

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,
GUWAHATI**

O.A .- 22/2015

PRESENT

**HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)
HON`BLE VICE ADMIRAL A.G.THAPLIYAL, AVSM & BAR, MEMBER (A)**

Ex-Sep B.Lalthansanga.

..... **Applicant.**

By legal practitioners for
Applicant.

**Mr. Lalbiakunga Hnamte,
Mr. C.Lalhruaitluanga,
Mr. B. Vanlalnunkima.**

-VERSUS-

**1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence,
South Block, New Delhi –110011.**

**2. Principal Controller of Defece Accounts, Pension,
Pension G3/III Section, Allahabad- 14 U.P.**

**3. Controller of Defence Accounts,
Udayan Vihar, Narangi,
Guwahati, 781171.**

..... **Proforma Respondent.**

**4. Record Officer,
Assam Regiment Headquarter,
Happy Valley, Shillong, C/o 99 APO.**

..... **Respondents.**

By Legal Practitioner for
the Respondents.
Mr. D.C.Chakravarty,CGSC.

Date of hearing: 31.03.2016.

Date of Judgment & Order: 01. 04.2016.

JUDGMENT & ORDER

(By B.P.Katakey,J.)

The applicant, who was in the Indian Army and was discharged from service because of Low Medical Category on 01.04.2006, has filed this O.A. praying for a direction to the respondent authorities to grant disability pension.

2. The undisputed facts relevant for the purpose of disposal of the O.A. are that the applicant was enrolled in the Indian Army on 25.07.1998 and on completion of basic military training he was posted to 1st Assam Regiment on 30.06.1999. The applicant, while was stationed in Sonapindigali, was granted combined annual leave for 98 days for the years 2002-2003, with effect from 8th November, 2002 to 12.2.2003. The applicant accordingly on 8th November, 2002 came to Jammu in the State of Jammu & Kashmir and thereafter boarded the train at Jammu for coming to his home town in the State of Mizoram. The applicant after reaching New Delhi purchased a Motor bike and boarded the train again for Guwahati. He has also booked the Motorbike in the train. On reaching Guwahati he has proceeded to his home town in Mizoram in the motorbike on 13th November, 2002. On that date, while proceeding to his hometown, he met with an accident and was admitted in a private hospital in Guwahati, where he was indoor patient till 14.12.2002 and thereafter, on being released, he was admitted to 151 Base Hospital at Guwahati on the same date, i.e. 14.12.2002. A Court of Inquiry was also conducted to ascertain the cause of the accident as well as the injuries sustained by the applicant, which opined that the applicant, in the said accident, received the following injuries:

- “(a) Compound communitated fracture both bones (Lt) leg with extensive skin and soft tissue loss.
- (b) Closed communitated fracture (Lt) femur.
- (c) Posterior dislocation (Lt) hip with fracture head (Lt) femur.
- (d) Fracture terminal phalanx (Lt) index finger and fracture 2-4th metacarpal (Lt) hand.
- (e) Internal derangement (Lt) knee.”

The Court of Inquiry has also opined that nobody can be blamed for the injuries sustained by the applicant and the same was not attributable to military service. The applicant was thereafter discharged from service because of the Low Medical Category, for the aforesaid injuries sustained by him, vide order dated 01.04.2006. The applicant then filed an application claiming disability pension, which has been rejected vide order dated 14th October, 2006 on the ground that the disability, recorded by the Release Medical Board, were neither attributable to nor aggravated by military service. The First Appeal filed by the applicant was also dismissed on 27.04.2008, which order, according to the applicant, has never been served on him. Hence, the present O.A.

3. We have heard Mr. Lalbiakunga Hnamte, learned Counsel for the applicant and Mr. D.C.Chakravarty, learned Central Govt. Standing Counsel, assisted by Col Anand, OIC, AFT Legal Cell, Guwahati, appearing for the respondents.

4. It has been contended by the learned Counsel for the applicant that since the applicant has left Sonapindigali for his home town in the district of Aizwal, Mizoram after obtaining annual leave, the disability, which he has suffered because of the motorcycle accident occurred on 13.11.2002 in G.S.Road, Guwahati while proceeding to his home town in Mizoram, has to be treated as attributable to military service and hence, the respondents cannot deny the payment of disability pension to the applicant, he having been discharged from service on the ground of disability. Learned Counsel submits that since the applicant had to travel a long distance from Sonapindigali to reach his home town in Mizoram via Jammu, New Delhi and Guwahati by train, it cannot be said that the applicant was not on duty when the accident occurred and he is, therefore, not entitled to the disability pension. Referring to an order passed in O.A. 13/2003 (No. 14919599 Ex-Sep Shri Kapthianga Vs. Union of India & Ors.) by the Regional Bench of this Tribunal, it has been submitted by the learned Counsel that since the accident has occurred within the time an individual would normally take in reaching the leave station from duty station, the applicant is entitled to the disability pension and hence necessary direction may be issued to the respondent authorities to pay the same.

