
(2005) 07 KL CK 0049
In the High Court Of Kerala
Case No : O.P. No. 13522 od 1997 (1)

Ravindran P.M.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-07-2005

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2005) 3 ILR (Ker) 590 : (2005) 2 KLJ 681 : (2005) 3 KLT 707

Hon'ble Judges : S. Siri Jagan, J;M. Ramachandran, J

Bench : Division Bench

Advocate : M. Rajagopalan and M. Premchand, for the Appellant; Narayanikutty Chettur and K.M. Jamaludheen (Addl. CGSC), for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—In this original petition, the petitioner is challenging Exts.P4 and P11 orders of the respondents by which the petitioner's claim for disability pension was rejected on the ground that the injury sustained by him consequent to which he was invalided out of military service was not attributable to military service. The issue to be decided in this original petition is as to whether the accident in which the petitioner sustained injury is attributable to military service. The brief facts necessary for deciding this issue are as under. The petitioner was enrolled in the Army on 10-01-1980. While he was serving in one of the units of the Army in a forward area, on 13-3-1986, while traveling on out pass with permission from his superior authority for attending to some personal affairs in the University nearby, he was hit by a truck in which accident, he sustained serious injuries. He sustained permanent disability which was assessed at 40% by the Medical Board. Later, he was invalided out of the military service because of the disability suffered for disability pension, which was rejected. Therefore, he filed O.P.No. 10360/1990 before this Court in which this Court directed the respondents to re-examine the claim of the petitioner for disability with reference to the medical records. Pursuant to the said direction, the 2nd

respondent passed Ext.P11 order against rejecting the claim of the petitioner for disability pension. Therefore, he filed this original petition challenging the said order also.

2. When the original petition came up for hearing before a learned Single Judge of this Court, the petitioner sought to buttress his claim on the basis of a decision of another learned Single Judge of this Court in O.P.No. 9107/1998. However, the learned Single Judge who heard the present original petition, doubted the correctness of the said decision and, therefore, referred the matter for consideration by a Division Bench by order dated 4-3-1999. Pursuant to the said order, the Hon'ble Chief Justice has directed the original petition to be posted for hearing by us. It is under the above circumstances that the matter has come up before us.

3. We have heard arguments of Sri. M. Rajagopalan, learned counsel for the petitioner as also Sri. Jalaludeen, Additional Central Government Standing counsel. The issue arising for consideration in this original petition, as we have already indicated, is as to whether the injury sustained by the petitioner on 13-3-1986 while he had gone on out pass for a private work to Rohali Khand University in a traffic accident, can be considered as injury attributable to military service entitling the petitioner to claim disability pension.

4. The relevant provision in the Pension Regulations for the Army regarding grant of disability pension is Regulation 173 in Section IV of the Pension Regulations for the Army, 1961, Part I. The same reads as follows:

173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service 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 Rules in Appendix II.

As is clear from the said regulation, the question as to whether a disability is attributable to military service should be determined in accordance with the Rules in Appendix II. Appendix II is the entitlement Rules. Rule 2(a) thereof reads as follows:

2. Disablement or death shall be accepted as due to military service provided it is certified 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;

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The petitioner relied on this Rules to contend that his disablement is attributable to military service since the disablement is due to an injury which arose during military service and remains aggravated thereby as provided in Rule 2(a)(ii). Counsel for the petitioner lays stress on the words "which arose during military service." He also relies on the judgment of a learned Single Judge in O.P.No. 9107/1988 as also the decision of the Hon'ble Supreme Court of India in Madan Singh Shekhawat Vs. Union of India and Others, .

5. On the other hand, learned Additional Central Government standing Counsel appearing for the respondents submits that since the petitioner; was not actually on duty at the time of accident. Entitlement Rules as per the provisions of which eligibility for disability pension has to be divided do not enable the petitioner to claim disability pension in so far as the injury sustained by the petitioner while on out pass for his private purpose is unconnected with military service, and, therefore, cannot be regarded as attributable to military service.

