

(1970) 11 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Appeal No. 825 of 1968

Major Harbans Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-11-1970

Acts Referred:

Citation : (1971) ILR Delhi 326

Hon'ble Judges : T.V.R. Tatachari, J; Narain Andley, J

Bench : Division Bench

Advocate : B. Kirpal, B.B. Kishore and J.P. Gupta, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) This writ petition has been filed by Major Harbans Singh (Retired) against the respondent the Union of India, through the Secretary, Ministry of defense, regarding his claim for "disability pension".

(2) The petitioner was commissioned in the Indian Army on 3rd May/21st December, 1947, from the Indian Military Academy, Dehra Dun. After joining the Indian Army, the petitioner served at various places and was promoted from time to time till he attained the rank of a substantive Major in the Indian Army. He was in field service in Jammu and Kashmir from 8th October, 1952, to 26th November, 1955, and in N.E.F.A. from 12th December, 1959 to 17th December. 1961.

(3) In December. 1961, he was commanding 71 Heavy Mortar Battery with Battery Headquarters located at Walong in N.E.F.A. While so, he applied for annual leave of 60 days, and the same was sanctioned for the period from 9th December, 1961, to 6th February, 1962, by his Commanding Officer, Col. R.T.K. Foregard. He flew from Walong to Jorhat and from there he travelled by aeroplane to Calcutta. According to the petitioner, before starting from Walong on his annual leave, he had received a letter from the Canteen Stores Department (India) intimating him that a Lambretta Scooter for which he had applied

was being dispatched and he should arrange to collect the same from Station Canteen, Ambala Cantonment. The petitioner averred in his writ petition that before undertaking the journey he obtained permission from his then Commanding Officer. Lt. Col. R.T.K. Foregard through the then Adjutant of the Regiment, late Major (then Lieutenant) R. N. Roy. to break his journey at Ambala Cantonment so as to collect the Scooter and then to proceed from Ambala Cantonment to Patiala, which was his permanent home station, by road on the said scooter. The petitioner travelled by train from Calcutta to Ambala Cantonment, and after collecting the scooter he proceeded to Patiala on the said scooter. While he was going by the scooter to Patiala, he met with an accident on 26th December, 1961, at a place which was about 14 miles from Patiala. He was taken to Rajindra Hospital, Patiala, and from there to the Military Hospital, H Ambala. Thereafter, he had medical treatment in various Military Hospitals, the last of them being the hospital at Lucknow. According to the petitioner, the Military authorities made enquiries from him about the nature of and the manner in which the accident had taken place, and after detailed and thorough examination by the said authorities, a Part II Order (Annexure B) dated 6th March, 1963, was published by the Army Headquarters (Adjutant General's Branch) "in which it was stated that the petitioner had received an injury, viz.- "Fracture right parietal and temporal bones with hemiplegia right", and that the said injury was attributable to military service in peace area",

(4) The petitioner was brought before a Medical Board on 30th of October, 1963, for being invalided out of Military service. The Board met at the Military Hospital, Lucknow, and declared him unfit for further Military service on account of "severe head injury (effects of)".

(5) On 29th January, 1964, a letter (Annexure C) was issued for and on behalf of the Military Secretary and released from the Army Headquarters (Military Secretary's Branch at New Delhi, wherein it was stated that the petitioner was found to be permanently unfit for any form of Military service by a Medical Board held at Military Hospital at Lucknow on 30th October, 1963, and was placed in medical category "E", that a competent medical authority had accepted the findings of the Board, that the petitioner submitted an appeal for reconsideration of his medical category, and the same was forwarded to the Government, that the Government accepted the findings of the Medical Board and ordered that the officer be invalided, and that accordingly the petitioner was released from the Army with effect from the date of the said letter i.e. 29th January, 1964.

