

(1999) 12 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 296 of 1990

Bhagwan Singh (Ex.Nk)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Army Rules, 1954 — Rule 13(3) Item III(i)
Pension Regulations for Army, 1961 — Rule 173

Citation : (2000) 2 SCT 1061

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Advocate : K.L. Sharma, Rupinder Singh, Advocates appearing for the Parties

Judgement

O.P. Sharma, J.—What is the ambit and scope of the expression ""attributable to and aggravated by Military service"" appearing in Rules 173

of the Pension Regulations for Army, 1861 is the only question involved for consideration.

2. The admitted facts are that the petitioner was enrolled in Army as Sepoy on 19.9.68. He met with a motor vehicle accident on 30.11.1977 and

his disability was assessed at 40 per cent in 1979. But he was retained in service and discharged only on completion of 17 years of service under

rule13(3) Item III(i) with effect from Oct. 1,1985. He has been granted service pension which he earned under the pension rules.

3. Petitioner, however, approached the respondent for grant of disability pension in addition to service pension on the plea that he sustained injuries

in an accident in the year 1977. After treatment, Medical Board assessed his disability on 28.8.79 at 40%. He was placed in medical category

CEE"" (permanent) which entitles him to disability pension also. This plea was

rejected by the respondent on the ground that the disability was not attributable to military service.

4. The reliefs claimed by the petitioner are (I) that he be declared to have been invalidated from service on account of the disability, and (II) respondent be directed to give him invalid pension retrospectively.

5. The stand of the respondent is that disability of the petitioner was neither "attributable to nor aggravated by Military Service" because he had

met with an accident involving a tractor on 30.11.77 while on casual leave. After treatment, he was downgraded to medical category "CEE

(permanent) on August 28, 1979. The Medical Board recommended his discharge because of the disability but he was not discharged. He was

finally discharged from the service with effect from 1.10.85 only after completion of his term of engagement under Rule 13(3) Item III(i) of the

Army Rules, 1954. He was thus not entitled to disability pension as his discharge was not under rule 13(3) item III(v) of the Rules.

5A. The contention of Mr. Singh is that the petitioner met with an accident in his village on 30.11.77. At the time of accident he was on casual

leave. As casual leave under Pension Regulations counts for duty, the disability is attributable to Military Service under rule 173. Mr. Sharma,

however, argued that although the petitioner was recommended to be invalidated out of service by the Medical Board in 1979 yet he was not

invalidated instead retained and even promoted in 1982. He next argued that petitioner having been discharged from service under Army Rule

13(3) item III(i) is not eligible for disability pension because he was not discharged from service on account of disability. Further according to him,

the injuries having not been sustained due to Military service, he is not entitled to pension.

6. The admitted case of the parties is that the petitioner was on casual leave when he met with the accident on 30.11.77 and suffered injuries for

which he was treated in Army Hospital. This fact though suppressed by the petitioner has been stated in quite some detail in para (ii) of the brief

history given in the counter. it reads as under :

(ii) As per records, the above named individual/petitioner while on casual leave met with a tractor accident on Nov. 30, 1977, he was admitted in

166 MH on Nov. 30, 1977 at 2245 hrs while on casual leave and further

transferred to 148 Base Hospital on Dec. 5, 1977 for his multiple injuries and discharged on May 2, 1978. He was placed in medical category "CEE" (Temporary) for six months on June 30, 1978. On review he was downgraded to medical category "CEE" (permanent) on Aug. 28, 1979. At the time of retirement, his disability was assessed at 40% in medical category "CEE" (permanent). The petitioner has been discharged from service on fulfilling his terms of engagement under Army Rule 13(3) item III(i) with effect from Oct. 1, 1985 and not invalidated out of service due to his disability.

