IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI

OA - 30 of 2016

PRESENT

HON`BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)
HON`BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

No-4362745N
Ex-Sep Baneswar Boro
S/O- Tapan Boro,
Vill – Nizdejeli
P.O.- Pachim Jhargaon,
Dist-Baksa (BTAD), Assam.

..... Applicant

By legal practitioners for Applicant.
Mrs. Rita Devi
Mr. A.R.Tahbildar

-VERSUS-

1. **The Union of India through**
   the Secretary, Ministry of Defence,
   New Delhi.

2. **Chief Records Officer**,
   Records The Assam Regiment
   C/O 99 APO

3. **Additional Directorate General**
   Personnel Services, PS -4(d)
   Adjutant General's Branch
   Integrated HQ of MOD (Army), DHQ,
   New Delhi-110011.

4. **Senior Accounts Officer**,
   PCDA (P), Allahabad.

..... Respondents

By Legal Practitioner for the Respondents
Brig.N.Deka (Retd.) CGSC.

Date of Hearing : 10.05.2018
Date of Judgment & order: 11.05.2018

JUDGMENT & ORDER

(Per Lt Gen Gautam Moorthy, Member (A)

This case has been filed U/s 14 & 15 of the Armed Forces Tribunal Act 2007 for denial of disability pension.

1. The fact of the case is that the applicant was enrolled in Assam Regiment on 24.12.1992. While at home on casual leave on 24.01.2003 he while he was sitting on the verandah of his house, he fell dizzy and fell down and became unconscious. After he regained his consciousness, he felt no movement in his limbs. He was taken to MI Room of HQ 107 Bde and thereafter to 151 Base Hospital Guwahati and later transferred to Military Hospital, Kirkee wherein Invalid Medical Board of the individual was carried out. He was declared 100% disabled due to "CORD COMPRESSION CV3-4 WITH POST TRAUMATIC QUARDIPLEGIA" and was invalided out from service on 29.11.2004 after completion of 11 years 11 months and 06 days of service.

2. The applicant was granted service element of disability pension, but was denied disability element of disability pension by PCDA (P) as his disability was held neither attributable to not aggravated by military service vide their letter No. G-3/70/31/3-05 dated __06.05.

3. The applicant filed his first appeal after a gap of 9 years and 9 months on 30.03.2015 which was rejected by ACFA vide ADGPS letter No. B/40502/409/2015/AG/PS-4(Imp-II) dated 09.02.2016. Subsequently, he filed his second appeal which was also rejected vide letter of even No. dated 25.04.2017. While rejecting the second appeal, the authorities have stated as below-

"The individual was on 20 days Casual Leave w.e.f. 09 Jan 2003 to 28 Jan 2003. He sustained the injury on 24 Jan 2003 when, while at home he developed dizziness and fell off his house verandah which was at a height of 3 feet. He was shifted to 151 Base Hospital Guwahati where he was managed initially with traction. He was then transferred to Spinal Cord Injury Centre at MH Kirkee, where he underwent rehabilitation. At IMB he was wheel chair ambulant. In the instant case the individual was on Casual Leave at the material time of sustaining injury. Hence there is no causal connection between injury and military service. Indl was also treated adequately at a service hospital and there was no worsening of condition because of military service. Hence the ID is conceded as neither attributable to nor aggravated by military service in terms of ER-2002 amendment 2008."

4. The medical certificate filed at Annexure (A) has also observed that the treatment of the applicant could be *"life long"* and his disability has been stated as *"Case of Cord Contusion C3 – C4 with Post Traumatic Quadriplegia. He is physically handicapped with 100% disability and uses wheel chair for mobilization. He needs Constant Attendant Care.. He is entitled for grant/assistance by the Govt./Non-Govt. organization as per existing order."*

This certificate has been signed by KR Salgotra, Sr. Advisor , MH Kirkee on 08.06.2004.

5. The Invaliding Medical Board held on 04.11.04 at M.H. Kirkee has also attributed the injury to service and has stated that injury sustained while in military service.

6. The Commanding Officer in Part 3 of the Release Medical Board has also stated in para 12, it was asked *"Do you consider the disability is attributable to service? (Give reason) reply is yes due to*

service condition. In Para 13, it was asked do you consider the disability aggravated by service? (Give reason). The reply is yes, due to service condition.

