
(2002) 02 PAT CK 0051
In the Patna High Court
Case No : L.P.A. No. 874 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Smt. Meera Devi

RESPONDENT

Date of Decision : 19-02-2002

Acts Referred:

Citation : (2002) 02 PAT CK 0051

Judgement

R.S. Garg, J.—The appellant-Union of India being aggrieved by the judgment dated 10.4.2001, passed in C.W.J.C. No. 7056 of 1999, reported in 2002 (1) PUR 406, whereunder the learned Single Judge was pleased to allow the writ application and issued direction against the present appellant to make payment of disability pension to the respondent (widow of the Sepoy) from the date of discharge of the deceased Sepoy, has filed this Letters Patent Appeal under Clause 10 of the Letters Patent of the Patna High Court.

2. The facts necessary for disposal of the present petition are that Jai Kumar Singh (since deceased) was enrolled in the Army on 6.6.1987. In the year 1993, the said Jai Kishore Singh was granted annual leave and provided with a railway journey warrant No. 70 P.A. 693035 dated 18.4.1993 from Jammu Tawi to Arrah Junction by the authorised officer of the Army Unit. The respondent's husband came to his native village and stayed there for some time. When the said Jai Kishore Singh was enjoying the leave at his village home, he received information that his brother and some other villagers were being manhandled by some miscreants, therefore, the said Jai Kishore Singh rushed to the spot with a few of his friends/villagers. After about some time when Jai Kishore Singh, his brother and others were sitting in the village, the very same miscreants appeared on the scene and started firing, in the said firing, the said Jai Kishore Singh and other villagers suffered gun shot injuries. One villager died, but said Jai Kishore Singh survived. The said Jai Kishore Singh was thereafter treated in the Military Hospital, Danapur and Lucknow. The Medical Board of Command Hospital, Lucknow, vide Annexure-6 declared the said Jai Kishore Singh as permanent handicapped and certified that the said Jai Kishore Singh was

orthopedically handicapped paraplegic person and could travel without assistance of an escort. The said Jai Kishore Singh was discharged from the service with effect from 5-5-1995. He applied for grant of disability pension, but as his claim was rejected vide order dated 21.12.1996, he filed an appeal against the said order. The appeal was dismissed, therefore, said Jai Kishore Singh came to this Court in C.W.J.C. No. 1547 of 1998. The said writ application was disposed of on 16.12.1998 (Annexure-9). This Court directed the authorities to reconsider the matter in accordance with the observations made in Annexure-9 and also required the authority to pass a reasoned order. The said Jai Kishore Singh was given liberty that if he was aggrieved by the fresh decision of the authority, he would be entitled to challenge the same before the appropriate forum.

3. In pursuance to the order passed by this Court, the authorities reconsidered the matter and ultimately by order dated 25th February, 1999 again rejected the claim of the said Jai Kishore Singh. The authorities, while rejecting the claim, observed that the injury gun-shot wounds sustained by Jai Kishore Singh was as a result of gun shooting at his own station due to some enmity during his annual leave of another party by reason of his belonging to armed forces. Authorities also observed that the said Jai Kishore Singh would not be treated as deemed on duty.

4. The said Jai Kishore Singh being aggrieved by the order passed by the authorities came to this Court in C.W.J.C. No. 7056 of 1999. Unfortunately, before seeing the final outcome of the writ petition, the said Jai Kishore Singh died on 29.7.1999. Thereafter an application for substitution was filed, the application was allowed and his widow Meera Devi was permitted to be brought on the record.

5. After hearing both the sides and taking into consideration the relevant rules and regulations, the learned Single Judge, allowed the petition and directed the authority/Union of India to issue necessary authorisation for payment of disability pension to the present respondent from the date of discharge of her husband within two weeks of the receipt/production of a copy of the said order. The appellant-Union of India being aggrieved by the said order and direction has come to this Court in this Letters Patent Appeal.

6. Learned Counsel for the appellant submitted before us that the learned Single Judge erred in not appreciating the distinction between the causal leave and annual leave. He also submitted that Rule 12(f) of Entitlement Rules For Casualty Pensionary Awards, 1982 has not been read or appreciated in its true perspective, therefore, the finding arrived at by the learned Single Judge are bad and deserve to be set aside.

7. Learned Counsel for the respondent/petitioner submitted that undisputedly the respondent's husband traveled at public expenses, was on annual leave and as his case does not fall under Clause-11(a) of the Leave Rules for the Services, and as the injuries suffered by the deceased sepoy was at a time, when he was trying

to save his brother and other villagers from the hands of the miscreants, the said sepoy would be deemed to be on duty. He submitted that the learned Single Judge has rightly held that the deceased was entitled to disability pension. We have heard the parties at length and have perused the relevant rules/regulations and the judgments cited at bar.

