
(2001) 04 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 7056 of 1999

Meera Devi

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Citation : (2001) 04 PAT CK 0004

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—Initially the writ petition was filed on behalf of Shri Jai Kumar Singh upon whose death his wife, Meera Devi, has been substituted vide order dated 20th September, 1999.

2. In this writ petition, the Petitioner is aggrieved by the order dated 25th February, 1999, contained in Annexure 1, whereby and where under the claim of her husband for grant of disability pension has been rejected.

3. In short, the relevant facts are that the Petitioner's husband was enrolled in the Army on 6.6.1987 and invalidated out of service with effect from 5.5.1995 with ID GUN SHOT WOUNDS which were sustained at his home town while he was on annual leave. It so happened that there was some altercation between the brother of the Petitioner's husband and some other persons for boarding a tempo. The brother of Petitioner's husband alongwith some others were already going in the tempo when one Ashok Singh came and asked them to leave the tempo. The brother of the Petitioner's husband Yogeshwar Rai did not agree whereupon Ashok Singh threatened him with dire consequences. He alongwith his associates came to the village of the Petitioner's husband on the next day in the night and attacked Yogeshwar Rai and others upon which the Petitioner's husband with some villagers in order to defend them countered and fought with them. In course of this one villager died and the Petitioner's husband received gun shot injury on account of which he became disabled. The Petitioner's husband was thereafter treated in Military Hospital, Danapur and Lucknow. The Medical Board of Command Hospital, Lucknow vide Annexure 6, declared the

Petitioner's husband permanent handicapped and certified that the Petitioner's husband is a bonafide orthopaedically handicapped paraplegic person and cannot travel without the assistance of an escort. Thereafter, the Petitioner's husband was discharged from the service on 5.5.1995 whereupon he applied for grant of disability pension which has been rejected vide order dated 21.12.1996. The Petitioner filed appeal against the said order which was rejected by the order dated 10.11.1997. The Petitioner being aggrieved by the said orders filed a writ petition bearing C.W.J.C. No. 1547/98 which was disposed of vide order dated 16.12.1998, contained in Annexure 9. This Court on perusal of the order under challenge from which it did not appear that any of the authority considered the Rule quashed the order impugned and remitted the matter back to the appellate authority for reconsideration of the case of the Petitioner in the light of the Rules and to pass a reasoned order. The Petitioner was given liberty that if he feels aggrieved by the said decision it will be open for him to challenge the same. In pursuance to the said order of this Court the impugned order, as contained in Annexure 1, has been passed.

4. It appears that in the year 1993 the Petitioner's husband was granted annual leave and provided with a railway journey warrant Sr. No. 70 P.A. 693035 dated 18.4.1993 from Jammu Tawi to Arrah junction by the concerned Officer of its unit. The Petitioner's husband came to his native village on duly granted annual leave and the aforementioned occurrence took place in which the Petitioner's husband became the victim of the circumstances and by the grace of God he survived, although he got multiple gun injury and consequently was disabled, and was treated in Military hospital as already stated above. It appears that the attackers were criminal in nature and they were charge-sheeted under Sections 323, 324 and 302/34 of the Indian Penal Code and u/s 27 of the Arms Act. The case was committed to the Court of Sessions and the trial of the case is pending.

5. It is contended on behalf of the Petitioner that the Petitioner's husband being army personnel had moral obligation to save the life of those who were attacked by anti social elements. On receiving information about the attack by miscreants he along with two villagers reached to protest them where some miscreants appeared with fire arm and started firing in which one villager was killed and the Petitioner's husband along with others were injured. The Petitioner's husband got injury without provocation on his part. As such, according to the learned Counsel the Petitioner is entitled for disability pension.

6. On the other hand, learned Senior Standing Counsel appearing for Respondents has submitted that as per Clause 12(f) of the Entitlement Rules for Casualty Pensionary Awards, 1982, an accident which occurs when a man is not strictly on duty as defined may also be attributable to service but only where a person is killed by another party by reason of belonging to Armed Forces, he shall be deemed on duty at the relevant time. It is submitted that in the case of the Petitioner's husband he suffered injury of gun shot wound as a result of gun suiting at his own station due to enmity while on annual leave and has not been

injured by another party by reason belonging to armed forces. As such, according to him, he cannot be treated as deemed on, duty which would make him entitle for disability pension, it is, thus, contended that disability suffered by, the Petitioner was assessed as not attributable to and unconnected with military service.