7. Besides, the Invaliding Medical Board has very clearly answered following questions in the form which is set out at page 5 of the report which is reproduced below –

NO4362745 Sep Baneswar Boro Unit S Assam Regt C/O 56 APO

CONFIDENTIAL

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2. Did the disability exist before entering service ? (Y/N could be) No.
3.In case the disability existed at the time of entry, is it possible that it could not be detected things the routine medical examination carried out at the time of the entry : No.
4.In case of disability awarded aggravation ,whether the effects of such aggravation still persist? If yes whether the effects of aggravation will persist for a material period . No.
5.(a) was the disability attributable to individual 's own negligence or misconduct ? If yes, in what way . No
(b) If not attributable, was it aggravated by negligence or misconduct ? If so, in what way and to what percentage of the total disablement ? NO.
(c) Has the individual refused to undergo operation/treatment? If so individual's reasons will be recorded. NO Note: In case of refusal of operation treatment a certificate from the individual will be affected.
(d) Has the effect of refusal been explained to and fully understood by him/her viz reduction In or the entire withholding of any disability pension to which he/she might otherwise be entitled? NA
(e) Do the Medical Board consider it probable that the operation/treatment would have cured the disability or reduced its percentage ? NA
(f) If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduce d by operation/treatment? NA
(g) Do the Medical consider the operation to be dangerous to life ? NA
(h) Do the Medial Board consider individuals refused to submit to operation/treatment reasonable? Gove reasons in support of the opinion specifying the operation/treatment recommended.
6. What is present degree of disablement as compared with to health person of the same age and sex? (Percentage will be expressed as Nil or as follows) 1-5%,6-10%, 11-14%,15-19% and thereafter in multiple of ten from 20% to 100%.

Disability (As numbered in question 1 Part IV)	Percentage of disablement	Probable duration of this degree of disablement .	Composite assignment for all disabilities with duration (Maz 100%)
((a) Cord compression CV3-4 with post Traaumatic Quardiplegia S-12.2 G-95.2	100%	for life	100% (one hundred percent)
(b)			
(c)			
(d)			
(e)			

Sd/ DINESH KUMAR
MAJ AMC CONFIDENTIAL Sd/ J Ray Major AMC

Illegible CR Capt Maj
Officer in chargeNER Gp

8. In addition, the Commanding Officer gave his opinion Court of Inquiry after the injury which is enumerated as under –

"I agree with the findings of the court. The injury (Post Traumatic Quadriplegia) was sustained by No. 4362745N Sep Baneswar Boro while on casual leave and was beyond the control of the individual. The injury sustained is attributable to military service in peace area and no one is to be blamed for the same"

Station C/o 56 APO Sd/-xxxxx

Date 25 Aug 2003 (NK Narayan)

Col

9. Learned counsel for the applicant has assailed the order of rejection of second appeal of disability pension and has argued that inspite of Casual Leave being in the nature of duty and the fact that the Court of Inquiry as well as statement by the Commanding Officer and all medical records which have reflected the fact that the injury being attributable to military service, there was no reason the appellant to have been denied disability element of pension @ 100%. He has produced the Judgment of Kolkata Bench of Armed Forces Tribunal in OA 52 of 2015 in ***Debashish Ghosh v. UOI & Ors,*** wherein in a similar case, injury sustained by the applicant was correctly recorded as attributable to military service both by the Court of Inquiry as well as the Release Medical Board, but rejected PCDA(P) by ignoring both the findings only on the ground that the injury sustained could not be treated as attributable to military service because the applicant had suffered the injury while being in casual leave. He has also referred to the judgment of Hon'ble Supreme Court in Sukhvinder Singh v. Union of India (2014) 14 SCC 364, a detailed judgment which stressed upon the fact that the invaliding out of service of any individual is *"tantamount to*

dismissal of a member of the armed forces without recourse to a court martial which would automatically entitle him to reinstatement."

10. Further in the judgment Sukhvinder (Supra) in para 11, the Hon'ble Supreme Court has held –

> "*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."*

11. Learned counsel for the respondents on the other hand while admitting that the Court of Inquiry as well as Release Medical Board had attributed the injury to service stressed upon the fact that there appears no cogent connection to the injury sustained by the applicant, although he was on casual leave which counts as duty except as provided for in Rule 11(a) of Leave Regulations.

