
(2008) 08 DEL CK 0075

In the Delhi High Court

Case No : Writ Petition (C) 6959 of 2004 and CM No's. 6869 and 10898/04

Ex. N.K. Dilbag

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Army Pension Rules, 1961 — Rule 12, 2, 4, 48, 6
Central Civil Services (Extraordinary Pension) Rules, 1939 — Rule 3
Constitution of India, 1950 — Article 141
Medical Services of the Armed Forces Regulations, 1983 — Regulation 423
Pension Regulations for Army, 1961 — Regulation 172, 173, 174, 175, 176

Citation : (2008) 106 DRJ 865

Hon'ble Judges : Vikramajit Sen, J; Sanjiv Khanna, J; S.L. Bhayana, J

Bench : Full Bench

Advocate : S.M. Dalal, for the Appellant; Darpan Wadhwa and S.S. Pandey for Respondents 2 to 4, for the Respondent

Judgement

Vikramajit Sen, J.—We are called upon to impart an interpretation on the words - "a disability which is attributable to or aggravated by military service", as occurring in Regulation 173 of the Pension Regulations for the Army, 1961 (for short "Pension Regulations"). Reference to the Full Bench was originally necessitated because of the divergence of opinion of two Division Benches, in terms of the Order dated 9.3.2006 in WP(C) 11128/2005 titled Sunita Devi v. Union of India passed by the Bench comprising Mukul Mudgal and H.R. Malhotra, JJ. Our learned Brothers detected diametrically different dialectics of Division Benches, the unreported decision in WP(C) 4619/1993 titled Ex Sepoy Vijay Pal Singh v. UOI and in Ex-Signalman Shri Bhagwan Vs. Union of India (UOI), . The cause has become even more confounded and complicated owing to yet another decision of the Division Bench comprising Swatanter Kumar and G.S. Sistani, JJ. decided on 19.10.2006 reported as Mr. Jitendra Kumar Vs. Chief of Army Staff and Others . Broadly stated, the submission of the petitioners is that any injury or fatality suffered by military personnel on casual leave would per se entitle them to claim Disability Pension in addition to ordinary Family Pension. The

Respondents contend that the factum of casual leave is irrelevant and what has to be ascertained in every case is whether the injury was sustained while the person was doing an act ascribable to military service. So far as the situs or location where the injury came to be encountered is concerned, it is again irrelevant whether it was in a Field Service/Active Service area or under normal peace conditions. What is imperative, according to the Respondents, is that the claimant must establish that the disability or death bore a causal connection with his military duties.

2. Regulation 173 of the Pension Regulations, within the parameters of which every claim of a non-commissioned personnel for Disability Pension must perforce be predicated, concerns "Primary conditions for the grant of disability Pension" and reads thus:

Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over.

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

These provisions are similar to Regulation 48 in Chapter 2 of the Pension Regulations, which deals with claims of commissioned officers, which is in these words:

48. (a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20 per cent or more.

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

3. The relevant Rules which are placed in Appendix-II are reproduced for facility of reference:

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 singly by a prescribed or organized route.

(d) When proceeding from his duty station to his leave station or returning to

duty from his leave station, provided entitled to travel at public expense, i.e. on railway warrant, 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) When journeying by a reasonable route from one's official residence to and back from the appointed place of duty irrespective of the mode of conveyance, whether private or provided by the Government.

(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 definitively 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.

4. Regulation 423 of Medical Service of Armed Forces Regulation, 1983 seeks to define the term "attributability to service" and incidents which will fall within the parameters of this phrase:

423. Attributability to 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. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as

to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(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-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the armed forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(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, in so far 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 C.O. 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 officer in the latter case will be furnished on a medical board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air).

5. The legal nodus confronting us has, to some extent, been considered by the Supreme Court of India, in the decisions reported as *Lance Dafadar Joginder Singh Vs. Union of India (UOI) and Others*, decided on 16.8.1993 [Kuldip Singh and B.P. Jeevan Reddy, JJ.]; *Union of India (UOI) and Another Vs. Baljit Singh*, decided on 11.10.1996 [K. Ramaswamy and G.B. Pattanaik, JJ.] and *Madan Singh Shekhawat Vs. Union of India and Others*, decided on 17.8.1999 [S.P. Bharucha and N. Santosh Hegde, JJ.]. It is trite that we are duty-bound to apply the ratio decidendi of these pronouncements of the Apex Court. We must, therefore, be clear in our minds of the manner in which the ratio decidendi of a decision is to be drawn. *Municipal Corporation of Delhi Vs. Gurnam Kaur*, lays down that the ratio decidendi is the principle upon which the case is decided and statements which do not partake of this character are obiter dicta which do not have authoritative force.

