

(2014) 09 SC CK 0119
In the Supreme Court Of India
Case No : C.A. No. 2903 of 2011

Pension Sanctioning Authority and Others	APPELLANT
Vs	
M.L. George	RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Defence Service Regulations, 1980 — Regulation 10, 11, 48
Defence Services Rules — Rule 10, 48

Citation : (2015) 2 SCALE 358 : (2015) 2 SCT 495 : (2015) 15 SCC 399

Hon'ble Judges : T.S. Thakur, J;R. Banumathi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.S. Thakur and R. Banumathi, JJ.—This appeal arises out of an order dated 11.06.2010 passed by the Armed Forces Tribunal, Regional Bench, Kochi holding the Respondent entitled to disability pension with the benefit of rounding off effective from 21st March, 2005 the date when he was discharged from service. The Respondent it appears was on 11.9.1993 returning to his place of duty after availing one day's casual leave. He was driving his own motor cycle on the highway when he hit a lorry parked on the road. He was treated initially in a civil hospital and then at the Military Hospital before being sent on sick leave. While on sick leave he started complaining of hoarseness and breathlessness. He returned from sick leave to be treated at the Military hospital at Chandigarh. He was found to have developed what is called "supraglottic web" which was excised by surgery on 17th December, 1993. He was operated thrice for laryngeal web but the web recurred/reformed. The Senior Advisor Surgery at Command Hospital Air Force, Bangalore opined that any further surgical intervention on the supraglottic web was likely to cause more scarring and a thicker web. Conservative management only was, therefore, advised. The Court of Inquiry ordered into the incident found that there was no negligence or misconduct on the part of the Respondent. It was also found that the Respondent was not intoxicated at the time of the accident. All the same since the accident had taken

place at a "peace station", the disability was held to be not attributable to Military service. Disability pension claimed by the Respondent was on that basis denied to him. Appeals preferred by the Respondent before the Appellate Authority having failed, the matter eventually landed in the Armed Forces Appellate Tribunal who upon a reappraisal of the factual matrix and the rule position came to the conclusion that the disability suffered by the Respondent was attributable to military service. The Tribunal in support of that finding placed heavy reliance upon the decision of this Court in *Madan Singh Shekhawat Vs. Union of India and Others*, where this Court was dealing with a similar question. The Appellant in that case was serving in the army as a Sawar (Horse Rider). He was discharged from service after 11 years and six months on account of a disability that arose out of an accident in which he was involved while alighting from a train at Didwara Railway Station, resulting in the amputation of the Appellant's right hand. At the time of the accident, the Appellant Madan Singh Shekhawat was travelling from Jodhpur to his home station on authorized casual leave sanctioned to him. The question that fell for consideration was whether the Appellant in that case was on duty and whether the disability was attributable to military service. Relying upon the provisions of Rule 10 of Defence Service Regulation this Court held that casual leave counts as duty except as provided in Regulation 11(a) and that since the case of the Respondent did not fall under any one of the exceptions Under Regulation 11(a) of the Regulations, the Appellant was on duty at the time of the accident. This Court further placed reliance upon Regulation 48 of the Regulations aforementioned to hold that a person is deemed to be on duty during the period of participation in recreation, organised or permitted by service authorities and while travelling in a body or singly under organised arrangements. A person was on duty even when proceeding to his leave station or returning to duty from his leave station at public expense. This Court observed:

"9. Rule 48 of the said regulation contemplates admissibility of disability pension. It has enumerated various cases under which an army personnel is entitled to the grant of disability pension. 10. Rule 48 reads thus:

"48. Disability pension when admissible.--An officer who is retired from military service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section;"

11. In respect of accidents the following rules will be observed:

"(a)-(b) * * *

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

12. This rule is a deeming provision which provides for situations under which a person on duty, if he suffers disability, is entitled to the grant of disability pension. The last part of this sub-rule provides that a person incurring disability when proceeding to his leave station or returning to duty from his leave station at public expense is also entitled to the grant of disability pension."

(emphasis supplied)

2. The Court next held that since Regulations for payment of disability pension were beneficial in nature the same had to be interpreted liberally. Relying upon several earlier decisions, this Court declared that the words "at public expense" used in Regulation 48 had to be construed to mean a travel which is undertaken authorisedly. The Court noted that even an army personnel entitled to casual leave by not be authorised to leave his station of posting without permission. Generally, when authorised to avail leave by leaving station of posting, any army personnel uses travel warrant which is issued at public expense, which will not be issued if person concerned is travelling unauthorisedly. It was in that context held that the expression "at public expense" is used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly meaning thereby that if such journey is undertaken during casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of disability pension since his act of undertaking the journey would be unauthorised.

3. The decision in Madan Singh Shekhawat's case (supra) is, in our opinion, a complete answer to the case at hand. The Respondent in the present case also was returning to his place of duty after availing casual leave when he met with an accident. It is not the case of the Respondent that he had left the place of his duty unauthorisedly. It cannot, therefore, be said that he was not on duty in terms of the provision of Regulations 10 and 48 referred to in Madan Singh Shekhawat's case (supra). In the circumstances we have no hesitation in holding that the Tribunal committed no error in directing payment of disability pension to the Respondent. There is no merit in this appeal which fails and is hereby dismissed. No costs.