(6) Rule 48 of the Pension Regulations for the Army provides that an officer who is retired from Military service on account of disability which is attributable to or aggravated by such service and is assessed at 20% or over may, on retirement, be awarded disability pension. It further provides that the question whether a disability is attributable to or aggravated by Military service shall be determined under the Rules in Appendix II. The said Appendix II contains Rules as regards

entitlement of an officer to disability pension. Rule 2 thereof provides that disablement shall be accepted as due to Military service provided it is certified that the disablement is 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 thereby. Rule 3 in the Appendix provides that there must be a casual connection between disablement and Military service for attributability or aggravation to be conceded. Rule 4 provides that in deciding on the issue of entitlement all the evidence both direct and circumstantial will be taken into account and the benefit of reason-able doubt will be given to the claimant. Rule 6 provides that in respect of accidents, injuries sustained when the man is on duty will be deemed to have arisen in or resulted from Army/Naval/Air Force Service unless they were self inflicted or due to serious negligence or misconduct in which case the question of withholding the pension in full or in part will be considered. It further provides that:-

(7) A person is also deemed to be "on duty" during the period of participation in recreation, organized or permitted by service authorities and of traveling in a body or singly under organized 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."

(8) According to the petitioner, since it was stated in the Part 11 Order (Annexure B), dated 6th March, 1963, that the petitioner had received an injury which was "attributable to Military service in peace area", he expected that he would be given disability pension. But, he received a letter (Annexure D), dated 28th July, 1965, from the under Secretary to the Government of India, Ministry of defense, in which it was stated that the President had decided that the petitioner's disability, viz. "severe head injury (effects of)" on account of which he was invalided out of service, could not be regarded as either attributable to or aggravated by his service, and that the petitioner was not, Therefore, entitled to disability pension under the existing rules. The petitioner preferred an appeal (Annexure E) to the Secretary, Ministry of defense, on 30th September, 1965, under the provisions of the Army Order No. 503 of 1964 (Annexure F) which entitled an officer to file such an appeal.

(9) In the meantime, the petitioner received a letter, dated 11th August, 1965, from the Controller, defense Accounts (P) and a letter, dated 30th August, 1965, from Army Headquarters, Adjutant General's Branch, informing him that in view of the aforesaid letter, dated 20th July, 1965 (Annexure D), he was not entitled to any disability pension, and that he should select whether to receive gratuity under the new pension code or pension under the old pension code. The petitioner replied to the said letters stating that in view of the fact that he had filed an appeal against the decision of the Government of India contained in the letter, dated 28th July, 1965, it was not possible for him to make a selection regarding pension under the new or old pension codes.

(10) In reply to his appeal, the petitioner received a letter (Annexure G), dated

10th November, 1965, from the Under Secretary, Ministry of defense, in which it was stated that the petitioner's claim to a disability pension was reconsidered, but the Government of India found no reason to alter the decision already conveyed under the letter (Annexure D), dated 20th July, 1965. The petitioner then preferred another appeal on 3rd January, 1966, to the Secretary, Ministry of defense, stating that no reasons were recorded in the letter, dated 10th November, 1965, and praying that he may be granted the disability pension. This appeal also was rejected and the petitioner was informed about the same by a letter (Annexure H-I), dated 27th January, 1966, from the Under Secretary, Ministry of defense. In this letter, it was stated that his claim to a disability pension was re-considered, but as the petitioner had not brought out any new point, the Government of India found no reason to alter the decision already conveyed under the letter, dated 10th November, 1965. It was further stated that-

"AS regards the reasons for rejection of your case, I am to inform you that at the time of accident, you were traveling on your own scooter and without the permission of your higher authorities. Under the existing rules, you were not on duty at the time of accident and your disability which is result of that accident cannot be viewed as attributable to or aggravated by Military service."

(11) In other words, according to the said letter, the petitioner's claim for disability pension was rejected for two reasons, Viz..-

(1)that he was traveling on his own scooter and with- A out the permission of his higher authorities; and (2) that under the existing rules, he "was not on duty at the time of the accident and his disability which was a result of that accident could not be viewed as attributable to or aggravated by Military service.