7. The scope of rule 173 was considered by their lordships of the Supreme Court in *Union of India v. Baljit Singh*, 1996(11) SCC 315 . Their

lordships observed as under :

..."It is seen that various criteria have been prescribed in the guidelines under the rules as to when the disease or injury is attributable to the military

service. It is seen that under rule 173 disability pension would be computed only when disability has occurred due to a wound, injury or disease

which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military

service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made amply clear from clauses (a) to

(d) of para 7 which contemplates that in respect of a disease the rules enumerated thereunder require to be observed, Clause (c) provides that if a

disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the

onset of the disease and that the conditions were due to the circumstances of duty in military service. Unless these conditions are satisfied, it cannot

be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of doctors, it is not due to

the military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account

of military service. In each case, when disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether

the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service. Accordingly, we are of

the view that the High Court was not totally correct in reaching that conclusion.

8. The ratio of the judgment is that under "Clause c of para 7 of the regulations even if disease/injury is accepted as having arisen in service, it must

also be established that conditions of Military Service determined or contributed to the onset of the disease and that the conditions were due to the

circumstances of duty on military service. Unless these conditions are satisfied, it cannot be said that the sustenance of injury per se is on account

of military service." After this authoritative pronouncement, the Division Bench of the Punjab and Haryana High Court in *Jarnail Singh v. Union of*

India, 1997(3) Service Cases Today 484 reviewed the entire case law in the context of this case and held as under :

17. The injury or disability must be incidental to military service. The Hon'ble Supreme Court in the case of *Union of India v. Baljit Singh*, 1997(1)

SLR 98 : 1997(1) SCT 386 (SC) while declining to interfere with the judgment of the High Court held as under :

In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury

sustained was due to military service or was aggravated which contributed to invalidation for the military service. Accordingly, we are of the view

that the High Court was not totally correct in reaching that conclusion. However, having regard to the facts and circumstances of this case, we do

not think that it is an appropriate case for interference.

18. On proper analysis of the above discussion the position that emerges is that an accident or injury suffered by a member of the Armed forces

must have some casual connection to the aggravation or attributability to military service and at least should arise from such activity of the member

of the force as he is expected to maintain or do in his daytoday life as a member of the force. The nexus between the two is not apparently one so

as to cover every injury or accident. The hazards of Army service cannot be stretched to the extent of unlawful and entirely unconnected acts or

omissions on the part of the member of the force even when he is on leave. The fine line of distinction has to be drawn between the matters

connected, aggravated or attributable to military service and the matters entirely alien to such service. What falls ex facie in the domain of an entirely

private act which may even extend to the sphere of undesirable and unlawful activity of such member cannot be treated as legitimate basis for

claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on

casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus

to the nature of the force. At least remote attributability to service and expected standards of behaviour and living, of the member of the force

appears to 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 behaviour.

19. We may elucidate the above principle by giving a very simple example that if a person on casual leave and subject to the Act goes to canteen

to buy things or takes his children for treatment to hospital and on the way meets with an accident, may be arising out of his negligence or

contributory negligence, suffers injuries causing permanent disability, in our view, would be entitled to claim the benefit under Rule 173. Similarly a

person who joins Army is not found to be suffering from any disease, but subsequently suffers from a disease which renders him liable for being

invalidated out of Army on such illhealth, such a disease would be attributable and/or aggravated by military service and would entitle him to take

benefit of these regulations.

20. Thus, to sustain a claim of disability pension, the member of the Armed force must be able to show a normal nexus between the act, omission

or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from member of such

disciplined force. It is so primarily for the reason that no unlawful activity or commission can validly support a lawful claim. Violation of expected

standards cannot form a fair ground for raising a claim under these provisions. Every rule is expected to be understood so as to be implemented

lawfully and to achieve its object, but equally true is that no lawful activity can be brought to the aid of an unlawful act and that too by stretching the

rules of present kind because it may ultimately result in abuse of the benefit sought to be granted by such rule. It has to be understood that no

straitjacket formula could be provided for such cases and each case has to be judged on its own merits. We have attempted to provide certain

guiding principles which could help the authorities concerned while deciding such

a claim.

9. Since Jarnail Singh had suffered injury while operating wheat Thrasher at his home, it was held that the injury was not attributable to Military service and he was not entitled to disability pension.

