The injury causing disability, therefore, must spring from such event of circumstances which falls within expected standard of functioning of disciplined members of the Armed forces. The expression `attributable to military service' has to be understood in its wide spectrum, but this understanding must find its limit within the principle of prudence and reasonableness. 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 in no way be connected to his being on duty as understood in the above sense, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period would necessarily be attributable.

13. The expression "attribute" means to ascribe, assign, consider as belonging that which is inherent in or inseparable from(The Chambers Dictionary 1994 Edition) Attributability means attribution to its principal source. It may not be possible to precisely define the expression "attributable" which could apply as a matter of principle to the cases of the present kind. But this expression has now been well understood and explained in various pronouncements even in English Law. It may be appropriate to refer to the meaning described in the Butterwords "Words and Phrases Legally Defined, Volume 1" A-C which is as follows:

These words have been considered in a number of cases and I do not wish to add to the explanations and definitions which have been given. Counsel for Mr. Walse submits that it is a wider concept than "directly caused by", or caused by or resulting from", but he accepts that it involves some nexus between the effect and the alleged cause. He suggests that "owing to" or "a material contributory cause" or " a material cause in some way contributing to the effect" may besynonymous. Lord Raid in Central Asbestos Co. v. Dodd 1972(2) All.ER 1135, said"...."Attributatble". That means capable of being attributed. `Attribute' has a number of cognate meanings; you can attribute a quality to a person or thing. You can attribute a product to a source or author,you can attribute an effect to a cause. The essential element is connection of some kind." Suffice it to say that these are plain English words involving

some casual connection between the loss of employment and that to which the loss is said to be attributable. However, this connection need not be that of a sole, dominant, direct or proximate cause and effect. A contributory casual connection is quite sufficient. Walse v. Rother District Council 1978(1) ER 510, per Donaldson J.

The act, omission or commission which result in injury to the member of the force and consequential disability must relate to military service in the some manner or the other. In other words, the act must flow as a matter of necessity from military service.

14. As noticed in the aforesaid case a member of the force who proceeds on casual leave or returns from casual leave or while on casual leave goes to get a ticket or warrant for his return etc. suffers an injury which ultimately results in invalidating from Army, of the member of the force, that could be termed as an injury or disability attributable to military service. While on the other hand a person who may be doing some act at home which even remotely does not fall within the scope of his duties or functions as a member of the force nor is remotely connected with the function of the military service and expected standard and way of living of such member of the force cannot be termed as an injury or disability attributable to military service. For example a person who gets drunk while on casual leave, fights with his neighbours, inflicts injuries or suffers injuries, resulting in some disability to him as a result to which he is invalided out of Army with some extent of disability, to our mind cannot be said to be a disability attributable to or aggravated by military service.

15. Aggravation of a disease in the provisions of Section 29 of the Compensation (Commonwealth Government Employees) Act, 1971 has been explained in the case of Commonwealth v. Johnston 1980(31) AIR 445 in the following manner:

Although it may be possible to attribute a meaning of growing worse to the term "aggravation" in the abstract, it is not possible to construe aggravation of a disease in Section 29 as meaning a growing worse of a disease to which nothing but the natural progress of the disease has contributed. Something else must contribute an increased gravity to the employee's disease, a gravity over and beyond what the natural progress of the disease produces.

16. The expression "attributable to or aggravated by military service" must be read ejusdem generis with rule 2 in Appendix II and opening line of Regulation 173. It must be read in conjunction with the scheme of these provisions and has to be given purposeful meaning. To understand this phrase better it may be

appropriate to make reference to the phrase "arising out of and in the course of his employment." This expression occurs in the provisions of the Employees State Insurance Act, 1948. The Supreme Court in the case of Regional Director, ESI Corporation and Anr. v. Francis De Costa1996(6) SCC 1 : 1996(6) SLR 553 (SC) observed as under:

The injuries suffered by the respondent in the instant case did not arise in any way out of his employment. Unless it can be said that his employment began as soon as he set out for the factory from his home, it cannot be said that the injury was caused by an accident "arising out of.... his employment". A road accident may happen anywhere at any time. But such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something incidental to his employment.

