

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4981 OF 2012

THE SECRETARY, GOVERNMENT OF INDIA &
ORS.

.....APPELLANT(S)

VERSUS

DHARAMBIR SINGH

.....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

- 1) The challenge in the present appeal is to an order dated March 7, 2011 passed by the Armed Forces Tribunal, Chandigarh, Regional Bench at Chandimandir¹, granting disability pension to the respondent Dharambir Singh, as the injury was found to be attributed to military service.
- 2) The undisputed facts are that the respondent joined Territorial Army on December 28, 1981 and was discharged on December 13, 1999. He was granted two days casual leave from January 25, 1999 to January 26, 1999 when posted at Jalandhar Cantt. During the leave period, he met with an accident while riding a scooter and suffered head injury with Faciomaxillary and compound fracture 1/3rd Femur (LT). A Court of Inquiry² was conducted to investigate into the circumstances under which the respondent

1 for short, 'Tribunal'

2 for short, 'COI'

sustained injuries. The Brigade Commander has given its Report dated August 18, 1999 that the injuries, occurred in peace area, are attributable to military service. One of the findings of the Report recorded under Column 3(c) is reproduced hereunder:

“(c) Was anyone else to blame for the accident? (If so, indicate how and to what extent).	No one is to be blamed. In fact, he lost control of his own scooter.”
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- 3) After rendering pensionable service of 17 years and 225 days, the respondent was discharged from service on December 13, 1999 pursuant to the report of the Medical Board dated November 29, 1999 which held the disability to be 30%. However, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for disability pension was rejected by the Additional Directorate General, Personnel Services. It is thereafter the respondent invoked the jurisdiction of the Tribunal. The learned Tribunal referred to the judgment of this Court in **Madan Singh Shekhawat v. Union of India & Ors.**³ and held that the respondent is entitled to disability pension.
- 4) Learned counsel for the appellants argued that though the respondent would be treated to be on duty even if he was on casual leave or annual leave but the injuries suffered must have causal connection as attributable to or aggravated by military service. The respondent in this case was admittedly going on a

3 (1999) 6 SCC 459

scooter to purchase electrical goods for his sister when he lost control while saving a cyclist, therefore, there is no causal connection between the injuries resulting in disability and military service. Learned counsel for the appellants relied upon two recent judgments of this Court in ***Renu Devi v. Union of India & Ors.***⁴ and ***Union of India & Ors. v. Vijay Kumar No.3989606 P, Ex-Naik***⁵. This Court in ***Vijay Kumar*** examined the admissibility of disability pension, when personnel of Armed Forces are on leave. The Court declined the claim with the following findings:

“23. In the light of the above discussion, it is clear that the injury suffered by the respondent has no causal connection with the military service. The Tribunal failed to appreciate that the accident resulting in the injury to the respondent was not even remotely connected to his military duty and it falls in the domain of an entirely private act and therefore the impugned orders cannot be sustained.”

- 5) *Per contra*, Mr. Rajesh Sehgal, learned counsel for the respondent, argued that the claim of disability pension arises under two heads: one, under ‘injury’ and the other, under ‘disease’ cases. It is argued that the opinion of the Medical Board in respect of disease cases is final but, in respect of injury cases, the finding of the COI is final and is to be made basis of grant of disability pension. He refers to Para 520 of the Defence Services Regulations published in the year 1986, which we shall reproduce at the relevant stage. The reliance is placed upon various judgments of the Tribunal as also Full Bench judgment of Punjab & Haryana High Court in ***Union of***

4 Decided on July 03, 2019 in Civil Appeal arising out of Diary No.37356 of 2017 & Anr.

5 (2015) 10 SCC 460

India & Ors. v. Khushbash Singh⁶ followed by Division Bench judgment in **Barkat Masih v. Union of India & Ors.**⁷ delivered by one of us (Justice Hemant Gupta) as a Judge of Punjab & Haryana High Court. It is argued that any injury caused by an activity which is not an “*unmilitary activity*” has to be deemed to be an injury attributed to or aggravated by military service. The Division Bench in **Barkat Masih** concluded as under:

“20. In view of the judgment of Hon'ble Supreme Court in *Madan Singh Shekhawat's* case (supra), *Balbir Singh's* case (supra) and that of Full Bench judgment of this court in *Khushbhash Singh's* case (supra), we find that the injuries suffered by the petitioner when on casual leave entitles the petitioner for a disability pension as the injury would be deemed to have been attributed to military service. Consequently, the writ petition is allowed.”