12. Also counsel for the respondents, in their affidavit in opposition, have taken recourse to Judgment of Hon'ble Supreme Court in Union of India v. Ex-Nk Vijay Kumar in Civil Appeal No. 6583 of 2015 whereby the Hon'ble Supreme Court upheld the appeal by Union of India and order of the Tribunal was set aside. However, in this case the respondent i.e. *(Ex-Nk Vijay Kumar)* had completed his term of engagement.

13. We have gone through all the judgments produced by both the parties as well as the facts of the case.

14. There is no doubt that the applicant was invalided out from service after 11 years, 11 months and 6 days of service. Para 173 & 173(A) of Pension Regulation of the Army 1961, Part I, read as follows-

*"173- **Primary conditions for the grant of disability pension**-Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.*

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

*173(A) - **Individuals discharged on account of their being permanently in low medical category –** Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative employment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the Entitlement Rules laid down in Appendix II to these Regulations."*

To continue further, in the order Debashish Ghosh v. UOI (Supra), the issue germane to both cases is the aspect of causal connection, its interpretation and its bearing on granting disability pension. Paras 11 to 20 of the Judgments *(Supra)* are set out as under –

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

"To sum up our analysis, the foremost feature, consistently highlighted by the Hon"ble Supreme Court, is that it requires to be established that the injury or fatality suffered by the concerned military personnel bears a causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the concerned personnel was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the causal connection which alone is relevant. Fourthly, since travel to and fro the place of posting may not appear to everyone as an incident of military service, a specific provision has been incorporated in the Pension Regulations to bring such travel within the entitlement for Disability Pension if an injury is sustained in this duration. Fifthly, the Hon'ble Supreme Court has simply given effect to this Rule and has not laid down in any decision that each and every injury sustained while availing of casual leave would entitle the victim to claim Disability Pension. Sixthly, provisions treating casual leave as on duty would be relevant for deciding questions pertaining to pay or to the right of the Authorities to curtail or cancel the leave. Such like provisions have been adverted to by the Supreme Court only to buttress their conclusion that travel to and fro the place of posting is an

incident of military service. Lastly, injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death has occurred at the place of posting or during working hours. This is because attributability to military service is a factor which is required to be established."

15. (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.

15 (13) Starting with the third point, the COI held to investigate the cause of the accident very clearly opined that the injuries were attributable to military service. The same was not only not controverted by the Release Invalidating Medical Board but they also opined the disability at 100% (life long). Now, the second aspect whether there was a causal connection between the injury and duty. Reference may be made to this Bench judgment and order in OA No. 2 of 2014 delivered on 25.01.2016 wherein judgment delivered on 19.10.2006 by the Hon'ble Delhi High Court in the case of **Jitendra Kumar vs. Chief of Army Staff and others** has been dealt with. It was held in the case of Jitendra Kumar (supra) that attributability/aggravation shall be considered if causal connection between death/disablement and military service is certified by the appropriate medical authority. Herein, extracts of the judgment are set out below :-

"12.(a) xxxxxxxxxxxxxxxxx
(b) xxxxxxxxxxxxxxxxxx
(c) xxxxxxxxxxxxxxxxxx
(d) xxxxxxxxxxxxxxxxxx
(e) xxxxxxxxxxxxxxxxxx
(f) ***An accident which occurs when a man is not strictly on duty as defined may also be attributable to service, provided that it involved risk which was definitely enhanced***

in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India*.(Emphasis added) Thus for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed 'on duty' at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act."*

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

(a) Injuries sustained when the man is "on duty" as defined shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.

(b) In cases of self-inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.

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

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

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

"15. The expression 'causal' appearing in clause 8 of Appendix II to Regulation 173 on which heavy reliance was placed by the respondents, is capable of varied meanings. 'Causal' has been defined in Cambridge International Dictionary of English as 'No causal relationship has been established between violence on television and violent behavior (=Violent behavior has not been shown to be a result of watching violent television programmes). BLACK'S LAW DICTIONARY explained this expression 'Causal' as '1. OF, relating to, or involving causation a causal link exists between the defendant's action and the plaintiff's injury. 2. Arising from a cause a causal symptom. Cf. CAUSATIVE".