By using the words `arising out of.... his employment', the legislature gave a restrictive meaning to "employment injury". The injury must be of such an extent as can be attributed to an accident or an occupational disease arising out of his employment. "Out of", in this context, must mean caused by employment.' In order to succeed, it has to be provided by the employee that (1) there was an accident; (2) the accident had a casual connection with the employment, and (3) the accident was suffered in the course of employment. In the instant case the employee was unable to prove that the accident had any casual connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment

17. The injury or disability must be incidental to military service. The Hon'ble Supreme Court in the case of Union of India and Anr. v. Baljit Singh 1997(1) SLR 98 while declining to interfere with the judgment of the High Court held as under:

In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or, was aggravated which contributed to invalidation for the military service. Accordingly, we are of the view that the High Court was not totally correct in reaching that conclusion. However having regard to the facts and circumstances of this case, we do not think that it is an appropriate case for interference.

18. On proper analysis of the above discussion the position that emerges is that an accident or injury suffered by a member of the Armed Forces must have some casual connection to the aggravation or attributability to 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. The nexus between the two is not apparently one so as to cover every injury or accident. 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. The fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service and the matters entirely alien to such service. What falls ex-facie in the domain of an entirely private act which may even extend to the sphere of undesirable and unlawful activity of such member, cannot be treated as 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 force. At least remote attributability to service and expected standards of behavior and living, of the member of the force appears to be the condition precedent to claim under Rule 173. The act of omission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior.

19. We may elucidate the above principle by giving a very simple example that if a person on casual leave and subject to this act goes to canteen to buy things or takes his children for treatment to hospital and in the way meets with an accident, may be arising out of his negligence or contributory negligence, suffers injuries causing permanent disability, in our view, would be entitled to claim the benefit under Rule 173. Similarly a person who joins Army is not found to be suffering from any disease, but subsequently suffers from a disease which renders him liable for being invalidated out of Army on such ill health, such a disease would be attributable and/or aggravated by military service and would entitle him to take benefit of these regulations.

20. Thus, to sustain a claim of disability pension, the member of the Armed force must be able to show a normal 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 member of such disciplined force. It is so primarily for the reason that no unlawful activity or commission can validly by support a lawful claim. Violation of expected standards cannot form a fair ground for raising a claim under these provisions. Every rule is expected to be understood so as to be implemented lawfully and to achieve its object, but equally true is that no lawful activity can be brought to the aid of an unlawful act and that too by stretching the rules of present kind because it may ultimately result in abuse of the benefit sought to be granted by such rule. It has to be understood

> *that no strait-jacket formula could be provided for such cases and each case has to be judged on its own merits. We have attempted to provide certain guiding principles which could help the authorities concerned while deciding such a claim.*
>
> *21. In the present case, we are not able to see that working in the fields or keeping him occupied in agricultural activity of occupation, during casual leave would be an act attributable to military service. An independent occupation privately undertaken by him cannot be said to be squarely falling in line with the views expressed by us above. May be the petitioner is entitled to other benefits but we are afraid that he cannot avail the benefits of Rule 173.*
>
> *22. We are unable to find this silver lining of nexus between the injury suffered by the petitioner in the present case and nature of functions which would bring the same within the expression `attributable to military service'. Consequently, we dismiss this writ petition, however, without any order as to costs.*

10. The above view is in consonance with the settled principles and we would adopt the same reasoning for rejecting the contention raised by the respondents before us even in the present writ petitions. This view can also be buttressed from other judgments of the Supreme Court and even this Court. The concept of attributability to and aggravation by service is quite similar to the expression "Accident arising out of and in the course of his employment" which occurs in Section 3 of the Workman Compensation Act." This provision was subject of scrutiny by the Supreme Court in the case of General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes and the Court held that the driver of petitioner's undertaking met with an accident while going home from duty, would be covered by this expression entitling the driver's family for receiving the compensation as the accident occurs during the course of employment. Applying the principles of `Notional extension at both entry and exist by time and space", the Court while reading such extensions as part of duty also held that circumstances of the case would have a bearing on such subject. Still in the case of Madan Singh Shekhawat v. Union of India and Ors. , the Supreme Court while determining the question in relation to grant of disability pension held that a person on 'casual leave' while traveling, even at his own expense, suffers from an injury or death, such an injury or death would be attributable to the military service entitling the person to receive such pension. The Court, thus, enlarged the scope and meaning of the word "at public expense" appearing in clause 12(d) of Appendix II, Regulation 173 and held as under:

