ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT CHANDIMANDIR

T. A. No. 237 of 2010
(arising out of CWP No. 12542 of 2009)

Ex. NK Raj Pal **…….Petitioner**

Vs.

UOI & Ors. **…….. Respondents**

ORDER
15-12-2010

Coram: Justice Ghanshyam Prasad, Judicial Member
Lt Gen H S Panag (Retd), Adminisrative Member.

For the appellant (s) : Mr. Ashok Tyagi, Advocate with
Mr. Surinder Sheoran, Advocate

For the respondent (s) : Ms. Ranjana Shahi, CGC
Ms. Renu Bala Sharma, CGC, and
Ms. Geeta Singhwal, CGC.

JUSTICE GHANSHYAM PRASAD:

This case has been received on transfer from Hon'ble Punjab and Haryana High Court and has been treated as application under Section 14/15 of the Armed Forces Tribunal Act, 2007.

The petitioner was enrolled in the Indian Army on 03-07-1991 in a medically fit condition. He served the Army for a period of 11 years 5 months and 15 days. In the year 2000 while the petitioner was

on sanctioned annual leave, he met with an accident on 09-09-2000 resulting into three injuries - **(i) Closed Head Injury, (ii) Fracture Neck Humerus (RT) and Acromnon and (iii) Soft Tissues Injury Foot (RT**). Ultimately, he was discharged from the military service on 01-03-2003 due to disabilities suffered by him. The Medical Board was held at the time of his discharge. The Medical Board found the disabilities neither attributable to nor aggravated as a result of military service. However, the composite assessment of disabilities as given is 30%. In the year 2004 the petitioner moved for disability pension, but the same was rejected on the ground that the disability having suffered during leave is neither attributable to nor aggravated by military service. The petitioner preferred two appeals. However both the appeals were rejected on the same ground. Thereafter the petitioner filed CWP No. 11489 of 2008 before the Hon'ble High Court. The same was disposed of vide order dated 08-07-2008 with a direction to the respondents to decide the second appeal by passing a speaking order within a period of three months. However, the same was also dismissed by the respondents on 30-03-2009 vide Annexure P-7. Thereafter the petitioner again filed the present writ petition for grant of disability pension.

Written statement has been filed on behalf of the respondents, which is on the record.

Apart from taking preliminary objections, it has been stated that the petitioner on 09-09-2000 met with an accident in which the jeep

collided with an oil tanker and toppled while he was on annual leave. Therefore, he was not entitled to get disability pension since the injuries sustained by him are not attributable to nor aggravated by military service. It is further stated that earlier the petitioner had filed MACT Case No. 74 of 2002 in the Court of Motor Accident Claims Tribunal, Gurgaon, claiming compensation on the ground that he had been discharged from the military service being permanent in low medical category and he was ultimately awarded compensation of Rs.10,60,000/- (Rs. Ten lacs sixty thousands). So far as the injuries of the petitioner are concerned, it has been admitted that in the said accident, he sustained three injuries of different percentage. However, the composite percentage of 30% has also been admitted.

Heard the learned counsel for both the parties and perused the pleadings as well as the documents annexed with the pleadings.

In course of the submissions, the learned counsel for the respondents submitted that the matter has already been settled that in such nature of cases, causal connection must be established with service for getting disability pension, otherwise it would not be deemed to be attributable to military service. It is further submitted by the learned counsel for the respondents that recently another Bench of this Tribunal has given a detailed judgment dated 02-11-2009 in **TA No.61 of 2010 (arising out of CWP No.12516 of 2009)** regarding causal connection

and attributability and in view of that judgment, the petitioner is not entitled to get disability pension.

On the other hand, the learned counsel for the petitioner has submitted that this Bench has decided several cases of such nature and granted relief to the individuals. Some of the judgments are: **TA No. 168 of 2009 (Deva Singh vs. Union of India & others) decided on 01-11-2010, OA No. 97 of 2010 (Tarwinder Singh vs. UOI), decided on 26-02-2010 and T.A No. 198 of 2009 (Ex. L/Nk Jaswant Singh vs. Union of India and ors), decided on 15-02-2010.** In all these cases, the petitioners had received injuries while they were on authorized leave.

The learned counsel for the respondents brought to the notice of this Bench a decision dated 02-11-2010 passed by another Bench comprising Hon'ble Justice N.P. Gupta and Lt. Gen N S Brar referred to above and submitted that an individual, who received injuries while on authorized leave also has to show causal connection between the accident and military service for conceding attributability/aggravation in order to get certain benefit of disability pension as per paragraph 173 of Pension Regulations for the Army, 1961.