- 6) Before we consider the respective arguments of learned counsel for the parties, the provisions of the Army Act, 1950⁸, Notification issued by the Central Government on November 29, 1962, Rules and Regulations which are applicable in respect of grant of disability pension need to be extracted hereunder:

**“Army Act, 1950
Section 3 (i)**

(i) “active service”, as applied to a person subject to this Act, means the time during which such person -

(a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or

(b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly

6 2010 (3) SLR 103

7 2014 SCC OnLine P&H 10564

8 for short, ‘Act’

occupied by an enemy, or

(c) is attached to or forms part of a force which is in military occupation of a foreign country.”

“Section 9

Power to declare persons to be on active service.

Notwithstanding anything contained in clause (i) of section 3, the central Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.”

“Notification dated 29.11.1962

S.R.O. 6.E - New Delhi, the 28th November 1962

In exercise of the powers conferred by section 9 of the Army Act, 1950 (46 of 1950), the Central Government hereby declares that all persons subject to that Act, who are not on active service under clause (I) of section 3 thereof, shall, wherever they may be serving, be deemed to be on active service within the meaning of that Act for the purposes of the said Act and of any other law for the time being in force.”

“Leave Rules for the Services, Volume-I (Army)

Rule 10. Casual leave counts as duty except as provided for in Rule 11 (a).

It cannot be utilized to supplement any other form of leave or absence, except as provided for in clause (A) of Rule 72 for personnel participating in sporting events and tournaments.

Casual leave due in a year can only be taken within that year. If, however, an individual is granted casual leave at the end of the year extending to the next year, the period falling in the latter year will be debited against the casual leave entitlement of that year.

Rule 11 (a) - Annual leave, for the year may at the discretion of the sanctioning authority, be extended to the next calendar year without prejudice to the annual leave authorised for the year in which the extended leave expires;

(b) Annual leave may be taken in instalments within the same year.

(c) The annual leave year is the calendar year, viz., 1st January to 31st December.

(Leave 11 substituted. Auth: MoD letter No. B/33922/AG/PS-(b)/642/D(AG) dated 4th April 2011)."

"Disability Element for Disability at the time of Discharge/Retirement (2008)

Regulation 53(a) - An individual released/retired /discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more."

Regulation 82 - For determining the pensionary benefits on death or disability which is attributable to or aggravated by Military service under different circumstance, the cases shall be broadly categorized as follows: -

Category A

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

Explanation:

The cases of death or disability due to natural causes falling under Category A entitles ordinary family pension or invalid pension or invalid gratuity as the case may be.

Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as:

- (i) Accidents while travelling on duty in Government vehicles or public/private transport.
- (ii) Accidents during air journeys
- (iii) Mishaps at sea while on duty.
- (iv) Electrocution while on duty etc.
- (v) Accidents during participation in organised sports events/adventure activities/expeditions or training.

Explanation:

Invalidment case falling under Category B and Category C due to disease contracted or injury sustained or cause of death if accepted by medical authority and/ or competent authority attributable to or aggravated by Military service the individual may be granted disability pension or special family pension as the case may be.

Category D

Death or disability due to acts of violence /attack by terrorists, anti - social elements etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public etc. would be covered under this category, besides death/disability occurring while employed in aid of civil power and also while dealing with natural calamities.

Explanation:

Cases falling under Category D entitles liberalised disability pension or liberalised family pension as the case may be.

Category E

Death or disability arising as a result of: -

- (i) Enemy action in international war
- (ii) Action during deployment with a peace keeping

mission abroad

(iii) Border skirmishes

(iv) During laying or clearance of mines including enemy mines as also mine sweeping operations.

(v) On account of accidental explosions of mines while laying operationally oriented mine field or lifting or negotiating mine field laid by the enemy or own forces in operational areas near international borders or the line of control.