(12) The petitioner then wrote a letter (Annexure 1), dated 9th April, B 1966, to the then Chief of Army Staff, General J. N. Chaudhuri, praying that his case may be looked into again and suitable orders be passed in his favor. In reply to the said letter, the petitioner received a letter (Annexure J), dated 19th April, 1966, from Major General J. K. Khanna, Mc, the then Deputy Adjutant General, in which it was stated that the Adjutant General's Office was representing the petitioner's case to the Government of India, and that the petitioner would be informed about the result as early as possible. Subsequently, the petitioner received a letter, dated 19th May, 1966, from the Ministry of defense in which it was stated that his appeal would be submitted to the defense Minister's Appellate Committee on Pensions in due course. Thereafter, the petitioner received letter, dated 30th August, 1966, from the Office of the Adjutant General, stating that the petitioner's appeal, dated 9th April, 1966, would be submitted to the defense Minister's Appellate Committee on pensions, and that the petitioner could, if he so desired, submit further arguments in support of his claim. Accordingly, the petitioner submitted further arguments by a letter (Annexure K), dated 12th November, 1966. Ultimately, the petitioner received a letter (Annexure N), dated 30th April, 1968, from the Under Secretary to the Government of India, Ministry

of defense, stating that the Government of India decided after consulting the defense Minister's Appellate Committee on Pensions that the disability, viz. "severe head injury (effects of)" on account of which the petitioner was invalided was neither attributable to nor aggravated by his Military service, and that disability pension was not, Therefore, admissible to him under the rules.

(13) The petitioner then issued a notice (Annexure O) u/s 80 of the CPC through his counsel on 1st August, 1968. to the Secretary, Ministry of defense, Government of India, and as he did not receive any reply to it, he filed the present writ petition on 29th October, 1968, praying-

(A)that the orders (Annexures B, G, H-I and N), dated 28-7-1965, 10-11-1965, 27-1-1966 and 30-4-1968 " respectively, be quashed; and * (b) that the respondent be directed to pay disability pension to the petitioner calculated in the manner provided under the relevant rules with effect from 29th January, 1964, the date on which he was discharged from the Army.

(14) In opposition to the writ petition, a counter-affidavit of Shri J. C. Paul, Under Secretary, Ministry of defense, Government of India, was filed on behalf of the respondents. It was averred in the said counter-affidavit, inter alia, that the 71/44 Heavy Mortar Regiment was located at Walong and during the Chinese aggression in 1962, all the unit documents were destroyed by burning before abandoning the position hastily against the enemy threat, that for that reason the Government were not in a position to check the correctness of the averments of the petitioner that he had obtained permission from higher authorities to break his journey at Ambala Cantt. and to travel from Ambala to Patiala on his own scooter, that the Part Ii Order referred to by the petitioner was only a recommendation of the Army authorities, but the question of entitlement to disability pension was to "be considered by the Government in accordance with the provisions of the entitlement rules, that under the rules, there must be a causal connection between disablement and Military service for attributability or aggravation to be conceded, that the petitioner was not traveling at "public expense" at the time of the accident. and was, Therefore, considered to be not "on duty" at that material time, and that since the causal connection between the disablement and Military service could not thus be established, the disability of the petitioner was held by the Government as neither attributable to nor aggravated by Military service, and the petitioner was not, Therefore, entitled to disability pension.

(15) Shri B. N. Kirpal, learned counsel for the petitioner put forward three contentions. He contended firstly that since the Army authorities had come to the conclusion in the Part Ii Order (Annexure B) issued by them that the injuries received by the petitioner were "attributable to Military service in peace area", it was not open to the civilian authorities to come to a contrary conclusion and contend that the injuries were not attributable to Military service. There is g no force in this contention. It is true that the Part It Order (Annexure B) No. 254, dated 6th March, 1963, published by the Army Headquarters, Adjutant General's

Branch, states that the petitioner had received that injuries described therein, and that they were attributable to Military service in peace area. According to the counter affidavit, the said order was only a recommendation of the Army authorities. The petitioner filed along with his rejoinder a copy of p the relevant provisions in the defense Services Regulations as Annexure "V. It appears from it that all orders of a Unit will be published in two parts-Part I and Part II, and Part II orders will be issued on matters affecting a soldier's pay, service and records. But, there is nothing in the said provisions to show that the Part II Order was a decision of the Army authorities which was binding on the civilian authorities in the matter of taking a decision as to whether the officer concerned was entitled to disability pension under the entitlement rules. The petitioner himself had stated in his writ petition that when he was in the hospital, the Military authorities made enquiries from him about the nature and the manner in which the accident had taken place, and that after detailed and thorough examination by the said authorities, the Part II Order was published by the Army Headquarters (Adjutant General's Branch). The said statement shows that what was stated in the Part II Order by the Army authorities was just their view regarding the attributability of the injuries to Military service expressed on the basis of the information given by the petitioner. The question of the entitlement of the petitioner to disability pension is obviously a matter for consideration and determination by the civilian authorities and not the Army authorities, and in the absence of any specific provision to the contrary, the said view expressed by the Army authorities cannot be held to be final and binding on the civilian authorities for the purposes of the determination of the question as to whether the petitioner was entitled to disability pension or not. The contention of the learned counsel cannot, Therefore, be accepted.