The admitted fact is that as per Rules 10 and 11 of the Leave Rules and several judicial decisions, a military personnel, who is on any authorized leave, is deemed to be on duty. It is also an admitted

fact that according to paragraph 173 of Pension Regulations for the army, 1961, in order to get disability pension apart from other ingredients, the individual has to show that disability is attributable to or aggravated by military service. The question of attributability or aggravation is to be determined under the Rules contained in Appendix-II of Entitlement Rules for Casualty Pension Awards 1982.

The question which falls for our consideration is that what should be the criteria to decide “causal connection” in case a military personnel sustains injury while he is on authorized leave as he was away from the place of posting, but is deemed to be on duty. The above decision is specifically on the point of “causal connection” in case one gets injury while on authorized leave.

T.A No. 61 of 2010 (Jagtar Singh vs UOI and others) decided on 02-11-2010.

The above judgment is well written running into 57 pages in which the learned Bench has considered almost all the relevant judgments of the Hon’ble Supreme Court as well as different High Courts and ultimately laid down the principles and guiding factors for deciding the question of attributability or aggravation for the individual, who suffers disability/injuries while on authorized lave. The same has been mentioned in page 37 of the judgment. It is as follows:-

T. A. No. 237 of 2010
(arising out of CWP No. 12542 of 2009)

"*To sum up in our view the following principles should be the guiding factors for deciding the question of attributability or aggravation where the disability or fatality occurs, during the time the individual is on authorized leave of any kind.*

(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 conditionally 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 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 generalize the statement that every injury suffered during such period of leave would necessarily be attributable

.

(c) The act of 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 Forces must have some causal 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 Rule 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 behavior.

(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.

Thus, having come to the above conclusions on the legal aspect, we now proceed to examine the individual cases on the above basis and their merits. While deciding these cases, the facts and relationship with applicable rules and regulations have been sufficiently elaborated to illustrate the application of the above conclusions in dealing with such cases to come up before the Tribunal in future as well."

The learned counsel for the petitioner submits that the guidelines and principles laid down in the above decision is too

conservative which will defeat the purpose for which the leave is deemed to be on duty. If it is applied, it becomes almost impossible for any military personnel to get disability pension in case he sustains injury while he is on leave. It could not have been the intention of the Legislature. It is further submitted that provision of pension, gratuity etc. are beneficial and welfare in nature. Therefore, it should be construed liberally, so as to give it a wider meaning rather than restrictive meaning. For that, the learned counsel for the petitioner relied upon a Supreme Court decision reported in **AIR 1999 S.C. 3378 (Madan Singh Shekhawat vs. Union of India & ors),** and a decision dated 15-12-2009 passed in **Civil Appeal No. 1478 of 2004 (Allahabad Bank & ors vs. Allahabad Bank retired Employees Association**), **along with W.P. (Civil) No. 150 of 2007 & 237 of 2007.**

1. **<u>1999 A.I.R. S.C. 3378</u>**

> This case relates to Military Personnel. The individual while travelling to his home on authorized casual leave received injuries as a result of which leave received as a result of which his right hand was amputated. His claim for disability pension was rejected on the ground that he was travelling at his own expense and not on public expense. The Hon'ble Supreme Court while dealing with the Pension Regulation observed as follows:-

T. A. No. 237 of 2010
(arising out of CWP No. 12542 of 2009)

"If the expression "at public expense" is to be construed literally then under the Rules referred to above,an army personnel incurring a disability during his travel at his own expense will not be entitled to the benefit of Rule 6c (supra). The object of the rule, as we see, is to provide relief to a victim of accident during the travel. If that be so, the nature of expenditure incurred for the purpose of such travel is wholly alien to the object of the rule. ***It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule***

In Seaford Court Estates Ltd. Vs. Asher (1949 2 All ER 155, Lord Denning L.J. (as he then was) held:- When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written word so as to give "force and life" to the intention of the legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is

woven, but he can and should iron out of the crease."

This rule of construction is quoted with approval by this Court in M Pentiah vs. Muddala Veeramallappa (1961 3 SCR 295) and also referred to by Beg, C.J. in Bangalore Water Supply & Sewerage Board vs. R. Rajappa (1978 3 SCR 207) and in Hameedia Hardware Stores, represented by its Partner S. Peer Mohammad v. B Mohan Lal Sowcar (1988 2 SCC 513).