6. We shall first deal with the argument of the petitioner's counsel on the basis of Rule 2(a)(ii) of Appendix II of the Pension Regulations for the Army. Placing reliance on the words "arose during military service" counsel argues that in order to enable the petitioner to get disability pension, it is not necessary that he should have been actually on duty at the time when the accident occurred. He would submit that even when a person is off-duty, if accident occurs within the general area where the petitioner is stationed, the same should be taken as injury which arose during military service. This, the counsel submits on the premise that an armyman is expected to be on duty 24 hours. He has relied on the decision of the learned Single Judge in O.P.No. 9170/1988 in support of this contention.

7. The said original petition related to claim for family pension by the next of kin of an Artillery Sepoy who died in an accident caused by a civilian bus of the Haryana Roadways while the Sepoy was on casual leave for two days. The learned Single Judge took the view that the Sepoy happened to be at the place where the accident occurred only because of his stay in the barracks of the Regiment in which he was attached to. However, there was no reference to the Entitlement Rules and no consideration of the case or discussion with reference to the Entitlement Rules or any other Rules for that said decision do not lay down the correct law on the point. Hence, we are unable to agree with the said argument or the decision. If such an argument is accepted, it would mean that a person who is in military service would be entitled to disability pension even if the accident occurred while he was at his home on leave. A reading of the Entitlement Rules do not warrant such a conclusion. Unless the injury itself had happened while on duty or at least under the circumstances specifically envisaged in the Entitlement Rules for treating as on deemed duty, the same cannot be regarded as attributable to military service. Although, counsel for the petitioner would contend that when the service personnel is on casual leave, he should be deemed to be on duty since he is not permitted to leave the station,

we do not find support for such contention in the Rules, Rule 6 details the circumstance under which injuries can be taken as injuries attributable to military service in cases of accidents. Rule 6 reads as follows:

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

(a) 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.

(b) A person subject to the Disciplinary Code of the Armed Force is on duty during the period of time when he is in the course of performance of an official task or a task the failure to do which would constitute an offence triable under the Disciplinary Code applicable to him. The course of performance of a task includes the journey or of performance of a task includes the journey or of performance of a task includes the journey or transport by a reasonable route from one's quarters to and back from the appointed place of duty under organised arrangements.

(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.

(d) An accident which occurs when a man is not strictly "on duty" as defined may also be attributable to service, provided that it is not an accident which can be attributed to risk common to human existence in modern conditions in India, unless such risk is definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of the person's service. 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/Air Force Act.

Note 1:- (a) Personnel of the Armed Forces participating in-

(i) local/national/international sports tournaments as members of teams, or

(ii) mountaineering expeditions/gliding organised by the service authorities, with the approval of Government- will be deemed to be "on duty" for purposes of the post-March 1948 entitlement rules for disability and family pensions:

(b) personnel of the Armed Forces participating in the above-mentioned sports tournaments or in privately organised mountaineering expeditions or indulging in gliding as a hobby, in their individual capacity, will not be deemed to be "on duty" for purposes of those rules, even though prior permission from the competent Service authorities may have been obtained by them.

(c) injuries sustained by personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, or with the approval of the local Service authority, and deaths arising from such injuries will continue to be regarded as having occurred while "on duty" for purposes of these entitlement rules.

Note 2:- The personnel of the Armed Forces deputed for training courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional course of exercise for the Defence Services for the purpose of the grant of disability family pensions on account of disability/death sustained during the courses.

From a reading of this Rule, it is evident that in order to qualify accidents for being counted for the purpose of disability pension, essentially the injury should have been sustained while on duty. Of course, the Rules also envisage certain circumstances under which a person is also deemed to have been on duty. Therefore, the question now to be considered is as to whether, although the petitioner was not on duty at the time of accident, he could be deemed to have been on duty at the time of the accident. Sub-clauses (a) and (b) cannot evidently be applied to petitioner's case because the same relate to persons who have been actually on duty. Of course, under clause (c), the person will be deemed to be on duty under certain circumstances. First part of clause (c) will not be applicable to the petitioner's case because it refers to participation in recreation. In order to apply the latter part of clause (c), the accident should have occurred while proceeding to his leave station or returning to duty from his leave station at public expense. (This clause will have to be adverted to for deciding the validity of the contentions of the petitioner based on the Supreme Court decision *supra* which he relies on, which we shall do later). Thus, the latter part will not be applicable to the petitioner in so far as, admittedly, he was not either proceeding to his leave station or returning to duty from his leave station.