16. According to the respondents, 'Causal' is to be given again a strict interpretation so as to establish a restricted and direct nexus between the act causing injury to the person belonging to the force and his military service. Once this relationship is not satisfied on strict construction, then the claim of disability has to be declined. According to Law Lexicon, the Encyclopaedic Law Dictionary by P Ramanatha Aiyer, 1997 Edition, 'Causa' means 'Remote cause; A cause operating indirectly by the intervention of the other

causes." Further, Law Lexicon The Encyclopaedic Law Dictionary by P Ramanatha Aiyar, 1997 Edition states 'Causal Relation' as under :

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

"20. ***The duty itself is an expression of wide 'connotation' and would be incapable of being defined strictly, particularly when a member of the armed force is on leave, duly sanctioned by the authorities. While a person is on leave whether casual, annual or sick, it is not expected of him to perform or discharge his regular military duties as if he was present in a unit. He is expected to live a normal life, which a member of the force is expected to live while on duty. The acts and deeds which are relatable and are part of the normal living of a member of the Force, during which he suffer an injury or death, would normally be attributable to the military service. Unless such an act or deed was entirely beyond the scope of normal behavior or member of the Force and had no nexus or even a casual nexus between the act and military force, in such circumstances, the injury suffered may not be attributable to the service. For e.g., a person on casual leave may suffer an injury while going to or coming from his leave station to his unit, by public or private transport, while performing his normal functions while on leave like dropping his children to school, going to the market to buy items of day-to-day needs, going to booking office for booking his train ticket for his travel and while doing so being hit by a vehicle on the road, would be attributable to the military service***. *While on the other hand, if he is performing the acts or deeds which have no relation to his military service and attempts to do acts for his personal gain or benefit of others like participating in some business, doing agricultural activities, wheat thresher and other agricultural appliances, the same may not be attributable to or aggravated by military service as has also been held by this Court in recent judgments of this Court of even date in the cases of Ex. AC Somveer Rana v. Union of India and Ors. WP© No. 2418/2004 and Ex.Hav(AEC) Bhup Singh v. Union of India and Ors. WP© No. 2325/2002".*(Emphasis added)

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

*"No doubt, when the petitioner met with an accident, he was on annual leave, but the accident was beyond control of the petitioner who was not performing any act he ought not to have done**. In view of the settled law by the Apex Court, a person on casual/annual leave is deemed to be on***

duty and there must be apparent nexus between normal living of person subject to military law while on leave and injuries suffered by him*. A person on annual leave is subject to Army Act and can be recalled at any time as leave is at discretion of authorities . This was so held by a Division Bench of Delhi High Court in Ex-Sepoy Hayat Mohammed's case (supra). In that case, the petitioner was on leave at his home town. While he was in his house, a huge steel beam and a cemented stone fell on the petitioner from the roof of the house, which was being repaired. This resulted in total paralysis of three fingers of his right hand and amputation of left hand. The petitioner was treated and was placed in permanent low medical category 'EEE'. He was discharged from military service and rejected disability pension. His writ petition was allowed and the respondents were directed to consider and grant disability pension to the petitioner. With advantage, we may also refer to the authority reported as Madan Singh Shekhawat v. Union of India, 1999(66) A.I.R.(SC) 3378 : (1999(4) SLR 744 (SC)) where* ***the Hon'ble Supreme Court held that any army personnel is deemed to be on duty when he is on any type of authorized leave during travelling to or from home or while on casual leave.****"(Emphasis added)*

15(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)

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

service as brought out in the COI as there exists a clear causal connection between these injuries and the nature of the duty that he was performing.