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

(2) Civil Appeal No. 1478 of 2004 along with WP (Civil) No. 150 of 2007 & 237 of 2007

The above judgment deals with provisions of labour and welfare legislation. The employees were denied payment of gratuity on the plea that the Association accepted the Contributory Provident Fund Scheme and opted for pension in lieu of gratuity. The Hon'ble High Court in paras 10 and 11 has held as follows:-

"*10. Notwithstanding the subsequent improvements and embellishments the stand taken by the bank was and is before us that the members of the Association had accepted the Contributory Provident Fund Scheme and they opted for pension in lieu of gratuity which was being paid and therefore are not entitled to payment of gratuity under the provisions of the Act.*

11. We shall proceed to examine the point urged by the learned counsel for the appellant. Remedial statutes, in contra distinction to penal statutes, are known as welfare, beneficient or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the Directive Principles of State Policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country."

T. A. No. 237 of 2010
(arising out of CWP No. 12542 of 2009)

It is further submitted by the learned counsel for the petitioner that taking into consideration of rule of interpretation of beneficial legislation, the guidelines and principles laid down in decision dated02-11-2010 for deciding attributability even in the case of accident occurred while a military personnel is on leave do not serve the interest of disabled military personnel for whom Pension Regulations have been framed. The guidelines and principles laid down in the above decision are too conservative to exclude even genuine cases thereby defeat the very purpose of the beneficial legislation. The law laid down in Full Bench decision of Punjab and Haryana High Court dated 31-03-2010 reported in **2010 (2) SCT 805 (Union of India vs. Khushbash Singh)** is in conformity with the principles laid down in the above two decisions of Hon'ble Supreme Court for interpretation of beneficial legislation.

It is further submitted that in order to gauge or decide the attributability, a person, who is away from place of work and is deemed to be on duty by legal fiction cannot be equated with the person who gets disability while at work place and on actual duty.

In the light of the above submission let us examine the above decision of Full Bench of Punjab and Haryana High Court.

2010 (2) SCT 805 (UOI vs. Kushbash Singh)

A similar matter was reported to F.B. for decision since divergent views were expressed

in earlier decisions. Paras 1,5, 6, 8, 11,14 and 18 are relevant which require to be reproduced. In the above decision, all the decisions on the point in issue have been considered:-

"1.The above two cases address the same issue with reference to the entitlement of disability pension by an Army Personnel, who suffered a disability in an accident during leave. In both the cases, the disability had arisen through accidents during leave. The entitlement to disability pension is anchored to para 173 of the Pension Regulation of the Army Act that provides for disability pension arising on account of disability, which is attributable to or aggravated by Military Service in non-battle casualty and is assessed at 20% or over. The expressions of a causal connection of disability that is attributable to Military Service in a non-combat situation would take us to examine what types of activities could be taken to have connection to Military Service. The issue would again be whether a person, who is on casual leave or annual leave would be subjected to any different yardsticks in assessing this causal connection. The reference to a Full Bench itself has arisen on account of a Division Bench of which one of us (Justice Adarsh kumar Goel) was party, noticed that there had

been a conflict of opinions between a Division Bench judgment of this Court in ***Jarnail Singh v Union of India 1998 (4) R.C.R.(Civil) 671: 1998 (2) R.C.R. (Rent) 426: 1998 (1) SLR 418*** *on the one hand and the three other decisions of this Court in* ***Gurjit Singh vs. Union of India and others2008 (2) SCT 333, Pooja and another v. Union of India and others 2009 (1) SCT 491 and Pargat Singh v. Union of India and another in C. W.P. No. 12434 of 1999 decided on 22.9.2006*** *on the other.*

5. Notional extension of duty dispels the needs to prove causal connection in accident situations.

Rule 12 has relevance to us for considering the issue of the attributability to Military Service since we are liberally applying a deeming provision. In both the cases, the petitioners were on duty and they were not actually engaged in military operations nor were they confined within areas of military activity. Each one of the situations, which Rule 12 contemplates, assumes that a person is on duty not merely by marking his attendance in register. For instance, participation in sports tournament as a member of service team, mountaineering expedition, his travel from his duty station to his leave station or when his accidents occurs by the identification of a person as an Army Personnel, which is not

normally a risk common to human existence in modern conditions. This deeming provision contained in Rule 12 gives us a clue that it takes a certain realistic approach that an Army Personnel who obtains a disability need not always prove that he was within the confines of his calls of duty. If any of the attendant circumstances existing within Rule 12 is attracted, no further question would require to be asked regarding the causal connection. A disability arising during the circumstances specified within Rule 12 would perforce be taken as a disability attributable to or aggravated by military service.

6. Person on casual leave or annual leave shall be considered on duty, except when the person did not perform duty in that year.

