

(1999) 10 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3835 of 1997

Manjit Singh, Ex. Naik

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Pension Regulations for Army, 1961 — Regulation 173

Citation : (2000) 124 PLR 490

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : K.S. Gill, for the Appellant; C.M. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—A person subject to Army Act, if suffers an injury, when on casual leave, which ultimately resulted in his invalidation from the army service, on medical ground, would be entitled to receive the benefits of disability pension or not, is the precise question that falls for determination in this writ petition.

2. The petitioner, Ex. Naik Manjit Singh, was enrolled in Bengal Engineering Group in Draftsman Trade on 3rd May, 1963. The petitioner continued to serve and was posted at Headquarter 7th Infantry Division at Ferozepur Cantt. as Naik in the year 1973. The petitioner had proceeded on pre-sanctioned 10 days casual leave to attend his younger brother's marriage at his native place. The petitioner left his Headquarter on 27th November, 1973. However, while returning from the place of marriage in a jeep, to his native place, the jeep in which he was travelling met with the accident with a Truck on 3rd December, 1973. The petitioner was seriously injured and after some treatment was evacuated at military hospital at Ferozepur, the petitioner was treated at various medical hospital and the Medical Board had placed him under Low Medical Category "EEE" with 100% disablement for army service. On 20th October, 1976, the petitioner was boarded out of military service with 100% disability. His case for

disability pension was processed by his Unit, but the claim of the petitioner was rejected by the CCDA (P) Allahabad. On 26th September, 1977, the petitioner filed an appeal under the rules against the rejection of his request for disability pension but the same was also rejected, vide order dated 26th December, 1981, Annexure P-6. Thereafter the petitioner appears to have served a legal notice u/s 80 of the CPC after a considerable lapse and the case was also taken up by the President of the Indian Ex-Service League, Union Territory Chandigarh with the Central Government but the same was not accepted by the government. The representation was also rejected, though the notice served through the counsel remained un-replied, compelling the petitioner to file the present writ petition under Article 226/227 of the Constitution of India.

3. Upon notice, the respondents filed a detailed reply. Preliminary objections were taken with regard to territorial jurisdiction of this Court as well as that the writ petition was liable to be rejected on the ground of delay and laches. On merits, it was stated that the petitioner has not stated the correct facts in the writ petition. The petitioner had not taken 7 days casual leave but had taken 10 days casual leave from 27th November, 1973 to 6th December, 1973. It is conceded that while the leave, he met with the accident on 3rd December, 1973. His admission to the military hospital, at Ferozepur on 5th December, 1973 as well as treatment in other military hospitals is also not disputed. The case pleaded by the respondent for rejection of the claim of the petitioner in the present case is as under:-

"The petitioner's disability Pension Claim was submitted to the CCDA (P), Allahabad and the same was rejected as his invaliding disability (ID) was not accepted as attributable to or aggravated by military service. His appeal against this rejected order was also rejected by the Government of India, Ministry of Defence. This fact was communicated to the petitioner by them vide registered letter No. 223674/R-68/Pen-A dated 29th August, 1978. A copy of this letter is annexed herewith as Annexure R-1.

3) That the date of enrollment of the petitioner is denied being wrong. In fact, the petitioner was enrolled in the Army on 30th May, 1963. Rest of the para is not denied.

4) That this para is denied being wrong and baseless. The true position regarding date and duration of the Casual Leave taken by the Petitioner has already been explained in para 2 above. In fact, the petitioner got injured while returning to his village along with the marriage party after attending his brother's marriage. Besides, the averment in this para that the petitioner was injured while returning to his duty runs contrary to the averments in para 2 wherein it has been stated that he suffered injury on his return journey from his brother's marriage. The true position has already been explained in reply to para 2 above, which is reiterated herein..."

4. As is clear from the above, the language of the letter dated 26th December,

1981 (Annexure P-6 to the writ petition), it is clear that the appeal of the petitioner for grant of disability pension was primarily rejected on the ground that the invaliding of the petitioner was neither attributable to nor aggravated by the military service. The respondents on the identical line had earlier rejected the representation of the petitioner for the same relief.

5. From the above narrated facts, there is no dispute that the petitioner was invalidated from the military service on medical ground and his disability was more than 20% at the time of discharge from the army. In the medical report placed on record, the petitioner was brought on Lower Medical Category unfit for military service with 100% disability. No medical report has been placed before this court where it has been stated by the Medical Specialists or any other competent authority that the injuries suffered by the petitioner were not during the course of his employment.

6. There are two main arguments raised before this Court on behalf of the Union of India (a) that the claim of the petitioner is not maintainable, in view of the serious delay and laches on the part of the petitioner; and (b) the petitioner was on casual leave when he suffered the aforesaid injuries, which resulted in his invalidation from army service with 100% disability, as such, the same are neither attributable to nor aggravated by army service.