6. The frequently quoted opinion of the House of Lords in *Quinn v. Leathem* 1901 AC 495 : (1900) All ER 1 is to the effect that "every judgment must be read as applicable to the particular facts proved or assumed to be proved.... The other is that a case is only an authority for what is actually decided". These quotations have been reiterated in *Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another*, and *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, . In the latter case, the Court explicitly opined that "a decision on a question which has not been argued cannot be treated as a precedent". Their Lordships, in turn, referred back to the previous opinion in *Rajput Ruda Meha and Others Vs. State of Gujarat*, in which it had similarly been stated that where an issue has neither been raised nor argued any decision by the Court, even after "pondering over the issue in depth", would not become a binding precedent. Similar observations have been made by the Constitution Bench in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, , as is evident from the following extract:

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

7. *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, cautions that - "a little difference in facts or additional facts may make a lot of difference

in the precedential value of a decision". In *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, , a Three Judge Bench has opined that "Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case". The Constitution Bench has also reiterated this view in *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, , viz. that the ratio decidendi of a judgment can be obtained only from a reading of its entirety. The opinion of the Apex Court in *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, is in similar vein. Their Lordships observed that - "Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes". This is also the opinion of the Court in *Punjab National Bank Vs. R.L. Vaid and Others*, . In *State of Gujarat v. Akhil Gujarat Pravasi* AIR 2004 SCC 3894, the Hon'ble Supreme Court has observed that "any observation made during the course of reasoning in a judgment should not be read divorced from the context in which they were used". In *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, , the Apex Court has unequivocally declared that "a decision is not an authority for the proposition which did not fall for its consideration." In *M/s. A-One Granites Vs. State of U.P. and Others*, it had been contended that the controversy was covered on all fours by a previous decision of the Court. The contention was rejected in these words-

This question was considered by the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be

binding and precedents sub silentio and without arguments are of no moment. Following the said decision, this Court in the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, observed thus (at p. 43 of AIR):

In Gerard v. Worth of Paris Ltd. (K) (1936) 2 All ER 905, the only point argued was on the question of priority of the claimant's debt, and on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 KB 675, the Court held itself not bound by its previous decisions. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier Court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed.

In State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, , reiterating the same view, this Court laid down that such a decision cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India and observed thus:

A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.

In the case of Arnit Das Vs. State of Bihar, , while examining the binding effect of such a decision, this Court observed thus (Para20):

A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined.

Thus we have no difficulty in holding that as the question regarding applicability of Rule 72 of the Rules having not been even referred to, much less considered by this Court in the earlier appeals, it cannot be said that the point is concluded by the same and no longer res integra and accordingly this Court is called upon to decide the same.

8. We have gone into some detail on the principle of stare decisis since it is our considered opinion that the Division Benches have incorrectly applied the above-mentioned decisions of the Supreme Court. It is imperative that the facts of each case must first be noticed with clarity and precision and only thereafter, in the

context of the facts determinative of the decision, should the enunciation of the law by the Court be distilled. It also seems plain to us that their Lordships whilst passing "Order" in contradistinction to the "Judgment" intend to dispose of the controversy before them restricted to the fact situation therein, with no intention to lay down any principle of law.

9. In Baljit Singh the injury occurred while he was in service, thus diminishing, if not distinguishing, the relevance of that case from the pivotal question before us, viz. nature of injury received during casual leave which would nevertheless qualify for grant of Disability Pension. Even though Baljit Singh suffered the subject injury while he was discharging his duties, their Lordships cautioned that - "In each case where 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". A fortiori, where the claimant is on casual leave the causal connection becomes acutely critical. So far as the aspect of liability for injury leading to discharge from service is concerned there is a plethora of precedents present for perusal, including Union of India (UOI) and Others Vs. Dhir Singh China, Colonel (Retd.), , Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair, decided on 21.10.2005, Union of India (UOI) and Others Vs. Keshar Singh, and Union of India (UOI) and Others Vs. Surinder Singh Rathore, . It was in these circumstances that Rule 173 must be considered and applied.