(vi) War like situations, including cases which are attributable to/aggravated by:-

(1) extremist acts, exploding mines etc, while on way to an operational area

(2) battle inoculation training exercises or demonstration with live ammunition

(3) Kidnapping by extremists while on operational duty

(vii) An act of violence/attack by extremists, anti-social elements etc. while on operational duty.

(viii) Action against extremists, antisocial elements etc. death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators shall be covered under this category.

(ix) Operations specially notified by the Government from time to time.

Explanation :

Death or injury sustained in the circumstances falling under Category E entitles liberalised family pension or war-injury pension as the case may be.

Note: The illustrations given in each category above from 'A' to 'E' are not exhaustive. Case not covered under these categories shall be dealt with as per Entitlement Rules for Casualty Pensionary Awards, 1982 as contained in APPENDIX IV of these Regulations."

- 7) Pension Regulations for Army, 1961, have now been substituted by Pension Regulations for the Army, 2008. Pension Regulations for Army, 1961 and Pension Regulations for the Army, 2008 are substantially same in respect of admissibility of disability pension. Regulation 173 of the Pension Regulations for the Army, 1961,

reads as under:

“173. The grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same Regulations as are applicable to Personnel Below Officer Rank of the Army, except where they are inconsistent with the provisions of the Regulations in this chapter.”

- 8) The Entitlement Rules for Casualty Pensionary Awards, 1982⁹ apply to service personnel who become non-effective on or after January 1, 1982. Prior to 1982 Rules, the Entitlement Rules of 1950 were in force which are similar to the 1982 Rules as far as factors considering disablement as attributable to military service are concerned. Rules 12, 13, 17 and 19 of the 1982 Rules are reproduced hereunder:

“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 triable 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 travelling in a body or single by a prescribed or organized route.

NOTE: 1

- (a) xxx xxx
- (b) xxx xxx
- (c) xxx xxx

NOTE: 2

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(d) When proceeding from his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher, on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for the journey.

(e) xxx

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(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."

"13. 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."

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“17. **Medical Opinion:** At initial claim stage, medical views on entitlement and assessment are given by the IMB/RMB. Normally, these views shall prevail for decisions in accepting or rejecting the claim. In cases of doubt the Ministry/CCDA (Pensions) may refer such cases for second medical opinion to MA (Pensions) Sections in the office of the DGAFMS/Office of CCDA(P), Allahabad, respectively. At appeal stage, appropriate appellate medical authorities can review and revise the opinion of the medical boards on entitlement and assessment.”

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“19. **Aggravation:** if it is established that the 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.”

- 9) Regulation 423 of the Medical Regulations also explains the injuries which are attributable to service. Such Regulation reads as under:

“Regulation 423. Attributability of Service

- a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions...
- b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of ‘duty’ in armed forces. In case of injuries which were self-inflicted or due to an individual’s own serious negligence or misconduct, the Board will also comment how far the disability resulted from self-inflection, negligence or misconduct.

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- d) The question, whether a disability or death is attributable to or aggravated by service or not, will

be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the death certificate. The Medical Board/medical officer will specify reasons for their/his opinion. The opinion of the Medical Board/medical officer, insofar as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

- e) To assist the medical officer who signs the death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on:
 - (i) AFMS F-81 in all cases other than those due to injuries.
 - (ii) IAFY 2006 in all cases of injuries other than battle injuries.
- f) In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical office in the latter case will be furnished on a Medical Board form and countersigned by the ADMS (Army)/ DMS (Navy)/DMS(Air)."

10) In view of the provisions reproduced above, we find that the following questions arise for consideration:

- (i) Whether, when armed forces personnel proceeds on casual leave, annual leave or leave of any other kind, he is to be treated on duty?
- (ii) Whether the injury or death caused even if, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

- (iii) What is the effect and purpose of COI into an injury suffered by armed forces personnel?