Rule 12 of the Entitlement Rules for Casually Pensionary Awards, 1982 provides that when a person would be on "duty". Rule 12 reads as under:

12. A person subject to the Disciplinary Code of the Armed Forces is on "duty"

(a) When performing an official task or a task, failure to do which would constitute an offence, triable under the Disciplinary Code applicable to him.

(b) When moving from one place of duty to another place of duty irrespective of the mode of movement.

(c) During the period of participation in recreation and other unit activities organized or permitted by Service Authorities and during the period of travelling in a body or singly by a prescribed or organised route.

8. From a perusal of Rule 12(a)(b)(c) it would be clear that it applies to officers/sepoy when they are performing an official task, when moving from one place of duty to another place of duty and they would also be on duty during the period of participation in recreation and other unit activities, etc. Rule 12a, b, c, are complete in themselves. Clause (d) of Rule 12 says that when such a person is proceeding from his duty station to his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e., on railway warrants, etc. he shall be deemed to be on duty. According to Clause (e) of Rule 12 when a person is travelling by reasonable route from one's quarter to and back from the appointed place of duty under organized arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available, he would be on duty.

9. Clause (f) of Rule 12 which is material for the present appeal and on which strong reliance is being placed by both the sides 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 begging 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.

10. For appreciating the effect of these rules to a person who is on leave, it would be advisable to refer to the "Leave Rules" for the Services. The said Leave

Rules provide that for recruits and boys there would be three types of leaves (a) Casual Leave (b) Annual Leave and (c) Sick leave. Rule 10 of the leave rules reads as under:

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

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

(12) 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.

11. Annual leave has been defined in Rule 11 while sick leave has been defined in Rule 12. Rule 11 reads as under:

11. (a) 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.

(b) Annual leave, for the year may at the discretion of the sanctioning authority, be extended to the next calendar year without prejudice to the annual leave authorised for the year in which the extended leave expires, but further annual leave will not be admissible until the individual again performs duty.

(c) Annual leave may be taken in instalments within the same year.

(d) The annual leave year is the calendar year, viz., 1st January to 31st December.

12. Rule 10 clearly stipulates that Casual Leave counts as duty except as provided for in Rule 11(a). There would have been no problem in deciding this matter, if the said Sepoy had proceeded on casual leave. In the matter of Madan Singh Shekhawat Vs. Union of India and Others, the Supreme Court took into consideration the effect of the Defence Service Regulations which relates to the disability pension. Their Lordships observed that the 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 Supreme Court further observed that 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. The word "at public expense" used in the relevant part of the rule, in the opinion of the Supreme Court meant a traveling which is undertaken authorisedly. Their Lordships further observed that the word "at public expense" should actually mean that such a person is travelling authorisedly. In the present case, there is

again no dispute that the said Sepoy travelled authorisedly under a warrant.

13. Learned Counsel for the respondent placed his strong reliance on the judgment of the Supreme Court in the matter of Lance Dafadar Joginder Singh Vs. Union of India (UOI) and Others, and on a Single Bench judgment, of this Court in the matter of Mahesh Prasad Mandal v. Union of India and Ors. 2000 (1) PUR 1060 to contend that the said Sepoy was on deemed duty and as he was traveling on public expense he and after his death his wife would be entitled to disability pension. In the matter of Lance Dafadar Joginder Singh, (Supra), it was not in dispute that the said person was proceeding on casual leave from his duty station to his home, while boarding the train at Babina railway station, he got involved in an unfortunate accident as a result of which he fell down from the train and suffered severe injury. The said petitioner was given army pension, but was denied disability pension under the Pension Regulations on the ground that the injury was not attributable to military service. The Supreme Court observed that there is no reason not to treat the said petitioner on duty when he was on casual leave. It was not disputed before the Supreme Court that an Army personnel on casual leave is treated "to be on duty. The Supreme Court allowed the petition and required the Union of India to make payment of disability pension.

14. In the matter of Mahesh Prasad Mandal (Supra), the question before the Court was grant of disability pension in a case where Army personnel was invalidated from service on account of his disability which was either attributable to or aggravated by military service and assessed at 20% or above. In the said matter, this Court held that disability pension had to be granted to an individual, who was invalidated from service on account of his disability assessed with 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.

15. Learned Counsel for the appellant has also placed reliance on a judgment of the Supreme Court in the matter of Union of India (UOI) and Another Vs. Baljit Singh, , to contend that in absence of proof of injury being sustained due to military service or being aggravated thereby the Sepoy would not be entitled to disability pension.