The issue simply does not end there. We are trying to examine whether beyond Rule 12, a normal activity of a person during leave that results in disability would also qualify for an expression of disability attributable to Military Service. Since we are examining the issue of disability arising during leave, the reference to relating to Leave Rules also become relevant. Rule 10 refers to casual lave and Rule 11 refers to annual leave. It is apposite to reproduce to both the Rules:

T. A. No. 237 of 2010
(arising out of CWP No. 12542 of 2009)

Casual leave

"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 failing in the latter year will be debited against the casual leave entitlement of that year."

Annual leave

"11. (a) Annual leave is not admissible in any year unless an individual has actually performed duty in that year. For purposes of this rule, an individual on casual leave shall not be deemed to have actually performed duty during such leave. The period spent by an individual on the 'Sick List Concession', shall however, be treated as actual performance of duty.

(b) 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 authorized for the year in which the extended leave expires, but further annual leave will not be admissible until the individual again performs duty.

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

(d) The annual leave year is the calendar year viz. Ist January to 31st December."

8. Disability arising out of accidents and out natural causes- Primacy of medical opinion in latter cases.

It is in this context that the reference to several other decisions, as regards the interpretation of the causal connection that Regulation 173 envisages, obtains relevance. A greater reliance that could be possible on medical evidence with reference to a disability as arising from the natural causes when a person is in service, may not be necessary in a case where we are examining causes of disability due to accident. Reliability of a medical evidence in the former may be necessary in view of the particular scientific knowledge that a medical professional may have in tracking the natural causes of a particular progression of disability as resulting from military service or is aggravated by such

service. Medical evidence may not even be relevant in cases where we are examining cases of disability arising from accidents where the proximate cause for the disability is not far to seek. It is the accident itself that results in disability but the question is whether even an accident could be stated to be attributable to or aggravated by Military Service.

11. It is the decision of the Hon'ble Supreme Court in Madan Singh Shekhawat's case (supra) that introduces the need to discard literal interpretation and to a consideration of the fact of a person who suffered a disability through an accident, during casual leave which through a legal fiction shall be treated as on duty. The proximate cause for the disability was, in this case, an accident. Here, while awarding disability pension, the attributability or aggravation test takes a back seat, although still a relevant test. The first issue is to see whether to a person, who is on duty, has an accident injury which is still treated as attributable to Army Service only, by inverting the approach from a negative standpoint, namely, whether the Army Personnel had done any act, which the Military Service could not have permitted him to do. If it was inconsistent with an activity which is normally in Military Service, then a disability suffered by such conduct could not be attributed to or

aggravated by medical service. If it was not inconsistent, but an accident when he was still deemed to be on duty, such disability would make possible a claim for disability pension.

14. The focus of attention in cases of disability arising out of accidents weans us away from medical opinions only to see whether the activity is prohibited or incompatible to military service. It has to be only seen whether the accident would have been occurred when an Army Personnel had been in Military Service. A travel from a hospital towards home by motor cycle or cycle or even as a pedestrian could well be consistent with the conduct of a Army Personnel undertaking such an activity even if he had been at the duty station. The fact that a person had been away from the duty station on casual lave or annual leave would not, therefore, make any difference so long as the activity could not be seem to be an unmilitary activity, if we may use such an expression. We have already seen in the Leave Rules 10 and 11 regarding casual lave and annual leave, both of which situations will have to be taken only as on duty. If only the casual leave or the annual leave has continued at a time, when in that year, the Army Personnel had not been on duty at all, such a leave could not be treated as on duty. Any

other leave could not take away the character of a person as on duty. If, therefore, an accident takes place by a person riding a cycle or a motor-cycle when he was performing an act which was not inconsistent with any act of a Military Personnel, then a disability that arises from such an act, would always be only a disability attributable to Military Service. We are, after all, examining the situation of a disability arising in a non-combat situation. If a person gets hit by a bullet at the war front and there is a disability that is wholly different situation and principle of res ipsa loquitor could easily be invoked. It would be stating the obvious that an injury that leads to a disability in such an operation shall always be taken to be attributable to army service. The forensic exercise becomes necessary only when we examine how even in a non-combat situation, the disability pension could still be sourced to Military Service as being attributable to it or aggravated by it. If we adopt the above reasoning, it could be noticed that the decision of Division Bench of this Hon'ble Court in ***Pooja and another v. Union of India and others 2009 (1) SCT 491*** *was perfectly justified when it was examining a case of an Army Personnel, who met with an accident while on annual leave. The Court found that the accident was beyond his control and further held that it could not be stated that it*

