
(2018) 12 RAJ CK 0358
In the Rajasthan High Court
Case No : Special Appeal Writ No. 234 Of 2009

Union? of? India And Ors

APPELLANT

Vs

Sish Ram

RESPONDENT

Date of Decision : 21-12-2018

Acts Referred:

Employees' State Insurance Act, 1948 — Section 2(8)

Entitlement Rules, 1982 — Rule 4, 5

Pension Regulations for The Army, 1961 — Regulation 173, 179

Citation : (2018) 12 RAJ CK 0358

Hon'ble Judges : Munishwar Nath Bhandari, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : R.D. Rastogi, Akshay Bhardwaj

Final Decision : Allowed

Judgement

This special appeal has been filed against the order dated 22nd August, 2008, passed by learned Single Judge. By the aforesaid order, the writ petition preferred by the petitioner to seek benefit of disability pension along with interest @ 6% per annum was allowed.

BRIEF FACTS OF THE CASE:-

The petitioner-respondent Sish Ram was enrolled in Army on 5th March, 1976 with Medical Category 'A'. It was in the operational areas of Army from February, 1977 to July, 1977 and December, 1981 to December, 1983. He was granted casual leave w.e.f. 4th April, 1984 and while on leave the petitioner Sish Ram met with an accident. He fell down from the roof of his residence and sustained injuries.

The Court of Enquiry examined the matter to find out the reason of injuries. It is found that petitioner fell down from the roof of his residence but an individual cannot be blamed for such injuries. The injuries were said to be attributable to military service. The view of the Court of Enquiry was supported by the

Commandant of Unit where the petitioner was serving. The petitioner was thereupon placed in Medical Category 'C' w.e.f. 31st August, 1984 and Category 'C' permanent w.e.f. 27th March, 1985. The petitioner was discharged from service on 28th July, 1985 in lower Medical Category 'C' permanent. He was at the age of 27 years at the time of discharge.

The Medical Board considered the disability and found that 50 per cent is attributable to military services. The claim for disability pension was thus made under Rule 4 of Entitlement Rules. It was with the prayer that the petitioner should be treated to have invalidated out of the service under Rule 5 of those Rules. The petitioner thus claimed benefit of disability pension but the respondents rejected his claim vide the order dated 04/04/1986. It was given out that disability is not attributable to military services.

An appeal was preferred by the petitioner to challenge the order dated 04/04/1986. The appeal was dismissed by the Government of India vide its order dated 20th July, 2004. The petition was pressed in reference to various judgments referred by the learned Single Judge in the impugned order.

The writ petition was thereupon allowed in reference to the judgment of the Supreme Court in the case of Joginder Singh Vs. U.O.I & Ors., reported in 1996 (2) SLR 149, apart from other judgments.

ARGUMENTS OF THE APPELLANTS-Shri R.D. Rastogi, Additional Solicitor General, appearing for the appellants, has assailed the order of the learned Single Judge in reference to subsequent judgments of the Apex Court in the case of Union of India and Ors. Vs. Vijay Kumar; reported in 2015 (10) SCC 460 and Union of India and Ors. Vs. Jujhar Singh; reported in 2011 (7) SCC 735. A reference to the rules has also been given. It is to show that if an employee is on casual or annual leave and meets with an accident then he would not be entitled to disability pension.

It is stated that the relevant rules were not referred by the counsel who appeared in the case of Joginder Singh (Supra) which were referred by the Court in subsequent judgments. It is not a case where an army personnel met with an accident on the way after casual or annual leave but is at the place of his residence. The rule provides for disability pension if the military personnel meets with an accident on the way after the leave or to join the duties. In view of the above, prayer is made to cause interference in the order passed by learned Single Judge. It is more so when the order to deny disability pension and thereupon the order on appeal were not challenged.

None appears for the respondent/petitioner to oppose the appeal.

This Court finds that counsel is not appearing to defend the case for last many occasions. The appeal is old by nine years, thus heard finally.