(16) The second contention was that the letter (Annexure D), dated 28th July, 1965, whereby the petitioner was informed that the President had decided that his disability could not be regarded as either attributable to or aggravated by his service, and the letter (Annexure G), dated 10th November, 1965, whereby the petitioner was informed in reply to his appeal that the Government of India found "no reason to alter the earlier decision, did not mention the reasons for the decision and the rejection of his appeal, that it was only when he preferred another appeal (Annexure H) on 3rd January, 1966, that a reply (Annexure H-I) dated 27th January, 1966, was sent to the petitioner rejecting the said appeal and mentioning that the reason for the rejection of his appeal was that at the time of the accident he was traveling on his own scooter and without the permission of his higher authorities, that the said reason was abandoned in paragraph 6 of the counter-affidavit as it was found that there was abundant evidence to show that the petitioner had obtained the necessary permission from his higher authorities, and a new ground was put forward for the first time in the said paragraph that the material point was not whether the petitioner had obtained permission to travel by scooter or not, but whether the journey performed was at public expense, and that it was not open to the respondent to

put forward the new ground as it was just an after thought. This contention also has no force. The reasons for the decision against the petitioner were mentioned in the letter Annexure H-I) as under :-

" AS regards the reasons for rejection of your case, I am to inform you that at the time of accident, you were traveling on your own scooter and without the permission of your higher authorities. Under the existing rules you were not on duty at the time of accident and your disability which is the result of that accident, cannot be viewed as attributable to or aggravated by Military service."

(17) It is clear from the above extract that two reasons and not one were mentioned in the said letter, viz. (1) that the petitioner was traveling in his own scooter and without the permission of his higher authorities, and (2) that under the existing rules he was not on duty at the time of the accident, and it was then stated, apparently for the said two reasons, that his disability which was the result of that accident could not be viewed as attributable to or aggravated by Military service. It is not, Therefore, correct to say that the second reason was an after thought and was put forward for the first time counter affidavit. The second contention of the learned counsel is thus without a basis and has to be rejected.

(18) However, in paragraph 6 of the counter-affidavit, it was first stated that the Government was not in a position to substantiate the statement of the petitioner in paragraph 6 of his writ petition, apparently referring to the statement that he had obtained the permission of his higher authorities, and it was then stated that the material point was not whether the petitioner had obtained permission to travel by scooter or not, but whether the journey performed was at public expense. Thus, the first reason mentioned in the letter (Annexure H-I), dated 27th January, 1966, was not sought to be maintained, and reliance was placed on the second reason only. Shri Brij Bans Kishore, learned counsel for the respondent also proceeded on the said basis and did not seek to rely upon the first reason, and confined his arguments to the second reason. This leads us now to the third contention of Shri Kirpal.

(19) The third contention was that the petitioner was in fact proceeding to his leave station at public expense at the time of the accident, and was, Therefore, "on duty" within the meaning of Rule 6(c) of the Rules in Appendix Ii to the Pension Regulations for the Army. As already pointed out. Rule 48 of the Pension Regulations for the Army provides that an officer who is retired from Military service on account of disability which is attributable to or aggravated by such service, may be awarded disability pension, and that the question whether a disability is attributable to or aggravated by Military service shall be determined under the Rules in Appendix Ii to the said Regulations. Rule 2 in Appendix Ii provides that disablement shall be accepted as due to Military service provided it is due to a wound or injury which arose during Military Service. Rule 6 in Appendix Ii provides that in respect of accidents, injuries sustained when the man is "on duty" will be deemed to have been arisen in or resulted from Army Service. Clause (c) of Rule 6 provides that a person is considered to be "on

duty" when proceeding to his leave station "at public expense".