7. It is not in dispute that the Petitioner was invalidated but of service with effect from 5.8.1995 with ID Gun Shot Wound which he sustained at his village home while the was oh annual leave on being declared permanent handicapped by military hospital. The question for consideration is as to whether under the above circumstances he is entitled for grant of disability pension irrespective of the fact that whether the said disability is directly attributable to or aggravated in course of his discharge of duty.

8. The Supreme Court in the case of Lance Dafadar Joginder Singh Vs. Union of India (UOI) and Others, where the Appellant met with an accident, while he was on casual leave and the Respondents discharged him from service and paid him the pension due to him but denied disability pension held that "the Appellant being in the regular Army, there was no reason why he should not be treated as on duty when he was on casual leave." Accordingly, the Apex Court held that there was no justification whatsoever for denying the disability pension to the Appellant.

9. Learned Senior Standing Counsel has, however, submitted that Clause (f) of Rule 12 of Entitlement Rules for Casualty Pensionary Awards, 1982 which provides that only where a person is killed by another party by reason of belonging to armed forces he shall be deemed on duty at the relevant time and shall be entitled for disability pension was not placed before the Apex Court in the case of Lance Dafadar Joginder Singh (supra). According to him, unless the injury is suffered by another party by reason of belonging to the armed forces he will not be deemed on duty when he is on leave. It is, submitted that in the present case the Petitioner's husband was on leave and he did not suffer any injury by another party by reason of belonging to the armed forces. As such, he will not be deemed to be on duty at the relevant time in which case only one is entitled for disability pension.

10. This Court is unable to accept the said submission of the learned Senior Standing Counsel appearing for the Respondents.

11. Clause (f) of Rule 12 referred to by the learned Senior Standing Counsel reads as under:

12(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 definitely 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.

12. The said Clause deals with where an accident which occurs when a man is strictly not on duty and provides that such accident may also be attribute able to service provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of service of army personnel and that the same was not a risk common to human existence in modern conditions in India.

13. Learned Counsel for the Petitioner has rightly submitted that the Petitioner's husband being an army personnel was under moral obligation to save the life of his brother and other villagers who were attacked by the miscreants and that it was his duty to protect them even if he was availing annual leave. In Clause (f) it is just by way of an instance that it is mentioned that where a person is killed by another party by reason of belonging to armed forces he shall be deemed on duty at the relevant time and not that injury received only under such circumstances will make a personnel entitled for disability pension. On the contrary, Clause (f) itself provides that 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. It is not in dispute that the Petitioner's husband was in active service attached to Wing 456 Arms Groups Work Shop EME, Sikundrabad posted at Jammu Tawi.

14. In the case of Madan Singh Shekhawat Vs. Union of India and Others, before the Supreme Court disability pension, was denied to the Appellant because the journey was being performed by him on leave and not at public expenses and such he was not treated on duty. The Apex Court held that "the Appellant could not be denied disability pension by giving a literal interpretation to the expression "at public expense". Thus, even in the case where person was traveling not at public expenses was held to be entitled for disability pension".

15. This Court in the case of Mahesh Prasad Mandal v. Union of India and Ors. reported in 2000 (1) PLJR 1060, from the principles decided by the Apex Court in the case of Lance Dafadar Joginder Singh v. Union of India and by the Himachal Pradesh High Court and Delhi High Court, held that "the disability pension has to be granted to an individual who is invalidated from service on account of his disability assessed at 20% or above irrespective of the fact that it was either directly attributable to or aggravated in course of discharge of duty in military service."

16. In the present case, it is not disputed that the Petitioner suffered total disability. Accordingly, this Court does not find any justification for denying the benefit of disability pension to the Petitioner's husband.

17. Accordingly, this writ petition is allowed. The Respondents are directed to issue necessary authorization for payment of disability pension from the date of

discharge of the Petitioner's husband within two weeks of the receipt/production of a copy of this order in accordance with law.

18. In the facts and circumstances, however, there shall be no order as to costs.