10. China retired in the rank of Colonel and his claim for Disability Pension was therefore governed by Chapter 2 Section III comprising Regulations 47-64 of the Pension Regulations. After noting that the Medical Board had opined that the two disabilities suffered by China were not attributable to or aggravated by military service, their Lordships opined that he could not derive any benefit from the said fasciculus dealing with "Disability Pensionary Awards". The facts as well as the conclusion are almost identical to Rathore and Keshar where the Medical Board had recommended the release of Rathore due to an eye ailment. The Apex Court reversed the decision of the Single Judge as well as the Division Bench of the High Court holding that Rathore and Keshar were not entitled to Disability Pension.

11. Nair also concerns a discharge from military service owing to Nair having been relegated to an unacceptable medical category (EEE). Baljit Singh was applied since the factual matrix was akin. Dealing in some detail with Nair is justified in order to underscore that if Disability Pension is not automatically available for a medical condition which had manifested itself during the discharge of duties, the claim for an injury suffered during leave would be on a much weaker foundation. While discharging his duties in the border area in Punjab, Nair developed medical problems which had not been detected at the time of his enrolment, for which he received prolonged treatment, but had eventually to be boarded out being in category "EEE". The Apex Court concluded in Nair that "the

Medical Board's opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the military service, both the learned Single Judge and the Division Bench were not justified in their respective conclusions. The respondent is not entitled to disability pension". If "attributability" is required to be "affirmatively proved" by the claimant even when the condition was discovered during discharge of duty, it follows that the burden of proof is even greater when the occurrence transpires during leave. There is no room at all to invoke the principle of *res ipsa loquitur*, viz., "the thing speaks for itself" to such claims. Although this maxim is usually employed in tortious liability predicated on negligence, we mention it because the Petitioners would have us hold that any injury received while on military rolls would per se and inexorably and inevitably lead to eligibility for Disability Pension. We record our inability to subscribe to this contention.

12. Indubitably, Joginder Singh is a leading authority relevant to the conundrum before us. The Petitioner was proceeding on casual leave from duty station when he suffered injuries as a result of his falling down from the train [similar to Shri Krishan Dahiya (*infra*)]. It was in this regard that the oft referred to passage came to be articulated by their Lordships:

5. The question for our consideration is whether the appellant is entitled to the disability pension. We agree with the contention of Mr. B. Kanta Rao, learned Counsel for the appellant that the appellant being in regular Army there is no reason why he should not be treated as on duty when he was on casual leave. No Army Regulation or Rule has been brought to our notice to show that the appellant is not entitled to disability pension. It is rather not disputed that an Army personnel on casual leave is treated to be on duty. We see no justification whatsoever in denying the disability pension to the appellant.

13. We are unable to perceive this precedent to lay down that each and every injury suffered by military personnel while on casual leave would justify a claim for payment of Disability Pension. Journeys to and fro the place of posting are specifically covered by Rule 12(d) in Appendix-II of the Pension Regulations which was palpably not brought to the notice of the Supreme Court. Furthermore, it is trite that concessions or mistakes of an advocate of the parties, especially in pointing out the provisions of law will undermine the precedential value of the decision. Their Lordships were not called upon nor did they intend to lay down that any injury suffered whilst availing of/enjoying casual leave in contradistinction to en route to and fro duty station would create an eligibility to claim Disability Pension.

14. In Shekhawat learned Counsel neglected to highlight that the petitioner was a non-commissioned personnel and therefore it was Chapter 3, Section III (being the pandect comprising Regulations 172-190) which applied to the case. However, since these provisions are identical in material and relevant particulars to Chapter 2, the decision would remain the same. Their Lordships specifically took note of Rule 48 read with Rule 12(d) of the Pension Regulations while

emphasising that "a person is also considered to be on duty when proceeding to his leave station or return to his duty from his leave station at public expense". It was not in dispute that Shekhawat was travelling from Jodhpur to his home station on authorised casual leave. It was contested that he had lost his eligibility to make a claim for Disability Pension since he was allegedly not travelling "at public expense". It was in this context that the Court observed that a beneficial provision must be interpreted liberally so as to give a wider meaning rather than a restrictive meaning which would negate the very object of the Rule. Their Lordships observed that they were 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 authorised, it can make no difference whether the fare for the same came from the public exchequer or the Army Personnel himself". This is the ratio of the Judgment which is most often misconstrued; the Apex Court did not enunciate that any and every injury suffered while availing casual leave, regardless of whether it had a causal connection with military service, would inexorably result in grant of Disability Pension.