(20) The question, Therefore, is as to whether the petitioner was, at the time of the accident, proceeding to his leave (home) station, Patiala, "at public expense". The contention of the petitioner is that at the time of the accident he was proceeding to his leave station "at public expense", while on the other hand the contention of the F respondent is that he was not proceeding to his leave station "at public expense".

(21) For a determination as to which of the contentions is correct, reference has to be made to Rule 341 of the Travel Regulations, a copy of which has been filed by the respondent as Annexure "R-1". Clause (i)(a) of the Rule provides that all Commissioned Officers irrespective of their rank will be allowed, once in each calendar year, free conveyance to and from the place where they intend to spend their annual leave subject to the journey not exceeding 600 miles in each direction, and that the officers will travel "on warrant". It is common ground that travel "on warrant" means that the officers do not have to pay any railway fare while traveling in first class. Clause (i)(b) provides for travel (distance being up to 600 miles each way) by modes of conveyance other than rail. i.e. by air, steamer, bus or private car etc., in which case the officers will be entitled only to a certain amount of refund specified in the clause. Clause (II) provides for a concession-where the Officers travel.. for a distance beyond the 600 miles limit. The said clause runs as follows:-

"(II)(A)The concession will be applied as under in cases where officer and their wives, proceeding to the same station desire to travel beyond the 600 miles limit:- (1) If the officer holds the rank of Colonel/Captain (I.N)/Group Captain or above, he will be allowed a warrant for himself for a distance of 600 miles in each direction or cash compensation in lieu thereof as under :- B (A) To the officer having a child/children-Rs. 140.00 each for self and wife. (B) To the officer having no child-Rs. 110.00 each for self and wife. Note "-The amount of Rs. 140.00 admitted vide (A) above represents an excess of Rs. 30.00 over the existing First Class rail fare for 1200 miles. This excess amount is intended to cover part of the expenses on leave travel of .a child/children of the officer. (2) If the officer is of the rank of Lt. Colonel/ Commander/Wing Commander or below, he will be granted Rs. 70". A similar sum will be allowed for his wife. Form "D" (AFT 1709-A) will be issued to each of them from the starting station to destination and back and any excess over the amount of Rs. 70 will be paid by the officer and his wife. When the journey is performed by air-conditioned third class in DeLuxe train the concession will be limited to the cost of actual rail fare by Air-conditioned third class accommodation for a journey of 600 miles. (b) In cases where the officers and their wives travel to leave stations situated beyond 600 miles by modes of conveyance other than by rail (;.c. by air, steamer, bus or private car, etc.), the refund admissible will be as under :- (1) Colonels/Captains (IN.)/Group Captains and above and their wives-The proportionate actual expenditure for 600 miles each way or Rs. 140.00 (to the officers having a child/

children or Rs. 110.00 to the officers having no child) which ever is less. (2) Lt, Colonels/Commanders/Wing Commanders and below and their wives-Cost of Form "D" for the entire journey, plus proportionate actual expenditure for 600 miles each way of Rs. 70 "- whichever is less. Note :-Officers and their wives who travel during "leave in the same private car will, when claiming refund of actual expenses under clauses (i)(b) and (ii) (b) above, furnish the following certificate :- "Certified that I and my wife travelled by private car from to and that the expenditure incurred on conveyance was not less than the amount claimed on this account from the Government."

(22) In the present case, the petitioner was at Walong when he was granted annual leave of 60 days, and he was to proceed on his annual leave from Walong in N.E.F.A. to Patiala which was his permanent home station or leave station. In other words, his destination was Patiala. He travelled by aeroplane from V/along to Jorhat and from Jorhat to Calcutta. It is common ground that his travel from Walong to Calcutta was by free conveyance i.e. wholly at public expense. From Calcutta he travelled by train on Form "D" up to Ambala Cantt., and from there he travelled on road by his own scooter to his leave station Patiala. It was while traveling on the scooter that he met with an accident which resulted in his disability. It is stated at the Bar that the distance between Calcutta and Ambala Cantt. is about 1100 miles. The contention on behalf of the respondent is that by virtue of Rule 341, the petitioner has to be held to have travelled by free conveyance i.e. at Government or public expense up to 600 miles from Calcutta, and beyond the 600th mile he has to be held to have not travelled at "public expense, and that since the accident had occurred between Ambala Cant and Patiala at a place which is about 14 miles from Patiala, it cannot be held to have occurred while the petitioner was traveling at public expense.