would disentitle him for grant of disability pension merely because he was on annual leave. The Division Bench relied on an earlier ruling in ***Ex. Naik Kishan Singh v. Union of India 2008 (2) SCT 378,*** *where the facts were similar, except that in the further case the Court was dealing with an injury suffered when the Army Personnel was on casual leave. The latter decision referred to a decision in Madan Singh Shekhawat's case, which dealt with a slightly different situation of an Army Personnel suffering from an accident, while he was a transit and it also referred to a decision of the Delhi High Court in* ***Ex. Sepoy Hayat Mohammed v. Union of India and others2008 (1) SCT 425.*** *Learned counsel appearing for the Union would point out the* ***Ex. Sepoy Hatyat Mohammed vs. Union of India and othe****r was itself set aside by a Full Bench decision of the same High Court.*

18. We have attempted to state the whole law in the context of the Rules as explained by the Hon'ble Supreme Court and by the decisions of Division Bench of this Hon'ble Court. We answer the reference by holding that there is no conflict between the decisions in Jarnail Singh, on the one hand and Gurjit Singh and Pooja and another, on the other. An army Personnel while on casual leave or annual leave, shall be considered to be on duty except

when by virtue of Rule 11 of the Leave Rules, he could not be deemed to be on duty, if he had not actually performed duty in that year. If he was on duty and he suffers the disability due to natural causes, the issue whether it was attributable to or aggravated by Military Service will be examined by taking the case of the Army Personnel as he was and examining whether it was the intervention of the army service that caused the disability. The decision of the Medical Board in examining the physiological injury or the psychological impacts of military service would obtain primacy and the Court shall normally be guided by such scientific medical opinion. However in case, where the injury that results in disability is due to an accident, which is not due to natural, pathological, physiological or psychological causes of the personnel, the question that has to be asked whether the activity or conduct that led to the accident was the result of an activity that is even remotely connected to Military service. An activity of an independent business or avocation or calling that would be inconsistent to Military Service and an accident occurring during such activity cannot be attributable to Military Service. Any other accident, however, remotely connected and that is not inconsistent with Military Service such as when a person is returning from hospital or doing normal activities of a

military personnel would still be taken as a disability attributable to Military Service."

We carefully considered the above two decisions on the point of 'causal connection' and 'attributability'. In case of disability/accident occurred while a military personnel is on any authorized leave and away from service place, we go by the principle laid down in Full Bench decision being a larger Bench. One yard-stick cannot be laid down for deciding 'causal connection' and 'attributability' for two different classes of disabled, one who gets injury at work place on actual duty and another, who gets injury while at out of work place and on deemed to be duty by fiction of law.

It is important to mention here that principle laid down in above **Khushbash Singh's case (supra)** has been approved by Hon'ble Supreme Court by dismissing SLP (Civil) No. 33614 of 2010 dated 10-12-2010 preferred against LPA No.613 of 2010 (P&H High Court) Union of India vs. Smt. Roshani Devi decided on 24-08-2010.

In our opinion, in simple words, in order to decide causal connection and attributability, in case a military personnel suffers an injury in accident while he is on authorized leave, the only point for consideration is as to whether the act of the individual as a result of which he involves in accident is inconsistent with military service which also includes normal activities of military personnel. If the answer is in

negative, the injury deemed to be attributable to military service and the individual is entitled to get disability pension, provided other conditions laid down in para 173 of Pension Regulations for the Army, 1961, are fulfilled.

So far as the instant case is concerned, the admitted position is that the petitioner was on annual leave. He received injuries while he was travelling in a civilian jeep. On the very facts mentioned in the petition as well as the reply, it is quite apparent that the act of the petitioner was not inconsistent with the military service. Therefore, the same will be considered as attributable. Apart from it, the accident had occurred in the year 2000 and he was discharged from the service in the year 2003. Therefore, under the circumstances, the aggravation can also be considered in this case. Taking any view of the matter, we are of the opinion that it is a fit case in which the petitioner is entitled to get disability pension as per percentage of disability as given by the Release Medical Board.

Accordingly, this application is allowed. The respondents are directed to assess and release the disability pension for 30% disability for life in favour of the petitioner from the date of his discharge within six months from the date of receipt of this order. The petitioner is also entitled to get arrears, but it shall be restricted to a period of three years prior to filing of this application with interest @ 10% per annum.

(Justice Ghanshyam Prasad)

(Lt Gen H S Panag(Retd)

December 15, 2010

'dls'

Whether to be shown on internet: Yes/No