15. In Harbans Singh Vs. Union of India, the petitioner was posted at Walong in N.F.E.A. He applied for and was granted sixty days annual leave. He flew from Walong to Jorhat and thence to Calcutta. The last leg of his homewards journey from Ambala Cantonment to Patiala was undertaken by him, with the permission of his superior officers, on his own scooter and in this segment that he met with an accident as a result of which he was invalidated out of the Army. The Pension Regulations, as well as the Rules in Appendix-II, were applied by the Division Bench, which provisions inter alia stipulate that - "a person is also considered to be on duty when proceeding to his leave station or returning to duty from his leave station on public expense". The following passage is palpably the precursor to the pronouncements in Shekhawat:

21. Therefore, the resulting position in the present case is that the travel by the petitioner from Calcutta to Patiala was partly at public expense. The question then is whether, in those circumstances, he can be considered to have proceeded or travelled to his leave station (Patiala) at public expense and, therefore, to have been on duty at the time of the accident within the meaning of Rule 6(c) in Appendix-II to the Pension Regulations for the Army. The contention of Shri Brij Bans Kishore on behalf of the respondent was that the journey from the starting station (Walong) to the destination station (Patiala) should be entirely at public expense if the provision in Rule 6(c) is to be attracted. In our opinion, the said contention of the learned Counsel cannot be accepted as it would result in an odd or anomalous position. The provision in Rule 6(c) is intended to lay down when the officer can be deemed or considered to be "on duty". It provides that he will be considered to be "on duty" when proceeding to his leave station or returning to duty from his leave station at public expense. As pointed out above, in a situation like the one in which the petitioner was, the journey to or from the leave station would be partly at public expense and partly at the officer's own

expense and the officer has to be considered to be partly "on duty" and partly "not on duty". This odd or anomalous result can be avoided by interpreting the words "at public expense" in Rule 6(c) in one of two ways viz. (1) that they mean that the entire journey from the starting station to the destination and back should be "wholly at public expense" or (2) that they mean that the said journey may be even "partly at public expense". In other words, either the word "wholly" or the word "partly" has to be introduced before the words "at public expense" in order to avoid an odd result in the application of Rule 6(c) to a situation like the one in which the petitioner was placed. The question then is as to which of the two interpretations is to be preferred. The answer, we consider, is to be found in Rule 4 in Appendix II to the Pension Regulations for the Army. The said Rule, as already pointed out earlier, provides that in deciding on the issue of entitlement of an officer to disability pension, all the evidence, both direct and circumstantial will be taken into account, and the benefit of reasonable doubt will be given to the claimant. Applying the principle underlying the said provision, if not the provision itself, the second of the two interpretations mentioned above would, in our opinion, be the proper and just interpretation of the words "at public expense" in Rule 6(c) in Appendix II to the Pension Regulations for the Army. In that view, we hold that the petitioner was travelling "at public expense" within the meaning of Rule 6(c) and was, therefore, "on duty" at the time of the accident which had resulted in his disablement, that his disablement has to be accepted as due to Military service by virtue of the provision in Rule 2 in the aforesaid Appendix II, and that he was, therefore, entitled to disability pension under Rule 48 of the Pension Regulations for the Army.

16. We shall now consider some Division Bench Judgments of other High Courts on the point in issue. In *Chatroo Ram v. Secretary Defence* 1991(1) SLR 678 the Division Bench of the High Court of Punjab and Haryana held the petitioner to be entitled to Disability Pension since he met with an accident during the journey back to his place of posting. Regulation 173 of the Pension Regulations, together with Rule 6 of Appendix-II framed under Rule 48 thereof, was pressed into service. We approve this decision, which had, in fact, applied *Harbans*.

17. *Shri Krishan Dahiya v. Union of India* 1997(1) SLR 607 is also a decision of the Division Bench of the Punjab & Haryana High Court. It referred to *Joginder*, *Chatroo* and *Harbans*. It had been narrated at the commencement of the Judgment that the petitioner had lost his legs while attempting to board the train for returning to duty after availing casual leave. One of the observations made, with which we concur, prophetically of *Shekhawat* is that - "expenses for the travel whether borne by the State or the individuals cannot be made the sine quo non for the purposes of determining whether the persons is on duty or not". Disability Pension was granted to the petitioner.