DISCUSSION BY THE COURT-

The main issue for our consideration is as to whether a military personnel is entitled to disability pension even if he meets with an accident while on casual or annual leave. The facts of the case have been narrated. The petitioner sustained injuries when he fell down from the roof of his house while on casual leave.

In view of the above, the judgments referred by Mr. R.D. Rastogi, learned Additional Solicitor General, are required to be taken into consideration. It is subsequent to the judgment in the case of Joginder Singh (Supra). The Apex Court in the case of Jujhar Singh (Supra) and also Vijay Kumar (Supra) considered the issue extensively. It was in reference to the rules. The disability pension in similar circumstances has been denied. Paras 7, 11, 12, 13, 14, 15, 16, 17 and 18 of the judgment in the case of Jujhar Singh (Supra) are reproduced hereunder for ready reference:-

"7. The questions that arise for consideration in this appeal are:

(a) Whether the case of the respondent for disability is covered under Regulation 179 of the Pension Regulations for the Army (Part I) 1961?

(b) Whether the disability in an accident suffered by the respondent during his annual leave while doing his personal work would amount to the disability attributable to or aggravated by military service?

11) In order to answer the abovereferred questions, it is useful to refer Regulation 179 which reads thus: "179. "Disability at the time of retirement/discharge (1) An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalidated out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is less than 20 per cent or more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

(2) the disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease."

12. It is clear that if a person concerned is found suffering from disability attributable to or aggravated by military service, he shall be granted disability pension. The other condition is that the disability is to be examined/assessed by Service Medical Authorities and based upon their opinion a decision has to be taken by the authority concerned. The Respondent should satisfy the conditions specified in the Regulation. In this case, it is the definite stand of the authorities that disability has neither occurred in the course of employment nor attributable

to or aggravated by military service. We have already pointed out and it is not in dispute that the Respondent was on annual leave when he met with a scooter accident as a pillion rider and sustained injuries on 26.03.1987 at his native place. He was not on military duty at the time of the accident in terms of Para 12 (d) of Entitlement Rules, 1982 as clarified vide Government of India, Ministry referred letter No. 1(1)/81(PEN)C/Vol.II dated 27.10.1998. In view of the same, the injuries sustained cannot be held to be attributable to the military service.

13. In this background, it is useful to refer decision of this Court in *ESI Corpn. v. Francis De Costa*- Though this decision arose under the Employees' State Insurance Act, 1948, we are of the view that since there is a similar provision in the Employees' State Insurance Act, namely, that the accident should have its origin in the employment and the same should have arisen out of and in the course of employment, the same is applicable to the case on hand. In that case, the Respondent employee while going to his place of employment (a factory), met with an accident at a place which was about only one kilometer away from the factory. The accident occurred at 4.15 p.m. while his duty-shift was to commence at 4.30 p.m. As a result of the accident, the Respondent's collar bone was fractured. The question before this Court was whether the said injury amounted to "employment injury" within the meaning of Section 2(8) of the Employees' State Insurance Act, 1948 entitling the Respondent to claim disablement benefit. Answering in the negative, this Court held: (*Francis De Costa* case, SCC p.5, para 5)

"5.....a road accident may happen anywhere at any time. But such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something incidental to his employment."

14. In *Union of India and Anr. v. Baljit Singh* the respondent therein was enrolled in the Army as an apprentice on 30.03.1975 and was appointed in the service on regular basis w.e.f. 27.03.1977 in the EME 177 Battalion. While he was in service he had sustained moderately severe injury. On the basis of the opinion of the Medical Board, he was discharged from service as an invalidated man on 31.05.1981. In the writ petition filed by him, the High Court of Himachal Pradesh directed the authorities to pay him disability pension. This was challenged by the Union of India before this Court by way of appeal by special leave. From the materials placed, this Court concluded that it cannot be said that the sustenance of injury per se is on account of military service. The report of the Medical Board of doctors shows that it is not due to military service.