7. As far as the first contention raised on behalf of the Union of India is concerned, the petitioner had made some representation after this appeal was rejected by the appellate authority vide its order dated 26th December, 1981. On 6th February, 1982, the petitioner was also informed, vide Annexure P-7 to the writ petition, that his request had been declined. Thereafter the petitioner remained silent for some time. Ultimately, on 30th September, 1986, the petitioner served a legal notice upon the respondents claiming disability pension, which, of course, was never replied to by the respondents. There is some delay on the part of the petitioner to approach the Court but such delay, in view of the principle enunciated by various pronouncements, cannot bar the claim of the petitioner, the Hon'ble Supreme Court of India has held that denial of grant/sanction of pension, is a continuing cause of action, as such, limitation will not debar the claim. In regard reference can be made to the case of S.R. Bhanrale Vs. Union of India and others, and a judgment of this Court in the case of Loka Ram Vs. Haryana State Electricity Board and Another, .

8. Further a Division Bench of this Court in the case of Sardara Singh v. Union of India 1992(6) S.L.R. 683 held as under:-

"4. It is no doubt correct that the petitioner has filed the writ petition after a lapse of almost 40 years. A perusal of the order, quoted above, however, shows that the petitioner had been regularly representing to the authorities and his claim was declined only on the ground that the disability was not attributable to or aggravated by military service. This being factually incorrect, we have no alternative but to quash the order. Further more, in the circumstances of the

case and more particularly the continuing disability (-sic-) delay in approaching the Court even in the matter of pension cannot completely defeat his claim. We consider it to be in the interest of justice to allow his claim for the payment of pension. However, on account of delay, we decline the petitioner's prayer for the payment of interest....."

9. This Court is bound by the principle spelt out by the Division Bench and more so when the facts of the present case are more or less similar to that case (Sardara Singh's case).

10. In so far as the second contention is concerned, the enabling provisions for grant of disability pension is Regulation 173 of the Army Pension Regulations 1961 Part-I, which reads as under:-

" Primary conditions for the grant of disability Pension:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service is non-battle casualty 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 rule in Appendix II."

Appendix-II which refers in turn Regulations 48, 173 and 185, deals with the entitlement of casualty pensionary and the instructions, which are required to be followed. Instructions 5 to 9 of the said instructions reads as under:-

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-

PRIOR TO AND DURING SERVICE

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

6. Disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that:-

(a) the disablement is due to a wound, injury or disease which-

(i) is attributable to military service, or

(ii) existed before or arose during military service and has been and remains aggravated thereby. This will also include the precipitating/hastening of the onset of a disability.

(b) the death was due to or hastened by-

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

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

7. Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

8. Attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority.

ONUS OF PROOF

9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."

11. The cumulative effect of the above regulations is that an injury suffered during the course of employment in the army, would normally be attributable to army service, unless contrary is shown. Under instruction 9, the onus is deliberately placed upon the employer and not on the employee. The thing done in the normal course and having normally nexus to the conditions of service, would be treated and taken as attributable to army service.

12. A Division Bench of this Court in the case of Jarnail Singh Vs. Union of India (UOI) and Others, while replying upon various judgments of the Hon"ble Supreme Court and referring to various rules, held as under:-

"13. The expression "attribute" means to ascribe, assign, consider as belonging that which is inherent in or inseparable from (The Chambers Dictionary 1994 Edition). Attributability means attribution to its principle source. It may not be possible to precisely define the expression "attributable" which could apply as a matter of principle to the cases of the present kind. But this expression has now been well understood and explained in various pronouncements even in English Law. It may be appropriate to refer to the meaning described in the Butterwords "Words and Phrases Legally Defined, Volume 1: A-C which is as follows:-

"These words have been considered in a number of cases and I do not wish to add to the explanations and definitions which have been given. Counsel for Mr. Walsh submits that it is a wider concept than "directly caused by", or "caused by or resulting from", but he accept that it involves some nexus between the effect and the alleged cause. He suggest that "owing to" or "a material contributor cause" or "a material cause in some way contributing to the effect" may be synonymous. Lord Raid in Central Asbestos Co. v. Dodd (1972)2 ALL.E.R. 1135, said: "..attributable. That means capable of being attributed. "Attribute" has a number of cognate meanings; you can attribute a quality to a person or thing,

you can attribute a product to a source or author, you can attribute an effect to a cause. These essential element is connection of some kind. "Suffice it to say that these are plain English words involving some casual connection between the loss of employment and that to which the loss is said to be attributable. However, this connection need not be that of a sole, dominant, direct or proximate cause and effect. A contributory casual connection is quite sufficient. Walsh v. Rother District Council (1978)1 E.R. 510 at 414, per Donaldson J."