Answer to Question No.1

- 11) In terms of Section 3(i) of the Act, the active service means time during which a person who is subject to the Act, is attached to, or forms part of, a Force which is engaged in operations against an enemy engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is attached to or forms part of a Force which is in military occupation of a foreign country. The present is not the case covered by the definition of Section 3(i) of the Act.
- 12) Section 9 of the Act empowers the Central Government to declare that any person or class of persons subject to the Act, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, will be deemed to be on active service within the meaning of the Act. In pursuance of such provision, the Central Government has notified that all persons who are subject to the Act shall, wherever they may be serving, be deemed to be in active service within the meaning of the Act and of any other law for the time being in force.
- 13) Still further, in terms of leave rules, the casual leave and annual leave count as duty. However, in terms of Rule 11(a) of the Leave Rules for the Services, Volume-I (Army), an individual on casual

leave is not deemed to actually perform duty during such leave. 1982 Rules provide that a person is on duty when he is proceeding from his leave station or returning to duty from his leave station. Still further, in terms of clause (f) of Rule 12 of the 1982 Rules, an accident can be said to be attributable to service when a man is not strictly 'on duty' as defined, 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. Therefore, a person if killed or injured by another person for the reason he belongs to the Armed Forces, he shall be deemed to be 'on duty'.

- 14) Thus, it is held that when Armed Forces personnel is availing casual leave or annual leave, is to be treated on duty.

Answer to Question No.2

- 15) The 1982 Rules give expansive definition to the expression 'duty' being undertaken by the personnel of the Armed Forces. It includes the period when Armed Forces personnel is proceeding from his leave station or returning to duty from his leave station. It includes even an accident which occurs when a man is not strictly on duty 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. However, as per

Regulation 423 of the Medical Regulations, such injury has to have causal connection with military service or such injury is aggravated by military service.

- 16) In Regulation 423(a) of the Medical Regulations, it has been specifically mentioned that it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service or active service area or under normal peace conditions, will be deemed to be duty. Regulation 423(a) mandates that it is essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to individual. For the sake of repetition, the said clause reads as under:

“a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions...”

- 17) Clause (b) of Regulation 423 of the Medical Regulations presumes that disability or death resulting from wound or injury, will be regarded as attributable to service if the wound or injury was sustained during *actual performance of ‘duty’* in Armed Forces. This is in contradiction to *“deemed to be duty”* as per Rule 12(f) of 1982 Rules, as the Rule is when a man is not strictly on duty.

However, the injuries which are self-inflicting or due to individual's own serious negligence or misconduct even in the cases of active duty, are not to be conceded unless, it is established that service factors were responsible for such action.

- 18) The question whether a disability or death is attributable to or aggravated by military service or not, is to be decided by the Medical Board. The opinion of Medical Board with regard to actual cause of disability or death and the circumstances under which it originated will be regarded as final in terms of Rule 17 of 1982 Rules which is to the effect that at initial claim stage, medical views on entitlement and assessment shall prevail for decisions in accepting or rejecting the claim.
- 19) Regulation 423(d) provides that the question whether a disability or death is attributable to or aggravated by service or not, will be decided as regards to its medical aspects by a Medical Board/ medical officers. Such opinion of the Medical Board insofar as it relates to the actual cause of disability or death and the circumstances in which originality will be regarded as final. The Commanding Officer has to record his opinion as to whether injured person was on duty and whether he or she was to blame in a COI. Therefore, the scope of COI is to examine the conduct of the injured person to determine whether the person has made himself liable to be proceeded against departmentally. In respect of the injury, causal connection of injury to the army service is not final in

the COI proceedings.

- 20) In view of Regulation 423 clauses (a), (b) and (d), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury or death must be connected with military service howsoever remote it may be. The injury or death must be intervention of armed service and not an accident which could be attributed to risk common to human beings. When a person is going on a scooter to purchase house hold articles, such activity, even remotely has no causal connection with the military service.

Answer to Question No.3

- 21) Before we answer Question No.3, para 520 of the Defence Services Regulations needs to be reproduced, which is as under:

“520. Injury to a Person Subject to Army Act.-(a) When an officer, JCO, WO, OR or nurse, whether on or off duty, is injured (except by wounds received in action), a certificate on IAFY-2006 will be forwarded by the medical officer in charge of the case to the injured person’s CO as soon as possible after the date on which the patient has been placed on the sick list, whether in quarters or in hospital. In the case of injuries which are immediately fatal, a report of the court of inquiry proceedings referred to in sub-para (c) (i) will take the place of IAFY-2006.

