
(2000) 11 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10708 of 1999

Hav. Parma Nand

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 11 P&H CK 0018

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. S.K. Sud, for the Appellant; Mr. Anil Rathee, for the Respondent

Judgement

R.L. Anand, J.—Havildar Parma Nand has filed the present writ petition under Articles 226/227 of the Constitution of India and he prayed for the quashment of the order Annexure P-2. He further prayed that a writ of mandamus be issued against the respondents directing them to grant him the disability pension along with interest.

2. Some facts can be noticed in the following manner. The petitioner joined the Indian Army on 8.2.1978. He availed casual leave for a period of 20 days with effect from 4.10.1990 up to 24.10.1990. On 23.10.1990 he suffered the injuries in an accident. The case set up by the petitioner is that when he was inclined to go to his unit, he visited the house of his sister and when he was returning from the house of his sister he met with an accident. He was treated. He was downgraded into category "C" permanent and was invalided out of service. His disability was assessed at 30%. According to the petitioner when he was in the service of the army, therefore, he is entitled to the benefit of disability pension as the disability is attributable to the army service.

3. The claim of the petitioner was contested by the respondents on the ground that the petitioner was on casual leave and he was returning after visiting his sister and on the way he met with an accident and, therefore, in these

circumstances, it cannot be said that the disability suffered by the petitioner is attributable to the army service.

4. The point for determination in this case is very short. Whether an army personnel, when he is on casual leave, is entitled to the benefit of disability pension or whether he can be considered on duty or not. This point is not coming for consideration for the first time before the law Courts but there is a band of authorities in this regard. This first judgment which can be relied upon is 1997(1) SLR 607 : 1996(4) SCT 426 (P&H) *Sliri Krishan Dahiya v. Union of India*. The other reported judgments in this regard are 2000(3) RSJ 327 *Garmit Singh Butter v. Union of India* 2000(1) SLR 149 *Joginder Singh v. Union of India* 2000(1) SLR 100 : 2000(1) SCT 385 (P&H), *Ex-Naik Manjit Singli v. Government of India* and others. The consensus of all these authorities is that when a member of the army service is on casual leave he will be deemed to be on duty and if he suffers any accident while on casual leave as a result of which he is invalided out of the army service on medical ground, such injury will be attributable to the army service.

5. The learned counsel appearing on behalf of the respondent, however, relies upon a D.B. judgment of Delhi High Court, *Ex-Sep. Jai Singh v. Union of India* decided on 14.10.1997 but this judgment cannot be acted upon in view of the judgment of the Hon'ble Supreme Court and it will be proper on my part if I quote the observations of the Hon'ble Supreme Court as contained in para No. 5, of the Judgment of *Joginder Singh (supra)*, wherein it was observed by their Lordships as follows :-

"The question for your consideration is whether the appellant is entitled to the disability pension. We agree with the contention of Mr. B.K. 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."

Relying upon the observations made by the Hon'ble Supreme Court, this writ is allowed by setting aside the orders, Annexures P-1, and P-2, and directions are, given to the respondents authorities to release the disability pension to the petitioner with effect from the date of his discharge, within three months from today, failing which, the petitioner shall also be entitled to interest at the rate of 12% per annum from the respondents. The petitioner shall appear before the Re-survey Medical Board as and when called upon by the respondent- authorities. There shall be no order as to costs.

6. Petition allowed.