10. On the same analogy the petitioner is also not entitled to pension because his injury is not attributable to military service. Whether he met an accident while riding tractor as a passenger or while ploughing the field or was run over by it, the "possibility of which is very remote" has not been

disclosed by him. His case is thus not covered by the pension regulations. Mr. Singh next relied on the decision of the Apex Court in *Exsepoy*

Madan Singh Shekhawat v. Union of India and others, 1999(4) SLR 744 : 1999(4) SCT 89 (SC). This judgment, however, is not applicable to

the facts of the case because the question before their lordships was what is ambit and scope of expression "at public expense" occurring in clause

of rule 48. Rule 48 and clause is reproduced in para 9 of the judgment which is extracted below :

Disability pension when admissible An officer who is retired from military service on account of a disability which is attributable to or aggravated

by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a

disability element in accordance with the regulations in this section.

(a)....

(b)...

(c) A person is also deemed to be 'on duty' during the period of participation in creation, organised or permitted by Service Authorities and of

travelling in a body or singly under organised arrangements. A person is also considered to be on duty when proceeding to his leave station or

returning to duty from his leave station at public expense.

The facts of the case were that Shekhawat was travelling from Jadhpur to his home station on authorised casual leave granted to him. While

alighting from train at the railway station on 1.10.94, he sustained injury due to which his right hand was amputated. He was invalided out of

service. The question was whether he was proceeding to his leave station "at public expense". The High Court dismissed the petition on the ground

that at the time of accident, he was travelling at his own expense. Reversing the judgment their Lordships held as under :

17. We, therefore, construe the words ""at public expense"" used in the relevant part of the rule to mean travel which is undertaken authorisedly.

Even an army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorised

to avail the leave for leaving the station of posting, an army personnel uses what is known as ""travel warrant"" which is issued at public expense,

same will not be issued if person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, ""at public

expense"" are used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly. Meaning

thereby if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be

entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised.

Since rule 173 did not fall for consideration in this case, therefore, decision in Baljit Singh's case (1996(11) SCC 315) holds the field. Since the

case of the petitioner is not covered by the exception as noticed by the High Court of Punjab & Haryana in the case of Jarnail Singh, he is not

entitled to disability pension although casual leave counts as duty under rule10 of the Defence Service Regulations. But grant of invalid pension in

view of the law laid down in Baljit Singh's case would depend upon whether it is established that ""conditions of Military service determined or

contributed to the onset of the disease and that the conditions were due to the circumstances of duty in Military service."" Since the petitioner was

injured while he met with an accident involving a tractor, his case does not fall under the category noticed by the Punjab and Haryana High Court

in the case of Jarnail Singh (supra).

11. There is another aspect of the case. It is admitted that the petitioner has been retired under rule13(3) ItemIII(i). Clause (3) of rule13 of Army

Rules, 1954 empowers the Commanding Officer to discharge a person under certain conditions. One of such conditions is incorporated in

itemIII(i) or rule13(3) which reads as under :

Category Grounds of discharge Competent authority to authorise discharge

Persons enrolled under the Act who have been attested III(i) On fulfilling the conditions of his enrolment or having reached the stage at which discharge may be enforced, (Commanding officer and, in the case of a person of the rank of Havildar (or equivalent rank) where such person is to be discharged otherwise than at his own request and where the Commanding Officer is below the rank of Lt. Colonel, the Brigade or Subarea Commander.)

He has thus not been discharged on account of disability which is possible only under Rule 13(3) Item III(V) of the Army Rules and that too on the recommendation of Invaliding Board. So he is not entitled to disability pension.

12. In view of the law laid down in the case of Baljit Singh (1996(11) SCC 315) the petitioner is not entitled to disability pension in addition to

service element of pension which he admittedly is getting as he was discharged under rule 13(3) item III(i) of the Army Rules and not under

Rule 13(3) Item III(V) or the Rules. The petition is accordingly dismissed.