(b) If the medical officer certifies that the injury is of a trivial character, unlikely to cause permanent ill-effects, no court of inquiry need be held, unless considered necessary under sub-para (c) (ii), (iii), (iv) or (v). In any event, however, IAFY-2006 will be completed and in all cases, except those of JCOs, WOs and OR will be forwarded through the prescribed channels to Army Headquarters, Org Dte in the case of non-medical

officers and Medical Dte in other cases, a copy being retained at command or other headquarters. In the case of a JCO, WO or OR, IAFY-2006 will be forwarded to the officer i/c records for custody with the original attestation, after the necessary entry, stating whether he was on duty and whether he was to blame, has been made by the CO in the Primary Medical examination report (AFMSF-2A).

(c) In the following cases a court of inquiry will be assembled to investigate the circumstances:-

(i) If the injury is fatal or certified by the medical officer to be of a serious nature. Where an inquest is held, a copy of the coroner's report of the proceedings will be attached to the court of inquiry proceedings.

(ii) If, in the opinion of the CO, doubt exists as to the cause of the injury.

(iii) If, in the opinion of the CO, doubt exists as to whether the injured person was on or off duty at the time he or she received the injury.

(iv) If, for any reason, it is desirable thoroughly to investigate the cause of the injury.

(v) If the injury was caused through the fault of some other person.

In cases where the injured person is a JCO, WO or OR, the court may consist of one officer as presiding officer, with two JCOs, WOs or senior NCOs as members.

(d) The court of inquiry will not give an opinion, but the injured person's CO will record his opinion on the evidence, stating whether the injured person was on duty and whether he or she was to blame. When no evidence as to the circumstances attending the injury beyond that of the injured person is forthcoming it should be stated in the proceedings. The proceedings will then be sent to the brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander who will record thereon his decision whether disability or death was attributable to military service and whether it occurred on field service. After confirmation, the medical officer will, in all cases

except those of JCOs, WOs and OR, record his opinion in the proceedings as to the effect of the injury on the injured person's service. The proceedings will then be forwarded by the CO through the prescribed channel to Army Headquarters, Org Dte in the case of non-medical officers and Medical Dte in other cases, a copy being retained at command or other headquarters. In the case of a JCO, WO or OR a record will be made in the primary medical examination report (AFMSF-2A) by the CO that a court of inquiry has been held, and also as to whether the man was on duty and whether he was to blame. The primary medical examination report will then be passed to the medical officer who will record his opinion as to the effect of the injury on the man's service. The proceedings of the court of inquiry will then be forwarded to the officer i/c records for enclosure with the injured person's original attestation (see sub-para (b) above), except in the case of a court of inquiry under sub-para (c)(v) above, in which case the proceedings, together with a copy of the medical opinion as to the effect of the injury on the man's service, will be forwarded without delay to Army Headquarters.

(e) When an officer, JCO, WO, OR or nurse, not on duty, is injured in any way by or through the fault of a civilian or civilians, and receives compensation from such civilian or civilians, in lieu of any further claim, this will be recorded in the proceedings of the court of inquiry.

(f) A Court of inquiry need not necessarily be held to investigate deaths or injuries sustained through taking part in organized games, sports and other physical recreations as defined in para 271.

In all cases where a court of enquiry is not held, IAFY-2006 will be completed with the statements of witnesses as required by item 4 thereon and when applicable, the CO will certify that the games, sports, or physical recreations were organized ones.

(g) The injury report will be submitted to the brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander only if the injury is severe or moderately severe or if a court of inquiry to enquire into the causes of injury has been held. The brigade commander or the officer who has

been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander will record on the form his decision whether or not the injury was attributable to military service, and whether it occurred on field service. In all other cases, the CO will record his opinion.”