15. Finally, it was held by this Court as under: (*Baljit Singh* case, SCC p. 316 para 6)

"6.....In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service. Accordingly, we are of the view that the High Court was

not totally correct in reaching that conclusion."

16. In *Ministry of Defence and Ors. v. A.V. Damodaran (dead) through L.Rs. and Ors.* the opinion of the Medical Board and acceptability or otherwise for awarding disability pension was considered. The short question that was considered in that case was whether the High Court was justified in ignoring the report of the Medical Board in which it was clearly mentioned that disability of A.V. Damodaran was neither attributable to nor aggravated by military service. On examination, the Medical Board had opined that the disability of A.V. Damodaran was not attributable to the military service nor has it been aggravated thereby and it is not connected with the service as schizophrenia is a constitutional disease. The legal representatives of A.V. Damodaran filed original writ petition before the High Court praying for grant of disability pension. By order dated 20.12.2000, the learned Single Judge allowed the original petition and declared that the individual was eligible to get disability pension under the provisions contained in the Pension Regulations for the Army, 1961 and such other enabling provisions. The Department filed a writ appeal before the High Court. The Division Bench dismissed the said appeal finding no reason to interfere with the discretion exercised by the learned Single Judge. After considering Regulation 173 which speaks about primary conditions for the grant of disability pension and various other earlier decisions, this Court concluded that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence.

17. In *Damodaran case*, the Medical Board has clearly opined that the disability of late A.V. Damodaran was neither attributable nor aggravated by military service. In this way, this Court concluded that the legal representatives of A.V. Damodaran are not entitled to disability pension. However, in the facts and circumstances of that case, this Court directed that the amounts which have already been paid to the L.Rs. of deceased A.V. Damodaran towards disability pension may not be recovered from them.

18. In *N.K. Dilbag v. Union of India and Ors.* a Full Bench of the Delhi High Court had an occasion to consider the similar issue and eligibility of disability pension by Armed Forces Personnel. After advertng to various decisions of this Court as well as of the High Courts, it concluded thus: (DRJ Mr. N.S. Dhakad-pp. 880-81, para 24)

"24. To sum up our analysis, the foremost feature, consistently highlighted by the Hon'ble Supreme Court, is that it requires to be established that the injury or fatality suffered by the concerned military personnel bears a causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the concerned personnel was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the causal connection which alone is relevant. Fourthly, since travel to and fro the place of

posting may not appear to everyone as an incident of military service, a specific provision has been incorporated in the Pension Regulations to bring such travel within the entitlement for Disability Pension if an injury is sustained in this duration. Fifthly, the Hon'ble Supreme Court has simply given effect to this Rule and has not laid down in any decision that each and every injury sustained while availing of casual leave would entitle the victim to claim Disability Pension. Sixthly, provisions treating casual leave as on duty would be relevant for deciding questions pertaining to pay or to the right of the Authorities to curtail or cancel the leave. Such like provisions have been adverted to by the Supreme Court only to buttress their conclusion that travel to and fro the place of posting is an incident of military service. Lastly, injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death has occurred at the place of posting or during working hours. This is because attributability to military service is a factor which is required to be established."

In the light of our discussion, we fully endorse the views expressed by the Full Bench."

The paras quoted above deal with the issue before us. The Apex Court has decided the issue after referring the rules as well as the earlier judgments on the issue.

Similar view has been taken in the case of Vijay Kumar (Supra). The entitlement towards disability pension has not been accepted if one sustains injury while on casual or annual leave. It is not on the way to join the duties. It is not taken to be the case of injuries attributable or aggravated out of the military services which otherwise was accepted by the Apex Court in the case of Joginder Singh (Supra). Therein, relevant rules were not referred by the counsel who appeared for the Union of India.

CONCLUSION-

In view of the subsequent judgment of the Apex Court referred to above and as the petitioner even failed to challenge the impugned order, we are inclined to interfere in the order passed by the learned Single Judge. Accordingly, it is set aside. The appeal is allowed with the aforesaid.