(23) Admittedly, the petitioner, in his journey from Calcutta, travelled on Form "D", and it is common ground that travel on Form "D" means travel by first class but paying second class Railway fare only. A copy of the Form "D" has been furnished by the learned counsel for the respondent. The relevant portion thereof runs as under:-

" TO The Station Master Station Railway. Certified that (rank, name, corps of department) ("the family of) who is Military employ". Is traveling on leave at his own expense ("accompanied by his family consisting of (members) are traveling at their own expense, and (he is/they are) entitled to travel first class from: to on payment of second class (fare Fares)."

(24) Shri Brij Bans Kishore, learned counsel for the respondent relied on the said form and argued that the petitioner who travelled from Calcutta on form "D" was specifically described as traveling at his own expense, and that he has, Therefore, to be held to have "not travelled at public expense. It is true that the form "D" describes the holder thereof as traveling at his own expense. But, this has to be under stood in the light of the provisions in Rule 341 of the Travel

Regulations. As the distance between Calcutta and Patiala is more than 600 miles, the learned counsel for both the parties are agreed that it is clause (ii) that applies to the present case. Clause (ii)(a)(i) provides that if the officer holds the rank of Colonel/Captain (I.N.)/Group Captain or above, he will be allowed a warrant for a distance of 600 miles in each direction or a certain amount of H compensation specified in the sub-clause in lieu thereof. Clause (ii) (a) (2) provides that if the officer is of the rank of Lt. Colonel/ Commander/Wing Commander or below, he will be granted Rs. 70.00, and that form "D" (AFT 1709-A) will be issued to him "from the starting station to destination and back" and any excess over the amount of Rs. 70.00 will be paid by the officer. Clause (ii)(b) provides that in cases where the officer travels to leave station situated beyond 600 miles by modes of conveyance other than rail (i.e. by air, steamer, bus or private car)-

(1) a specified amount of refund will be admissible to him if he is a Colonel/Captain (I.N.)/Group Captain and above, and (2) a specified amount of refund will be admissible to him if he is a Lt. Colonel/Commander/Wing Commander and below.

(25) In the case of an officer of the rank of the petitioner, clause (ii)(b) (2) states that the refund admissible to him is "the cost of Form D for the entire journey, plus proportionate actual expenditure for 600 miles each way or Rs. 70.00 whichever is less".

(26) Thus, while clause (ii)(a) provides for a case where the officer travels by rail to his leave station which is beyond 600 miles, clause (ii)(b) provides for a case where the officer travels by a mode of conveyance other than rail to his leave station which is beyond 600 miles. In the former case, an officer of the rank of the petitioner is granted a form "D" from the starting station to destination and back plus a sum of Rs. 70.00, and any excess over the amount of Rs. 70.00 will have to be paid by the officer himself. In the latter case, an officer of the rank of the petitioner is granted the cost of form "D" for the entire journey (meaning from the starting station to the destination and back) plus proportionate actual expenditure for 600 miles each way or Rs. 70.00- whichever is less. In other words, where the leave station is situated beyond 600 miles, part of the expense only is given to the officer by the respondent and any excess amount is to be borne by the officer himself. The officer thus travels partly at public expense and partly his own expense.

(27) Therefore, the resulting position in the present case is that the travel by the petitioner from Calcutta to Patiala was partly at public expense and partly at his own 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 vision 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 traveling "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.

(28) For the above reasons, we allow the writ petition, quash the orders (Annexure B, G, H-I and N), dated 28-7-1965, 10-11-1965. 27-1-1966 and 30-4-1968 respectively, and direct the respondent to E pay disability pension to the petitioner calculated in the manner provided under the relevant rules with effect from 29th January. 1964. the date on which he was discharged from the Army. The petitioner is entitled to his costs of this writ petition which are fixed at Rs. 250.00.