18. The Division Bench of the High Court of Punjab & Haryana had to adjudicate upon a claim for Disability Pension in *Jarnail Singh v. Union of India* 1998 (1) SLR 418, in which the petitioner had lost his right hand while working a thresher in

his home/farm. At the time of the unfortunate incident he was on casual leave. Swatanter Kumar, J., who authored the Judgment, had analysed a host of decisions before coming to the conclusion that agricultural activity undertaken by a military personnel while on casual leave could not be seen as attributable to military service. Paragraphs 5 to 22(end) of this Judgment were reproduced and adopted in Jitendra Kumar authored co-incidentally by Swatanter Kumar, J. while presiding over a Division Bench of this Court. Our learned Brother had repeatedly opined that the "injury or disability must be incidental to military service" and "must relate to military service in some manner or the other" and that "causal connection certainly would not include every act, deed or conduct which is neither ancillary to nor in any way connected to the recognised sphere of military service of a person on casual leave". We entirely agree with this enunciation of the law but with respect are unable to subscribe to the conclusion arrived at by the Division Bench in Jitendra Kumar. The facts in Jitendra Kumar appear to be that consequent upon his enrolment he, along with other members of his batch, was granted twenty-eight days "recruitment leave". At the end of this leave period, Jitendra Kumar allegedly went to the market in Bulandsahar in order to purchase items necessary/required by him at his place of duty. After completing the purchase, on his journey back home a bus had a frontal collision with him. He was invalidated out of military service with eighteen per cent Disability Pension. The Bench applied Clause 13(a) of Appendix-II to arrive at the conclusion that the Petitioner was "on duty" finding a causal connection between the injuries and military service. With respect, as we have already noted, we find no causal connection between the act of making purchases in the market even if it pertained to items needed in the discharge of duties, and military service. The second petitioner had applied for grant of casual leave from 13.4.2000 to 27.4.2000 for attending the marriage of his relative. On 18.4.2000 while he was journeying in a jeep to attend the marriage his vehicle collided with a truck. He suffered compound fractures to the proximal tibia, right knee, left femur etc. He was invalidated from military service on medical grounds. The Bench took into consideration that the casual leave was sanctioned for a definite period, that is, to attend the marriage of his brother. Respectfully, we see no causal connection, whatsoever, between the accident and the discharge of duties; attending a marriage cannot possibly be seen as analogous to military duties. The ratio of Joginder Singh is not applicable.

19. For similar reasons we are unable to subscribe to the views in Ex. Sepoy Hayat Mohammed Vs. Union of India (UOI) and Others, to the effect that the petitioner was eligible for the grant of Disability Pension owing to the fact that while on casual leave in his home he suffered several injuries owing to a steel girder and roof slabs falling on him. One of the reasons which appear to have persuaded the same Division Bench was that persons on annual leave are subject to the Army Act and can be recalled at any time as leave is at the discretion of the Authorities concerned. A rule of this nature is necessary to cover the eruption of insurgencies or the breakout of a war. They neither envisage nor attempt to

deal with liability to pay Disability Pension. It is impermissible to extrapolate a rule catering for a particular situation to altogether different circumstances.

20. The Division Bench of this Court had applied Shekhawat in G.D. Ishwar Chand v. Union of India 2004(3) SLR 439. The petitioner had been sanctioned short leave and while returning from his leave he had met with an accident. The claim was examined under the CCS(EOP) Rules, Rule 3(a) whereof provides as under:

3-A(1)(a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which-

(i) is attributable to Government service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by-

(i) a wound, injury or disease which was attributable to Government service, or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

The Petitioner was serving as a constable in the National Security Guard (NSG). Our learned Brothers recorded that Shekhawat had erased the distinction between public expense and private expense for undertaking journeys to and from the place of posting and accordingly held in favour of the petitioner.

21. Manjit Singh, Ex. Naik Vs. Government of India and Others, is the decision of the same learned Judge who, as a member of the Division Bench, had authored Jarnail Singh, in which it had rightly been observed that "a person who may be doing some act at home which even remotely does not fall within the scope of his duties or function as member of the force nor is remotely connected with the function of the military service and expected standard and way of living of such member of the force cannot be termed as an injury or disability attributable to military service". With respect, whilst we agree with the Division Bench in Jarnail Singh that an injury sustained while operating a thresher is not attributable to military service, we are unable to share the view of the learned Single Judge that an accident in the course of wedding celebrations can be so ascribed. We find ourselves unable to agree with views of the same learned Judge on behalf of the Division Bench in Jitendra Kumar that making purchases in the market albeit for his requirements at his place of duty and/or suffering injuries in a collision whilst journeying to attend a relative's marriage has any close or remote causal connection with the discharge of military duties. With all respect, we are unable to concur with the verdict of the same Division Bench in Hayat Mohammed. Whether the act which resulted in the disability is in the course of legal or normal activity is irrelevant; the central consideration is whether or not it is attributable

to military service. While we empathise with the Hayat Mohammed because he lost three fingers owing to the fall of a steel girder and stone slabs which was part of the roof of his home, we cannot conceive of this incident being part of or even an incident of military service.