- 22) In terms of para 520 of the Defence Services Regulations, a certificate on I.A.F.Y.-2006 is required to be forwarded by the Medical Officer In-charge to the Commanding Officer. The COI is assembled to investigate the circumstances leading to injury (clause c). The Commanding Officer has to record his opinion as to whether injured person was on or off duty including as to whether he or she was to blame. The proceedings are then to be sent to Brigade Commander or the officer authorized under Section 8 of the Act to record reasons as to whether disability or death was attributable to military service and whether it occurred on field service. The Commanding Officer has reported that the injury is not attributable to military service, but I.A.F.Y.-2006 produced before the Court at the time of hearing of the present appeal shows that the Brigade Commander has endorsed that the injury is attributable to military service. We find that there was no material available to the Brigade Commander to return a finding that disability was attributable to military service when the evidence of the witnesses and the conclusion given by the Commanding Officer is that no one is to be blamed for the accident as per column 3 (c) reproduced in the earlier part of this order. Since the accident has occurred when the respondent was purchasing house hold articles,

it cannot be said that there is any causal connection between the injury and the military service. Though, the attributability assessment of injury cases is different than the disease cases but, we are unable to accept the argument raised by Mr. Sehgal that in injury cases, the finding of COI is final. Therefore, we are unable to hold that the opinion of the Brigade Commander in all situations will be final in respect of an injury suffered. We have held in Answer to Question No. 2 that the opinion of Medical Board is final in terms of Rule 17 of 1982 Rules and Regulation 423 (d) of the Medical Regulations.

- 23) The purpose of investigation by the COI is to examine nature of injuries whether such injuries were suffered on or off duty. However, para 520 is not to the effect that the opinion of the Brigade Commander is final on the basis of which the grant of disability pension is dependent. The percentage of disability as well as whether the disability is attributed to or aggravated by military service has to be assessed by the Medical Board. The purpose of COI is to examine the conduct of the personnel of the Armed Forces, whereas, the Medical Board examines, the causal connection with the injury with the military services and also the extent of disability. Thus, the COI and the opinion of the Medical Board both have different objects and purposes to achieve.
- 24) Having considered the provisions of the statutes, rules and regulations, we now refer to the judgments referred to by the

learned counsel for the parties.

- 25) The judgments in ***Madan Singh Shekhawat, Pension Sanctioning Authority, PCDA(P), Allahabad & Ors. v. M.L. George, Ex. SGT¹⁰, Nand Kishore Mishra v. Union of India & Ors.¹¹*** and ***Union of India & Anr. v. Surendra Pandey¹²***, are the cases where the Armed Forces personnel have suffered injuries while returning from or going on leave. In terms of Rule 12 Note 2 (d) of 1982 Rules read with Regulation 423(a), any injury or death while returning from or going to duty has a causal connection with the military service and, thus, such injury or death is considered attributable to or aggravated by military service.
- 26) The Full Bench judgment of Punjab and Haryana High Court in ***Khushbash Singh*** has devised a new expression 'unmilitary activity'. Since the rules and regulations framed under the Act provide for disability pension only if there is causal connection of injuries with the military service, thus warranting a positive finding. The 'unmilitary activity' is not an expression used in the rules or regulations and is based on negative proof. What is unmilitary activity is vague, indefinite and is based upon surmises and conjectures. Therefore, we find that in terms of the provisions of the Act, Rules and instructions keeping in view the policy decisions of the appellants, the disability pension is admissible only if injury is either attributable to or aggravated by military service and not

10 (2015) 15 SCC 319

11 JT 2013 (10) SC 466

12 (2015) 13 SCC 625

that any activity which is unmilitary activity.

- 27) Mr. Sehgal has relied upon Division Bench judgment of Delhi High Court in **Vardip Singh & Anr. v. Union of India & Ors.**¹³. It was a case where a Captain saved 150-160 lives in a tragic fire incident in Uphaar Cinema, New Delhi. The High Court has considered it appropriate to grant disability pension to the family of the deceased Major. Said judgment is in the peculiar facts of that case.
- 28) However, the reliance of Mr. Sehgal upon Division Bench judgment in **Barkat Masih** is not tenable. We find that the judgment is correct to the limited extent that personnel of Armed Forces when on leave are also on duty. However, the subsequent question, whether an injury or death suffered by a personnel has some causal connection with military service, was not examined except referring to Full Bench judgment of that Court wherein, it was held that unmilitary service activity alone will be excluded from the expression 'death' or 'injury' caused by military service or aggravated to military service. We find that such conclusion is not sustainable as per the applicable rules and regulations.
- 29) In **Barkat Masih**, such Armed Forces person was riding a scooter which was hit by army truck in the cantonment area. Such accident with the army truck has no causal connection with the military service as the deceased was on casual leave. Even a civilian could meet with an accident with the army truck within or