16. In the matter of Union of India and Anr. v. Baljit Singh (Supra), the Army personnel was discharged from service by consent as an invalidated man on 31.5.1981. The Medical Board of Doctors found him physically incapacitated and diagnosed to have "neurosis superimposed on an immature histrionic personality." The High Court allowed the petition of the said petitioner, but the Supreme Court after taking into consideration Rule 173 observed that disability pension could be computed only when disability has occurred due to a wound injury on disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. The Supreme Court further observed that if the said conditions are satisfied, the incumbent would be entitled to disability pension and not

otherwise. The Supreme Court, however, refused to interfere in the matter and simply clarified the legal position. As we have already observed that if present was a case of casual leave and the incumbent/Sepoy suffered injuries during the course of the travelling while going to or coming from his home station, he would certainly be entitled to disability pension, but the question for consideration before us is that what would be the effect if a person is not proceeding on casual leave, but is proceeding on annual leave.

17. Rule 10 of the Leave Rules clearly provides that casual leave counts as duty except as provided for in Rule 11(a). If the casual leave availed by an incumbent is counted as duty, then a person who suffers an injury while on casual leave would be deemed to be on duty and would be entitled to disability pension. Rule 11 of the, Leave Rules provides that 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 Concession¹ shall, however, be treated as actual performance of duty.

18. From a persual of Clause (a) of Rule 11 of the Leave Rules, it would clearly appear that for earning the annual leave one has to work in any year and has to perform the annual duty. When a person is on annual leave, then the casual leave taken by him shall not be deemed to be a period on duty. From a perusal of Rule 10 and Rule 11(a) mark distinction between the casual leave and annual leave would emerge. While on casual leave except as provided for in Rule 11(a) an incumbent is deemed to be on duty, but while on annual leave he is not deemed to be on duty.

19. Apart from the above, it would also appear from Rule 12(f) of Entitlement Rules for Casualty Pensionary Awards, 1982 that a man who is not "strictly on duty may be deemed to be on duty provided an accident which occurs is attributable to his service and 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. An instance has also been given in Clause (f) of Rule 12 of the Entitlement Rules that 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. When a man is on leave and he requires the Court to deem him on duty then he has to satisfy the Court or the authorities before whom the claim for disability pension is made, that the accident 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 condition in India.

20. In the present case, unfortunately, the petitioner has failed in proving that the accident (gun shooting) involved any extra risk and the risk was enhanced in kind of degree by the nature, conditions, obligations or incidents of his service. The appellant has also failed in proving that the said risk was no common to

human existence in modern India. We would have readily allowed the petition, if the petitioner was discharging some of his duty and suffered the risk or met with the accident if the same was relating to the nature, conditions, obligations or incidents of the service of the incumbent. The phrase "it involved risk which definitely enhanced in kind or degree by the nature, conditions obligations or incidents of his service" is to be read in juxtaposition or in conjunction with the continuing phrase" and that the same was not a risk common to human existence in modern conditions in India. "The use of the word "and" shows that it has been used as a conjunctive and not as distinctive. The word "and" cannot be read as "or". An incumbent desirous of a disability pension has to satisfy the Court that the accident which occurred is also attributable to service and that it involved risk which has definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service. Not only this, he also has to prove that the said risk was not common to human existence in modern conditions in India.

21. The contention of the petitioner before us was that as his brother was facing danger to his life and limb, the petitioner being the Sepoy in the armed forces was required to save his brother and other villagers. The submission though is attractive, but unfortunately does not meet the requirement of law that is phrase of Rule 12(f) which says that the same was not a risk common to human existence in modern conditions in India.

22. The learned Single Judge, in our opinion, though was justified in holding that Rule 12(f) of the Entitlement Rules is not exhaustive, but simply provides certain examples, was not justified in observing that the Clause (f) provides that the said benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act. In our considered opinion, the learned Single Judge was also not justified in applying the provisions of Rule 173 of Pension Regulations for the Army, 1961 Part-I because present is not a case where the incumbent was invalidated from service on account of his disability on the ground that it was directly attributable to or aggravated in course of his discharge of duty in military Service. Rule 173 applies to a case where the man suffers or suffered some disease or some such disability which is either attributable to or aggravated by military service and assessed at 20% or above. Present is not a case where the petitioner suffered disability which was either attributable to or aggravated by military service. Present is a case where the incumbent was on annual leave and in a private dispute suffered a gun shot and was ultimately invalidated from the active service.

23. In our considered opinion, the appeal deserves to be allowed. The order passed by the learned Single Judge is set aside. The appeal is allowed and the petition is dismissed.

24. However, before parting with the case, we would like to make a request to the Union of India to take into consideration the fact that the said Sepoy was not on duty, but was doing an act to save his brother and other villagers from the

hands of the miscreants, therefore, even if the disability pension is not allowable to him, at least some ex-gratia payment be made to the widow of the deceased taking into consideration that the Sepoy who could survive the bullets of the enemy was shot by his own fellow man and that for such army personnel border is more safe in comparison to urban areas because there they know that who is the enemy but in the urban areas they do not know who is the enemy and from where an attack may be made.