The act, omission or commission which results injury to the member of the force and consequential disability must relate to military service in the some manner or the other. In other words, the act must flow as a matter of necessity from military service.

14. As noticed in the aforesaid case a member of the force who proceeds on casual leave or returns from casual leave or while on casual leave goes to get a ticket or warrant for his return etc. suffers an injury which ultimately results in invalidating from Army, of the member of the force, that could be termed as an injury or disability attributable to military service. While on the other hand a person who may be doing some act at home which even remotely does not fall within the scope of his duties of functions as a 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 services. For example a person who gets drunk while on casual leave fights with" his neighbours, inflict injuries or suffer injuries, resulting in some disability to him as a result of which he is invalided out of Army with some extent of disability, to our mind cannot be said to be a disability attributable to or aggravated by military service."

13. Learned counsel for the Union of India also relied upon Jarnail Singh's case (supra) to contend that act of the petitioner had no nexus to the military service and as such the petitioner was not entitled to receive disability pension. Learned counsel further placed emphasis on the concept of "no nexus" between "nature of the act" and the "military duty" based on the said judgment". In this regard, I would refer to para 22 of the said judgment, which reads as under: -

"22. We are unable to find this silver lining of nexus between the injury suffered by the petitioner in the present case and nature of functions which would bring the same within1 the expression "attributable to military service". Consequently, we dismiss this writ petition, however, without any order as to costs."

14. The above facts are not applicable to the present case and the enunciated principle of nexus has no application to the present case as I would shortly proceed to elucidate.

15. The foremost and important question is what is casual leave and what are its consequences in relation thereto the service of armed forces. At this stage, it will be relevant to refer to clause 10 which defines casual leave in contract to annual leave under the

CASUAL LEAVE

10. Casual leave counts as duty except as provided in for Rule 11(A).

It cannot be utilised to supplement any other form of leave of absence, except as provided for in clause (A) of Rule 72 for personnel participating in sporting events and tournaments.

Casual leave due in a year can only be taken within that year. If, however, an individual is granted casual leave at the end of the year extending to the next year, the period falling in the latter year will be debited against the casual leave entitlement of that year.

ANNUAL LEAVE

11. Annual leave is not admissible in any year unless an individual has actually performed duty in that year. For purposes of this rule, an individual on casual leave shall not be deemed to have actually performed duty during such leave. The period spent by an individual on the "Sick List Concession" shall, however, be treated as actual performance of duty.

16. The rule making authority is thus, conscious of the fact that a person on casual leave will not be performing his duties which he ought to be performing while actually performing his duty in army but still such leave has been treated to be his duty.

17. In fact, this question is no more res integra and stands settled by the judgment of the Hon"ble Supreme Court of India in the case of Joginder Singh (Lance Dafadar) v. Union of India and Ors.1996(2) S.L.R. 149 where the Court held as under:-

"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."

18. Admittedly, the petitioner had been sanctioned casual leave. The purpose for seeking casual leave was duly disclosed by the petitioner to the respondents. His casual leave was sanctioned for a definite purpose, i.e. "to attend the marriage of his brother". The very effect of this undisputed position would be that casual leave by very nature of things and within the ambit and scope of afore-referred rules would have to take within its fold. The purpose for which the casual leave was asked for and its sanction for that very purpose without any reservation by the employer cannot take the doing incidental act thereto during the leave outside the scope of army duty. It has been specifically recorded that no

negligence is attributable to the petitioner. He reported to his army hospital at the very first available opportunity and as such no fault is attributable to the petitioner which could even raise an iota of doubt in the genuinity to his case for disability pension under the rules.

19. A Division Bench of this Court in the cases of Union of India v. Gurnam Singh 1998(2) R.S. J. 478, and Shri Krishan Dahiya v. Union of India and another 1996(4) R.S. J. 503 have taken the view that if a person going from his home to his place of posting or returning from his home to place of posting suffered disability when on casual leave cannot be denied the pensionary benefits. In the case of Gumam Singh (Supra), the Court took the view that presumption under the instructions is favourable to the claimants.

20. For the aforestated reasons, I have no hesitation in coming to the conclusion that a member of the armed forces when on casual leave for specific purpose such leave would be deemed to be on duty. However, if he suffers any accident while on casual leave as a result of which he is invalidated out of the army service on medical ground, the injuries having resulted in disability of the above nature, the injuries would be attributable to army service. Thus, I answer the question in the affirmative.

21. Resultantly, the writ petition is allowed. The order passed by the respondent dated 12.7.1977 is hereby quashed. The respondents are directed to grant to the petitioner disability pension in accordance with rules. However, the respondents would have the right to subject the petitioner re-survey medical board for continuance of the relief of disability pension. There shall be no order as to costs.