

(1996) 08 P&H CK 0173
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3659 of 1996

Krishan Dahiya

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-08-1996

Acts Referred:

Citation : (1996) 114 PLR 468

Hon'ble Judges : V.S. Aggarwal, J; R.S. Mongia, J

Bench : Division Bench

Advocate : R.K. Malik, for the Appellant; J.S. Rathee, Senior Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—The petitioner was enrolled in the Army Medical Corps on December 1, 1966, as a Clerk (G.D.) and was promoted to the rank of Hawaldar in February, 1984, while he was posted in the Army. Hospital, Delhi Cantt., he proceeded on two days' casual leave from August 1, 1984, to August 2, 1984, for going to his home at village Bindhroli, district Sonapat, due to some urgent work. When he was returning after availing the said casual leave on August 3, 1984, he met with an accident while trying to board the train. One leg of the petitioner was chopped off at the spot of the accident and the other leg had to be amputated by the doctors in the Army Hospital, Delhi Cantt. In fact the leg, which was chopped off at the time of accident, had also to be amputated below knee. He was medically declared to be in the category of "EEE" w.e.f November 4, 1985. Though other retiral benefits were given to the petitioner, yet he was not given disability pension on the ground that the disability was not attributable to Military service and the injury did not exist before or arose during Military service or had been aggravated by the Military service. This order denying the disability pension was conveyed to the petitioner vide letter dated October 24, 1986. He filed an appeal against the aforesaid order. This same was rejected vide order dated May 25, 1996, attached as Annexure P-3. In the appellate order, it

was observed as under:-

"2. On examination of your service/ medical records/documents, the Appeal Examining Authority found that the disease causing disability to you "Crash injury both leg BK Amputation bilateral" was as a result of your falling on railway track while making efforts to catch the train on 3.8.1984 when you were returning after availing casual leave. As per the accident report, you were travelling on your own expense. Since you were travelling on your own expenses, you cannot be treated on duty. Therefore, the disability caused in these circumstances is not attributable to the military service."

The petitioner is stated to have filed representations thereafter to the Secretary to Government of India, Ministry of Defence, copies of which have been attached as Annexure P-4 to P-10. Since no action had been taken on representations, the petitioner filed the present writ petition. On notice of motion having been issued, the respondents have filed their reply.

2. It is not disputed on behalf of the respondents that an officer, subject to the Army Act, while he is on casual leave is considered to be on duty. Moreover, in view of the judgment of the apex Court in *Joginder Singh v. Union of India* 1996(2) S.L.R. 149, and a Division bench judgment of this Court in *Chatroo Ram v. Secretary Defence*, and Ors 1991(1) S.L.R. 678, it cannot be even disputed that an officer subject to the Army Act while on casual leave is to be treated on duty. The only ground for denying disability pension to the petitioner as is clear from the appellate order (portion of the order already reproduced above) is that the petitioner was travelling during the casual leave to and from his place of posting to his home at his own expense and not at public expense and, therefore, he could not be treated to be on duty and, therefore, the accident having occurred while the petitioner was not on duty he was not entitled to disability pension. Learned counsel for the respondent referred to Rule 6(b)(iv) Appendix II of Pension Regulations for the Army, Part I, 1961, which is in the following terms:

"A person subject to the disciplinary code of armed services is on duty when proceeding from his duty station to his leave station or returning to duty from his leave station at public expenses that is, on railway warrant, on cash TA, in Govt. transport or when road mileage is paid for the journey."

On the other hand, learned counsel for the petitioner argued that it is not disputed that the petitioner was entitled to travel on public expense during the casual leave that since the distance from duty station to leave station was so small and it would have taken quite some time to get the formalities completed to travel on public expenses, the petitioner thought of travelling at his own expense. According to him, the rule cannot be read in a manner that even if an officer while on casual leave was to spend for travelling from his own pocket, he would not be treated on duty. If a person subject to Army Act is considered to be on duty while on casual leave, it would not make any difference whether he

travels from duty station to leave station on his own expense or public expense as that cannot be the sine qua non for determining whether the person is on duty or not. He referred to a judgment of the Delhi High Court reported as Harbans Singh Vs. Union of India, , wherein the officer in that case was to travel from Walong in N.E.F.A, his duty station, to Patiala, his leave station. He had travelled from Walong in Johart and from Johart to Calcutta by air at public expense. From Calcutta to Ambala Cantt., he travelled on form D and from there, he travelled on road by his own scooter to his leave station Patiala. It was while travelling on scooter from Ambala to Patiala that he met with an accident which resulted in his disability. The High Court held that though he was travelling at his own expense and by his own conveyance during the part of his journey from Patiala to Rajpura, he was still to be treated on duty and entitled to disability pension.

3. After hearing the learned counsel for the parties, we are of the view that this writ petition is liable to succeed. As observed above it is not disputed and rather admitted that while a person subject to the Army Act is on casual leave, he is to be treated on duty. The only question is that if he is travelling to and fro from his duty station to leave station at his own expenses, would that make any difference to the person for being treated on duty. It is not disputed on the part of the respondents in this case that the petitioner could travel on D from which is a concessional travel in the sense that a person pays for a lower class in the train, but is entitled to travel in the higher class. This means that part of the expense is borne by the person himself. Take for instance in a given case, as is being suggested in the present case on behalf of the petitioner, that a person is to leave in an emergency to his home town because of some mishap. It may take quite some time before he can get permission to travel on public expense or even on D. form. The train is to leave within a short time after the person receives the information and he decides to travel at his own expense and unfortunately meets with an accident. Can it be said that he is not on duty because he was not travelling at public expense. To our mind the answer has to be that still he would be entitled to be treated as on duty. Take for instance another case where the distance between the duty station and leave station is very small. The officer thinks of foregoing the public expense, but unfortunately meets with an accident while travelling to or fro from the duty station to leave station, can he be denied the disability pension on the ground that he was not on duty? The answer, according to us, has to be in the negative. We cannot put such a draconian interpretation to the rule. On one side, the person may forgo the expenses that he may be entitled from the Army authorities for travelling and travel at his own expense, though he may otherwise be entitled to claim those expenses from the authorities and yet if the interpretation to the rule is put as suggested by the respondent, he would be denied the disability pension because he was not travelling on public expense. The person gets the pay for the period he is on casual leave. The expenses for the travel whether borne by the State or the individuals cannot be made the sine qua non for the purpose of determining

whether the person is on duty or not.

4. For the foregoing reasons, we allow this writ petition and quash the order of the respondent-authorities denying the disability pension to the petitioner, which was conveyed to him vide letter dated October 24, 1996, as also the appellate order dated May 25, 1990, copy Annexure P-3. We further direct the respondents to grant disability pension to the petitioner and release the arrears within a period of three months of the receipt of copy of this order from this Court or a certified copy thereof from the petitioner. We make no order as to costs.