5. On the other hand, learned Counsel appearing for the respondents submits that the applicant having left the duty station on 8.11.2002 and broke his journey in New Delhi for purchasing the motorcycle, and thereafter reached Guwahati on 13.11.2002, it cannot be said that the accident has occurred within the time an individual would normally take in reaching the leave station from duty station and hence, according to the learned Counsel, the applicant is not entitled to the benefit of disability pension, the accident having been occurred beyond the time the applicant would normally take in reaching his leave station from duty station. The learned Counsel, therefore, submits that the claim of the applicant has rightly been rejected.

6. The arguments advanced by the learned Counsel for the parties received our due consideration. We have also perused the pleadings of the parties, including the documents

annexed thereto. The facts narrated above are not in dispute. The applicant has started his journey from Sonapindigali after obtaining annual leave from 08.11.2002 to 12.02.2003. From Jammu the applicant boarded the train for New Delhi where he has purchased a motorcycle. The applicant again started his journey from New Delhi and reached Guwahati by train on 13.11.2002. The applicant thereafter started his journey to the leave station in the State of Mizoram on 13.11.2002 by his motorcycle. While proceeding to his leave station he met with an accident in G.S.Road, Guwahati for which he was admitted in a private hospital in Guwahati on 13.11.2002, wherefrom he was released on 14.12.2002 and thereafter on the same date he was admitted to 151 Base Hospital, Guwahati. The applicant was discharged from service because of the injuries sustained by him and his categorization of Low Medical Category by the Release Medical Board, with effect from 01.04.2006. The question, which requires determination in the case in hand is, whether the applicant was to be treated as on duty when he met with an accident on 13.11.2002, resulting in the injuries sustained and whether the disability occurred is attributable to military service.

7. Admittedly, the applicant proceeded to the leave station from the duty station, in view of sanctioning of the annual leave for the years 2002-2003. The applicant, to reach the leave station from the duty station, has to undertake the journey by train, first at Jammu, in the State of Jammu & Kashmir, then at New Delhi and thereafter to Guwahati, which takes atleast 3 (three) days time. The applicant, from Guwahati to the leave station in the State of Mizoram, has to again travel for atleast 24 hours by road. The applicant's journey, in view of the grant of leave, mentioning the leave station in the State of Mizoram cannot, therefore, be termed as unauthorized journey and hence he is to be considered as on duty while proceeding to his leave station. In the case in hand, the applicant took 5 (five) days for travelling from his duty station to Guwahati and thereafter for proceeding to his leave station, which period cannot be treated as not within the time an individual would normally take in reaching the leave station from the duty station, within the meaning of clause (e) below Note 2 of Rule 12 of the Entitlement Rules. The applicant having sustained the injuries, which resulted in the disability and his consequent discharge from service, while proceeding to his leave station within the time normally takes in reaching the leave station, such disability has to be taken as attributable to the military service, he being on duty.

8. The applicant has rendered exemplary service while he was in Indian Army and was awarded three medals, namely, Special service medal 'Suraksha', High Altitude Medal and Sainya Seva Medal. His character was also assessed as exemplary during service.

9. Having regard to the aforesaid facts, we are inclined to hold that the brake journey taken by the applicant in New Delhi should be considered as part of the journey from duty station to the leave station. As a corollary, we hold that the applicant is entitled to the disability pension.

10. In view of the aforesaid discussion, we are of the opinion that the respondents were not justified in refusing the disability pension to the applicant and hence, both the orders dated 14th October, 2006 as well as the order dated 27th March, 2008 are set aside. The respondents are directed to pay the disability pension to the applicant based on the percentage of disability certified by the Medical Board and taking into account the Govt. of India's Notification dated 31.01.2001. The applicant shall be entitled to arrear of disability pension with effect from the date three years preceding the date of filing the O.A. with interest @ 9% per annum till the date of payment. The arrear along with the interest shall be paid to the applicant within a period of 3 (three) months from today.

11. The O.A. is accordingly allowed.

12. No costs.

MEMBER (A)

MEMBER (J)

Nath.