> *12. If the expression "at public expense" is to be construed literally then under the Rules referred to above, an Army Personnel incurring a disability during his travel at his own expense will not be entitled to the benefit of Rule 6(c) (48(c)) (supra). The object of the rule, as we see, is to provide relief to a victim of accident during the travel. If that be so, the nature of expenditure incurred for the purpose of such travel is wholly alien to the object of the rule.*

13. It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule.

14. In Seaford Court Estates Ltd. v. Asher (1949) 2 All ER 155, Lord Denning, J.J. (as he then was) held:

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

15. This rule of construction is quoted with approval by this Court in M. Pentiah v. Muddala Veeramallappa, and also referred to by Beg, C.J. In Bangalore Water Supply & Sewerage Board v. A. Rajappa and in Hameedia Hardware Stores, represented by its Partner S. Peer Mohammed v. B. Mohan Lal Sowcar .

16. Applying the above rule, we are of the opinion that the rule-makers did not intend to deprive the Army Personnel of the benefit of the disability pension solely on the ground that the cost of journey was not borne by the public exchequer. If the journey was authorised, it can make no difference whether the fare for the same came from the public exchequer or the Army Personnel himself.

17. We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even an Army Personnel entitled to casual leave may not be entitled to leave his station of posting, n Army Personnel uses what is known as "travel warrant" which is issued at public expense, same will not be issued if person concerned is traveling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are used rather loosely for the purpose of connoting the necessity of proceedings or returning from such journey authorisedly. Meaning thereby, if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised.

> *18. Since on facts there is no allegation in this case that the appellant while traveling to his leave station on the fateful day was traveling unauthorisedly, we are of the opinion that he is entitled to the benefit of disability pension as provided under the Rules.*

11. The dictum of the Supreme Court in the above judgments, thus, is amply clear that a person on casual leave is on duty and injuries suffered by him would be attributable to military service entitling him to claim of disability pension. The judgment of the Supreme Court also emphasized the need for application of Rule of liberal construction to such provisions. In both the cases that we are dealing with in the present judgment, the persons were either on casual, annual or sick leave. All these leaves were authorised by the respondents and thus they have to be treated as on duty, of course subject to other objections of the respondents, which we would now proceed to discuss.

12. Learned Counsel appearing for the respondents in both the writ petitions have referred to various provisions of Appendix II to show that the cases of the petitioners are not covered under various clauses of the said Appendix and thus, they are not entitled to claim disability pension in terms of Regulation 173 or special family pension under Regulation 213. We have already referred to the language of Regulation 173, which is also similar to Regulation 48 except to the extent that Regulation 48 relates to grant of disability pension to an officer and under Regulation 173(2), it is the member of the force other than the officer. The disability pension consists of two elements namely disability element and service element. Once disability pension is granted to a member of the force, even if the disability ceases to exist or is determined by Re-Survey Medical Board as less then 20%, disability element of the disability pension is liable to be stopped but the service element has to continue in terms of Regulation 186(2) of the Regulations. Appendix II to Regulation 173, which we have already said to be referred for the purpose of a limited purpose i.e. to take assistance thereof for determining attributability to or aggravated by military service, spells out that onus to prove the conditions of entitlement is not upon the claimant and the claimant would be entitled to receive the benefit of even any reasonable doubt in that regard. Clauses 5 and 6 of this Appendix refer to certain presumptions, the aid of which will be taken for the purpose of determining the attributability for award of casualty pensions etc. These presumptions are in favor of the claimants. These presumptions, inter-alia, are that it would be presumed that every person was in sound physical and mental condition at the time of entry into service, a disablement due to wound, injury or disease, which is attributable to military service or arose during military service has been and remained aggravated thereby. In the event of member of force subsequently being discharged from service on medical grounds, any deterioration in his health, which has taken place is due to service. These presumptions and particularly some of them shall entirely tilt in favor of the claimant once they are certified by concerned medical authorities. The provisions on which reliance has been placed by the respondents in support of their argument can usefully be reproduced from appendix II at his stage.