22. The Division Bench decision in Vijay Pal Singh has not been reported and hence we are reproducing it, so as to make this Judgment composite and comprehensive. With respect our esteemed Brothers have not correctly extracted the ratio of Joginder Singh, and hence we find ourselves unable to uphold their opinion:

The petitioner was enrolled as Sepoy in the Indian Army with effect from July 1, 1982. While serving at Gauhati, he received a telegram informing him that his mother was indisposed. The petitioner thereupon applied for Casual leave, which was sanctioned w.e.f. May 27, 1987 to June 3, 1987. The petitioner while on casual leave in his native village met with an accident on May 31, 1987.

It is not disputed by the respondent that the accident took place when the petitioner was on casual leave. It is also not denied that the accident resulted in spinal injury to the petitioner. Our attention has also been drawn to the medical certificate issued by the Senior Advisor, Surgery and Orthopaedics, SCS Centre, M O I/C, which certifies that the injury of the petitioner is attributable to military service.

Learned Counsel appearing for the respondent submits that the petitioner is not entitled to disability pension as the injury was caused while the petitioner was on casual leave and the injury in these circumstances cannot be attributable to military service. Learned Counsel for the petitioner on the other hand has invited our attention to the decision of the Supreme Court in Joginder Singh v. Union of India and Ors. (SLP 3118/93, decided on August 16, 1993) in which it was held that the injury to an army personnel even if sustained while he was on casual leave will still entitle him for disability pension as the army personnel on casual leave is treated to be on duty.

Having regard to the decision of the Supreme Court, we are of the opinion that the petitioner would be entitled to disability pension even though he sustained the injury while he was on casual leave. Accordingly, we direct the respondent to determine the disability pension of the petitioner within one month and the arrears be paid with 12% interest within two months from today. The future disability pension be paid month by month by 7th of each calendar month.

With these observations and directions writ petition is disposed of.

23. We have also perused the detailed Judgment of the Division Bench of this Court in Shri Bhagwan wherein Jarnail Singh also came to be discussed. The Bench observed that - "An individual may be "on duty" for all practical purposes such as receipt of wages etc. but that does not mean that he is "on duty" for the purpose of claiming disability pension under the 1982 Entitlement Rules.... A

person to be on duty is required, under the 1982 Entitlement Rules, to be performing a task, the failure to do which would constitute an offence triable under the disciplinary code applicable to him. A person operating a wheat thresher while on casual leave cannot, by any stretch of imagination, be said to be performing an official duty or a task the failure to perform which would lead to disciplinary action". We respectfully affirm these views of the Division Bench.

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

25. It is a matter of regret that despite our messages and reminders Mr. S.M. Hooda, learned Counsel for the Petitioners in these writ petitions, did not appear or address arguments on behalf of his clients before the Court. Mr. Dalal had argued on behalf of the Petitioners with diligence and detail. Likewise, on behalf of the Union of India Mr. Wadhwa had taken us through the extant Rules and Regulations and several precedents related to the issue before us.

26. Returning to the facts of WP(C) 6959/2004 Ex. Naik Dilbag while availing casual leave from 23.12.1993 to 29.12.1993 met with a road accident on 25.12.1993. After his operation he was placed in Low Medical Category (CEE). Even a bald pleading to the effect that the injury was sustained in the course of military duty is conspicuously absent from the pleadings in the writ petitions. No effort, whatsoever, has been made to establish that the injury was attributable to

military service. The injury was not sustained on the journey to and fro the place of posting. The Petitioner is, therefore, not entitled to Disability Pension. In WP(C) 20348/2005 Ex. NK Ramesh Kumar sustained a head injury in a road accident on Delhi-Panipat Road while he had gone for the admission of his child to school. He was placed in permanently low medical category (CEE). Far from proving that the injury was attributable to military service the Petitioner has failed even to make an asseveration to this effect. The prayer recording Disability Pension is rejected. We decline to record any finding pertaining to the claim under the Army Group Insurance Scheme.

27. Writ Petitions are disposed of accordingly. All pending applications also stand disposed of.