
(2012) 07 P&H CK 0183
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8758 of 2012

Ex. Naik/TS Ved Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 168 PLR 435 : (2013) 1 SCT 141

Hon'ble Judges : Tej Pratap Singh Mann, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : Chanderhas Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

T.P.S. Mann, J.—The petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India against the order dated 2.11.2010 (Annexure P-11) passed by the Chandigarh Regional Bench of the Armed Forces Tribunal (hereinafter referred to as "the Tribunal") whereby the application filed by him for seeking quashing of order dated 1.6.2009 (Annexure P-8) passed by the Government of India declining his prayer for disability pension on the ground that invalidating disease was neither attributable to nor aggravated by military service, had been dismissed. According to the petitioner, he was enrolled in the Indian Army as Sepoy on 9.5.1988. When he was at his home for 15 days from 2.3.2004 to 17.3.2004, he slipped from the terrace of his house while playing Holi and sustained "Open Fracture Tibia and Fibula Right". As a result thereto, he was admitted in the Base Hospital. A Court of Inquiry was held which in its report dated 25.9.2004 (Annexure P-1) held that the injury suffered by him was attributable to military service. His case was, thereafter, sent to the Brigade Commander for information and vide report dated 13.11.2004 on accidental and self inflicted injuries, the Brigade Commander opined that the injury sustained by him was attributable to military service. Despite the same, on 1.6.2005, he was invalided out from military service after being placed in medical category "A-3

(permanent)". After invalidation from the service his case was taken up by the ASC (South) Records, Bangalore with the Principal Controller of Defence Accounts (Pension), Allahabad for adjudication of his claim for disability pension but the same was rejected. The appeal preferred by him was rejected on 19.9.2007. Even the second appeal preferred by him was dismissed on 1.6.2009. Aggrieved of the same, the petitioner filed CWP No. 13375 of 2009 in this Court which after establishment of the Tribunal was transferred to and entertained by the Tribunal as T.A. No. 285 of 2010.

2. The application (T.A. No. 285 of 2010) filed on behalf of the petitioner and couple of similar original applications and transfer applications was taken up by the Tribunal together. After discussing the various judgments on the issue as to what would be the guiding factors for deciding the attributability of or aggravation by military service where the disability or fatality occurs during the time the individual is on authorised leave of any kind, the Tribunal summed up the following principles :-

(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 generalize 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 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 matters 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.

3. Having held so, the Tribunal went ahead to appreciate the facts of the individual cases and as regards the petitioner, noted the facts as follows :-

T.A. No. 285 of 2010, Ved Singh v. UOI and others

The factual averments in this petition are that the petitioner was on casual leave from 2.3.2004 to 17.3.2004, and was playing Holi, in which process he slipped from the terrace of his own house and sustained injury. He was admitted in the Base Hospital. Court of Inquiry was held on 1.9.2004, which gave report, Exh.P-1, and according to the petitioner, found the injury to be attributable to military service. The injury sustained was "Open Fracture Tibia and Fibula Right" on 7.3.2004.

4. However, keeping in view the fact that the petitioner had accidentally fallen from the terrace on his own house while playing Holi and refusing to interpret the casual leave as being on duty, the Tribunal came to the conclusion that the playing of Holi at the residence during casual leave would not be said to be having any causal connection with military service, even in the remotest manner apart from the fact that it was only an accident which could be attributed to risk common to human existence in modern conditions in India and was not a risk enhanced in kind or degree by nature, conditions, obligations or incidents of military service. The claim for disability pension was found to have been rightly rejected and accordingly, the transfer application was dismissed.

5. Learned counsel for the petitioner has submitted that even when an army personnel is on casual or annual leave, he shall be considered to be on duty except when by virtue of Rule 11 of Leave Rules, he could not be deemed to be on duty, if he had not actually performed duty in that year. Further, where the injury that results in disability due to an accident, which is not due to natural, pathological or psychological causes the activity of a military personnel that is

not inconsistent with military service would still be taken as a disability attributable to military service and, therefore, the army personnel entitled to disability pension. In support of his submission he has placed reliance upon Union of India through Secretary, Ministry of Defence, New Delhi and others v. Khushbash Singh 2010(2) SCT 805.

6. The judgment in the case of Khushbash Singh (supra) was considered by the Tribunal while delivering the impugned judgment and held to be not applicable to the facts and circumstances as inconsistency or otherwise of an accident with military service could not be said to be any relevant consideration where such an individual indulges himself in any individual business or vocation or calling while on leave of any kind. Such activities have no causal connection with the military service and, therefore, cannot be held to be attributable to military service.

7. In the present case, the petitioner was admittedly on casual leave for 15 days from 2.3.2004 to 17.3.2004 and present at his house. While playing Holi, he slipped from the terrace of his own house and sustained injuries. Playing of Holi and, that too, while at his home and sustaining injuries by slipping from the terrace has no causal connection with military service. It may also not be out of place to mention here that the petitioner was on casual leave from 2.3.2004 to 17.3.2004. He had already reached his village and while celebrating the Holi on 7.3.2004, he fell from the terrace of his own house and sustained injuries. Therefore, it cannot be said that the petitioner was either proceeding to his leave station or returning to duty from his leave station when he suffered injuries, and, therefore, entitled to disability pension as the injury was attributable to military service.

8. The claim of the petitioner that the Court of Inquiry also found the injury suffered by him attributable to military service is against the records as in the opinion of the Commanding Officer the injury sustained by the petitioner was not attributable to military service in peace. For facility of reference, the opinion of the Commanding Officer as expressed in order dated 25.9.2004 and attached with the present writ petition as Annexure P-1 is as follows:-

OPINION OF THE COMMANDING OFFICER 509 ASC BN ON the COURT OF INQUIRY IN RESPECT OF NO. 148003331 KL/NK/MT VED SINGH SUSTAINED SEVERE INJURY ON 07 MARCH 2004

1. I have perused the C of I proceedings and opine that:-

(a) No. 14800333 KL/NK/MT Ved Singh of 509 ASC Bn while on CL fell down from the terrace of house and sustained Open Fracture Tibia Fibula Right

on 7 March, 2004.

(b) Injury sustained by No. 148000333 KL/NK/MT Ved Singh is not attributable to military service in peace.

Station:C/o 56 APO

Date : 25 Sep. 2006

(Sd/- Roopak Sharma) Col. CO

9. Similarly in the report prepared by the Brigade Commander on accidental and inflicted injuries received by the officers, copy of which has been attached as Annexure P-2, there is no reference that the injury sustained by the petitioner was attributable to military service. Rather against the column "(d) as to whether the individual was under the influence of intoxicating drink or drug at the material time", the Commanding Officer had mentioned "Yes".

10. In view of the above, the Court is of the considered opinion that the petitioner has been rightly denied the benefit of disability pension. There is no merit in the writ petition, which is, accordingly, dismissed.

Sd/- Satish Kumar Mittal, J.