> 8. *Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.*

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 friable 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 or permitted by Service Authorities and during the period of traveling in a body or singly by a prescribed or organized route. (see judgment in the book also)

NOTE-1.

(a)xxxxxxxxxxxxxxxxxxxx

(b)xxxxxxxxxxxxxxxxxxxxx

(c) xxxxxxxxxxxxxxxxxxxxxx

NOTE-2.

(d)xxxxxxxxxxxxxxxxxxxxxxx

(e)xxxxxxxxxxxxxxxxxxxxxxx

(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.

Injuries

13. In respect of accidents or injuries, the following rules shall be observed:

(a) Injuries sustained when the main 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.

13. 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 the 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.

14. 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. Clause 10 of Appendix II in unambiguous term shows the intent of rule framers that up to to 10 years of discharge of his service, if it can be established medically that disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge and that if the disability had been manifest at the time of discharge, the individual would have been invalided out of service on this account, then it would be recognised as attributable to service. Under clause 19, if it is established that disability was not caused by service, attributability shall not be conceded. However, aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim. Clause 21 provides that if there is delay in diagnosis including its adverse effects or complications, the attributability is to be conceded. These regulations have been enacted so as to amply demonstrate a liberal approach. Giving them a limited meaning or introducing uncalled for restrictions would not be in consonance with the known precepts of judicial interpretation of the Statute. They must be given their true and liberal meaning so as to satisfy the very purpose of these enactments. Deprivation of the benefit is exceptional while its grant subject to satisfaction of the conditions under Regulation 173, appears to be the purpose of rules.

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 Aiyar, 1997 Edition, `Causa' means `The Immediate Cause' while `Causa Proxima' means `The immediate cause'. `Causa Remota' means `Remote cause; A cause operating indirectly by the intervention of other causes." Further, Law Lexicon The Encyclopaedic Law Dictionary by P Ramanatha Aiyar, 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 `Casual' 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 met 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.

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 suffers 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 of 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, getting drunk, fighting and suffering injuries or suffering injuries from 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(C) No. 2418/2004 and Ex. Hav(AEC) Bhup Singh v. Union of India and Ors. WP(C) No. 2325/2002.

21. "Causal" depicts a link which exists between the act and the consequence. It has also been explained as arising from cause. A cause from which such a connection arises should be relatable to military service. The kind of leave does not have much of significance as per the respondents but in any case a person on casual leave, annual leave or even a sick leave, has been held to be on duty and if the act was otherwise having at least a casual connection or nexus between the nature of the act and the expected behavior of military services the petitioner would be entitled to the grant of disability pension. In addition to the above judgments reference can also be made to a Division Bench judgment of this Court in the case of G.D. Eshwar Chand v. Union of India and Ors. 2004 (3) SLR 439, judgments of Punjab and Haryana High Court in the case of Gurmeet Singh v. Union of India 2000 (5) SLR 596 and in the case of Ex. Naik Manjit Singh v. Government of India 2000 (1) SLR 100. The provisions of the Army Act and the Rules framed there under do not define the word "duty". This expression finds mention in Appendix II attached to Regulations 48, 173 and 185 of the Pension Regulations for the Army, 1961. In Clause 12 of the said appendix, this expression has been descriptively. It illustrates what could be a 'duty' for the purposes of determining attributability to military service or its aggravation. Such a clause which restrictively defines an expression would be incapable of being given a restricted meaning. Clause 'f' of Rule 12 even includes accidents which occurs when a man is not strictly 'on duty'. There are certainly acts and deeds which a member of the Force would be expected to perform while on actual duty in the Unit or while on leave. For example, going to the market to purchase his households, to go to drop his ward to school or going to some public office or booking office for booking a ticket or other such requirements. These are some of the acts, attributability to service whereof will not change by virtue of location or posting of the person subject to the Army Act.