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

"Ram Kumar Singh vs. Union of India, Rajasthan High Court Jaipur, SB Civil WP No. 4904 of 1997 Role of CCDA(P)

The petitioner was enrolled in Army in Regt of Artillery on 19 Jan 1960 and actually fought INDO PAK wars in 1965 and 1971 and was awarded 8 medals including Samar Seva Star and Paschim Star. On 30 Sep 1965 he sustained injury to his right eye due to splinter by air attack from enemy shelling. He was placed in medical category 'CEE' permanent for 'Medical degeneration right eye'. He was discharged from service on 1 Jun 1978 on his own request on compassionate grounds after completion of 18 years 4 months and 130 days service. The medical board recorded his disability as attributable to service in war zone and assessed as 30% for two years but the recommendations of the medical board were not accepted by Chief Controller of Defence Accounts (Pension) and disability pension claim rejected on the ground that his disability was not attributable to military service. On appeal the President of India decided the disability to be attributable to military service in war zone but the CCDA(P) arbitrarily reduced the disability from 30% recommended by the medical board to 15-19% and rejected his disability pension claim. Disability was once again assessed as 30% by the Medical Board but the CCDA(P) again reduced it to 15-19% in view of Regulation 173 of Pension Regulations for the Army, Part I. The Re-survey Medical Board confirmed permanent disability status with 90% disability but the CCDA(P) reduced the disability from 90% to 50% and granted disability pension @ Rs.225 per month from 19 Dec 1994. In the writ petition he prayed that the disability pension should be recomputed.

Held, there was no basis or reason or rationality with the CCDA(P) to disagree with the Reports of the Medical Board and Re-survey Medical Board. There was no justification for the CCDA(P) to reduce the petitioner"s disability from 30% to 15-19% from 90% to 50%. The Medical Board consists of specialists in the subject in the field of medical science and their opinion could not have over-ruled by those who had no occasion to make real assessment of the disability of the pensioner.

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

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

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

Authority of CCDA(P)

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

Held, it was not open to the CCDA(P) Allahabad to review the findings of the Invaliding Medical Board as the opinion of the Board, which had been recorded on a physical

examination of the patient, must be accepted. Moreover, it will be seen that the order gives no reason whatsoever as to why the CCDA(P) Allahabad had differed with the opinion of the Board with regard to the extent of the petitioner's disability."

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

Re-assessment

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

Held, it was not open to the CDA(P) Allahabad to ignore the Re-Survey Medical Board opinion without any further reassessment by the Re-Survey Medical Board. The CDA(P) Allahabad was directed to pass appropriate orders for payment of disability pension at 20%.
(Petition allowed, order dated 6 Feb 1995)

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

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

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

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

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

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

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

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

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

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

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

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

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

16. It is seen that the PCDA (P) has in the instant case overruled the opinion of the Court of Inquiry as well as the Invalidating Medical Board and therefore, in the light of the above letter, the opinion of the Medical Board should stand.

17. In the light of the judgments quoted above, there is certainly a necessity to give a more liberal construction to the provisions rather than a strict one holding that the legislative intent behind these provisions were basically meant for welfare of the soldiers. In the judgments quoted above, the Hon'ble Supreme Court too has emphasized in unambiguous terms that a liberal construction should apply rather than a strict construction. Besides, we make a due note of the judgment of ***Hyat Mahammad v. Union of India (1) SCT 425*** extracts of which have been reproduced as para 15(17) and is re-emphasised as under: -

> "*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)

Accordingly prayer is allowed.

18. The unfortunate applicant is 100% disabled with no movement in his arms and legs since that fateful day and is wheel chair bound. We therefore, hold that the applicant deserves disability element of disability pension from the date of his release from service as it was incorrectly denied to the applicant by PCDA (P) despite recommendations of the medical authorities. .

19. In addition, as communicated by the Medical authorities and as per para 35(a) of the Amendment to Chapter VI & VII of Guide to Medical Officers (Military Pension) 2002, the applicant is also entitled to Constant Attendance Allowance. While the disability element of the pension @100% is to be admitted to him from the date of his discharge from service i.e. 29.11.2004, the Constant Attendance Allowance may be admitted to him with immediate effect.

20. The arrears are to be calculated and paid to him within a period of three months from the date of receipt of this order failing which simple interest @8% per annum will be levied on the arrears.

21. OA is accordingly disposed of.

22. No costs.

23. After pronouncement of the judgment, Brig. N. Deka (Retd), learned CGSC appearing for the respondents made an oral prayer for grant of leave to appeal to the Hon'ble Supreme Court under Section 31 of the AFT Act, 2007. Since the order does not involve any point of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

MEMBER (A) **MEMBER (J)**

Kalita