8. Now, let us examine whether clause (d) is applicable. Under clause (d), although a person is not strictly on duty, an accident which occurs may also be attributable to service provided it is not an accident which can be attributed to risk common to human existence in modern conditions in India, unless such a risk is definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of the person's service. An example is also provided to the effect that where a person is killed or injured by another party by reason of belonging to the Armed Forces, then, he shall be deemed to be on duty at the relevant time. In the present case, the accident occurred in a public place caused by a civilian truck. The risk undertaken by the petitioner was a risk which any common man should have to take while travelling through that road, or through any road for that purpose. Therefore, it cannot be said that the accident in which the petitioner was injured can be attributed to a risk which is not common to human existence stipulated in clause (d). As such, that accident had no nexus with the petitioner being in the military service. Therefore, we are of opinion that

clause (d) also would not come to the rescue of the petitioner in the matter of deciding as to whether the injury sustained by him in the particular accident is attributable to military service.

9. In the circumstances, we are unable to hold that the petitioner's case falls under any of the situations detailed in Rule 6 which would make him entitled to disability pension.

10. Petitioner further relied on a decision of the Supreme Court of India in Madan Singh Shekhawat's case *supra*. We are afraid that the same cannot also be of any assistance to the petitioner in proving that the particular accident which he suffered was attributable to military service. That was a case where a military personnel while alighting from the train on his way to his home station on authorised casual leave granted to him, met with an accident. At the time, he was travelling at his own expense and not at public expense. The question considered by the Supreme Court in that case was whether in view of the fact that he was travelling at that time at his own expense, the latter portion of clause (c) of Rule 6 would be applicable and the Supreme Court, ultimately, held that the military personnel in that case cannot be denied disability pension on the ground that at that time he was travelling at his own expense. In this connection, it may be noted that that particular provision is applicable only to a situation where a person was either proceeding to his leave station or returning to duty from his leave station. Since, there is a specific provision in the Rule itself for deeming such situation as on duty, the said decision based on the interpretation of that clause cannot also be of any help to the petitioner in proving that the accident in which he was injured also was while on deemed duty, since, in his case, he was not proceeding to or returning from his leave station.

11. Counsel for the petitioner submits that since the Department did not take care to contest the motor accident compensation case of the petitioner approximately, it came to be dismissed and, therefore, the petitioner has been left high and dry without either the compensation or any benefits from the Army. Therefore, he submits that petitioner's case may be considered sympathetically in so far as he is now incapable of doing any work to earn his livelihood. We have no doubt in our mind that the petitioner deserves sympathy. However, unfortunately, sympathy cannot take the place of law and we cannot decide cases on the basis of sympathy alone regardless of the legal entitlement. Deciding cases on considerations of sympathy doing violence to statutory provisions would do more harm to the justice system. Sympathy can, of course, be shown within the frame work of law, but cannot go to the extent of undermining the law itself which has to be applied uniformly to all situations alike. While deciding cases, we should bear in mind that decisions on considerations of sympathy can also be used to claim benefit in undeserving cases which may ultimately result in undermining public confidence in the efficacy of law which may not enure to the benefit of the society at large in the

long run. In the above circumstances, we have no option but to hold that the accident in which the petitioner was injured is not covered by any of the situations enumerated and, therefore, was not attributable to military service. Therefore, the petitioner cannot claim disability pension under Rule 173 of the Pension Regulations for the Army. Hence, the petitioner is not entitled to any reliefs in this original petition and the original petition is dismissed.