13 2004 (3) SLR 500

outside the cantonment area. Such accident has no causal connection with the military service of an injured or the deceased. Therefore, the Full Bench judgment of Punjab & Haryana High Court in **Khushbash Singh** and that of the Division Bench of that Court in **Barkat Masih** are not the good law. It may be noticed that special leave petition in the **Barkat Masih** order was dismissed but it was dismissed on the ground of delay, therefore, in view of the judgment of this Court in **Khoday Distilleries Limited & Ors. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal**¹⁴, it does not amount to merger of the order passed by the High Court with that of this Court.

- 30) Another order referred by the respondent is **Lance Dafedar Joginder Singh v. Union of India & Ors.**¹⁵. In that case, this Court granted disability pension when no rules or regulations were produced that the appellant was not entitled to disability pension.
- 31) The judgments in **Union of India & Ors. v. Keshar Singh**¹⁶, **Union of India & Anr. v. Baljit Singh**¹⁷, **Union of India & Ors. v. Dhir Singh China, Colonel (Retd.)**¹⁸ and **Controller of Defence Accounts (Pension) & Ors. v. S. Balachandran Nair**¹⁹ are the cases arising out of disability on account of some disease which, in the opinion of the Medical Board, was said to be paramount. Such judgments are not applicable in the cases of

14 (2019) 4 SCC 376

15 1995 Supp (3) SCC 232

16 (2007) 12 SCC 675

17 (1996) 11 SCC 315

18 (2003) 2 SCC 382

19 (2005) 13 SCC 128

injuries.

- 32) In ***Secretary, Ministry of Defence & Ors. v. Ajit Singh***²⁰, the personnel had suffered disability on account of electric shock in his house, when on leave. It was held that such disability is not attributable to or aggravated by military service.
- 33) In ***Sukhwant Singh v. Union of India & Ors.***²¹, the Armed Forces personnel suffered injury in a scooter accident which rendered him unsuitable for any further military service. It was held that there was no causal connection between the injuries suffered and the services in the army referring to judgment of this Court in ***Union of India & Ors. v. Jujhar Singh***²².
- 34) In ***Vijay Kumar***, the person was climbing stairs of the house of his sister. He accidentally slipped on account of darkness on account of failure of electricity supply. This Court held that the injuries sustained were accidental in nature and nobody can be blamed for the same. Thus, the order of the Tribunal granting disability pension was set aside.
- 35) Another judgment referred to by the learned counsel for the appellants is ***Renu Devi***. It is a case of special family pension on account of death of the Armed Forces personnel during casual leave in a road accident. The principles laid down are in tune with the judgments where the causal connection of the injury with the

20 (2009) 7 SCC 328

21 (2012) 12 SCC 228

22 (2011) 7 SCC 735

military service was not found and, therefore, the disability pension cannot be granted.

36) We find that summing up of the following guiding factors by the Tribunal in **Jagtar Singh v. Union of India & Ors**²³ and approved in **Sukhwant Singh** and in **Vijay Kumar** do not warrant any change or modification and the claim of disability pension is required to be dealt with accordingly:-

- “(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.
- (b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, 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 of leave would necessarily be attributable.
- (c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.
- (d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some

23 T.A. No. 61 of 2010 decided on November 2, 2010 by the Tribunal

casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

- (e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.
- (f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service.”

37) In view of the above discussion and the conclusions drawn by the Tribunal in T.A. No. 61 of 2010, we find that the order of the Tribunal is not sustainable. Consequently, the appeal is allowed. The Order passed by the Tribunal is set aside and the Original Application filed by the respondent is dismissed.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

**NEW DELHI;
SEPTEMBER 20, 2019.**