22. Another aspect which the Court may examine in such cases is whether the authorities concerned exercise the same control and discipline over the person during his leave or the person is entirely free and outside the ambit and control of the authorities. Besides the relevant Regulations, terms like 'casual leave' to be treated as 'on duty' is also supported by the fact that during the period of leave, a person subject to Army Act is under the effective control and discipline of the Force and can be commanded to come back at any time by the concerned authorities. To such a command, he hardly has any right to raise any protest.

23. The Rules and Regulations also place an obligation upon the concerned authorities to find out the cause of injury and/or death of the person subject to the Army Act, while he is on duty or on leave. A Court of Inquiry so conducted has

a limited scope but it certainly can throw light on the cause or causal connection between injury, death and military service, as well as its extent and attendant circumstances. The onus to conduct such an inquiry is upon the authorities concerned, who is required to find out the correct facts not only to prevent its abuse but also with an intention to grant relief to the petitioner, if he is entitled to in accordance with law.

24. Upon analytical examination of the relevant provisions and the law-afore-referred, the principle that emerges is that the expression 'causal' is to be given liberal construction with reference to cumulative reading of other provisions of Appendix-II and entirely in comity to Regulation 173, which is substantive provision entitling a member of the force to claim disability pension. Rule of causal connection, thus, would take in its ambit even a casual connection or nexus between the injury and military service, so far the act or the incident was not apparently unauthorised or beyond expected standard of behavior or normal way of living of such person. Thus, causal connection certainly would not include every act, deed or conduct which is neither ancillary to nor in any way connected to the recognised sphere of military service of a person on casual leave. There cannot be any strait-jacket formula which will provide a panacea that would be applicable universally. This primarily would depend on the facts and circumstances of each case but could certainly be a reasonable precept for adjudication of cases raising similar issues.

B. 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)

C. 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".*

D. 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).

7. Keeping in mind the above cited judgments, we overrule this rejection of appeal order by Army Headquarters vide Artillery Records letter No. AG/PS-4 dated D/15200836N/T-5/2nd Appeal/155/Pen-3A dated 26.02.2015 and restore the status of the widow to Special Family Pension with effect from the date after the death of her husband i.e., 24 Jan 2013.

8. Since Special Family Pension was to be divided at the ratio of 50:50 as recommended by ARO, Kolkata, the same ratio is to be restored. We direct, therefore that Special Family Pension shall be granted to the widow Smt Mithu Das which shall be divided in the ration of 50:50 and that this special family pension be paid to both the widow and the mother from the next date of the death of OR. The arrears with 12% interest will also be paid to the widow and the mother of the OR. This order shall be implemented within a period of 3 months from the date of its receipt.

9. In so far as the other payments are concerned granting 50% share to the mother of the deceased sepoy ie the applicant, consent certificate has already been given by the widow for Final Settlement of the Account, AFPP Fund, and Death Link Insurance Scheme which have already been paid to the mother. The only aspect is balance of 30% share in the Army Group Insurance amount to Rs. 6,00,000/- which had been deposited in the Social Security Deposit Scheme. Since the widow has consented to give only 20% share to her mother-in-law i.e., the applicant and that it has already been paid to the applicant, the remaining 30% balance amounting to Rs. 6,00,000/- is to be released along with the

interest to the widow, Smt. Mithu Das (Respondent No. 6). We direct that this should also be released to Smt. Mithu Das, the widow of the deceased Sepoy at the earliest but not later than 3 months after receipt of this order.

10. The O. A. (O.A. No – 146/2017) is accordingly disposed of.

11. The O i/c Legal Cell had made an oral submission that in the event of an adverse order, he be permitted to file an appeal to the Hon'ble Supreme Court under Sec 31 of the AFT Act (2007). As there is no point of law of general public importance, this appeal is hereby rejected.

12. No order as to costs.

13. A plain copy of this order will be supplied to all concerned by the Tribunal Officer upon observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)

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