
(2014) 09 SC CK 0172
In the Supreme Court Of India
Case No : C.A. No. 2433 of 2011

Union of India (UOI) and Others

APPELLANT

Vs

Surendra Pandey

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Entitlement Rules For Casualty Pensionary Awards, 1982 — Rule 12, 173
Pension Regulations For The Army, 1961 — Regulation 12
Armed Forces Tribunal Act, 2007 — Section 31

Citation : (2015) 2 SCALE 361 : (2015) 2 SCT 497 : (2015) 13 SCC 625

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of an order dated 10th May, 2010 passed by the Armed Forces Tribunal, Regional Bench, Lucknow whereby Transferred Application No. 191 of 2009 filed by the Respondent has been allowed, orders passed by the Appellants herein set aside and the Respondent held entitled to claim disability pension to the extent of 20% with effect from the date of his discharge. Respondent was serving as a Sepoy in the Indian Army's Air Defence Corps. Having served for nearly 17 years he was discharged from service on 1st July, 2004 upon completion of the tenure. It is not in dispute that service pension admissible to him has been released in his favour. Since, however, the Respondent had suffered a disability while in service he appears to have claimed disability pension also which was declined by the Appellants on the ground that the disability was neither attributable nor aggravated by military service. Aggrieved by the said refusal the Respondent filed W.P. No. 3649 of 2008 before the High Court of Judicature at Allahabad, Lucknow Bench, which came to be transferred to the Armed Forces Tribunal, Regional Bench, Lucknow, after setting up of the said Tribunal under the Armed Forces Tribunal Act, 2007. Respondent's case in the writ petition and so also before us is that while posted in a field area in the State of Jammu and Kashmir he was authorised to go on annual leave for

a period of two months. His further case is that having started his homeward journey from Jammu on 25th March, 1997 he travelled to Hajipur, ahead of Sewan in the State of Bihar, by train. On 27th March, 1997 while boarding a bus from Hajipur to reach Patna to join his family he met with an accident that resulted in a disability, assessed at 20% by the Medical Board concerned. A Court of Inquiry ordered into the incident recorded a finding that the accident and the resultant injury suffered by the Respondent were not attributable to military service. The claim for payment of disability pension was on that finding declined by the Appellants, according to whom the Respondent was authorised to travel upto Gopalganj-his home station via Lucknow, Gorakhpur and Sewan. Any accident involving the Respondent at Hajipur was, according to the Appellants, in no way related to military service or the time requisite for completing the homeward journey which the Respondent was authorised to undertake.

The Respondent approached the Armed Forces Tribunal inn T.P. No. 191 of 2009 to challenge the order rejecting his claim. The Tribunal examined the rival versions and held that the disability was indeed attributable to military service inasmuch as the Respondent was on annual leave hence deemed to be on duty at the time the same was suffered. The Tribunal has consequently set aside the orders passed by the Appellants refusing the pension and issued directions for payment of the dues with effect from the date of his discharge from service. The present appeal filed by the Appellants assails the correctness of the said order of the Tribunal, as noticed earlier.

2. We have heard learned Counsel for the parties at some length who have taken us through the orders passed by the Tribunal as also other documents on record. Apart from the fact that an appeal under the provisions of Section 31 of the Act, aforementioned, is maintainable only in case the same involves a substantial question of law of general/public importance/interest which does not appear to be arising in this case, we are of the view that the order passed by the Tribunal does not even otherwise warrant any interference by us. We say so because in terms of Rule 12 of the Entitlement Rules for Casualty Pensionary Awards, 1982 a person subject to the disciplinary code of the Armed Forces is treated on duty while performing any one of the functions mentioned in paras (a), (b) and (c) of the Pension Regulations. Notes 1 and 2 to the entitlement Rules elaborate the scope and the purport of the term "duty". Para (f) to note 2 deals with accidents which occur when a man is not strictly "on duty" as defined in Rule 12. For such situations the expression "on duty" is given an extended meaning inasmuch as an accident which occurs when the person concerned is not strictly speaking on duty is also deemed to be on duty provided it involves risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service so long as the same was not a risk common to human existence in modern conditions in India. Para (a) to (f) to Notes 1 and 2 Under Rule 12 of the said Entitlement Rules may be extracted at this stage:-

"Rule 12: Duty:-The Entitlement Rules 1982

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 organized route.

Note 1: xx xx xx xx

XX XX XX XX

Note 2: (d) Personnel while travelling between place of duty to leave station and vice versa to be treated on duty irrespective of whether they are in physical possession of railway warrant/concession vouchers/cash TA etc or not. An individual on authorized leave would be deemed to be entitled to travel at public expense.

(e) The time of occurrence of injury should fall within the time an individual would normally take in reaching the leave station from duty station or vice versa using the commonly authorised mode (s) of transport. However, injury beyond this time period during the leave would not be covered.

(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.

3. 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." The question here is whether the extended meaning of the expression "on duty" within the purview of para (f) above, is attracted to the facts and circumstances of the case at hand. The Tribunal has, it appears relying upon two decisions one each rendered by the High Courts of Allahabad and Himachal Pradesh, taken the view that any accident involving a person serving in the army while he is on annual leave, is deemed to be attributable to military service. That proposition appears to us to be rather broadly stated. In our view the expression "duty" as set out in Regulation 12 postulates only specified situations in which an Army personnel can be said to be performing his duty for purposes of Entitlement Rules. But by reason of the extended meaning given in terms of Notes 1 and 2, situations in which a person is not strictly speaking "on duty" are also by a legal fiction presumed to be tantamount to discharging military duty.

4. Before we advert to the case at hand we may briefly refer to a few decisions which appear to us to be touching the issues that fall for consideration in this appeal. In *Sukhwant Singh Vs. Union of India (UOI)* through the Secretary, Ministry of Defence and Others, , a two-Judge bench of this Court upon a review of the case law, summed up the legal position in the following words:

"To sum up in our view the following principles should be the guiding factors for deciding the question of attributability or aggravation, where the disability or fatality occurs, uring the time the individual is on authorized leave of any kind.

a. The mere fact of a person being on "duty" or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant" and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionally applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as "duty".

b. If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible statement that every injury suffered during such period of leave would necessarily be attributable.

c. The act omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other n other words the act must flow as a matter or necessity from ilitary service.

d. A person, doing some act at home, which even remotely does not fall within the scope of his duties and function as a member of Force nor is remotely service cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day to day life as a member of the force.

e. The hazards of Army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omission on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matter connected aggravated or attributable to military service and the matter entirely private act cannot be treated as legitimate basis for claiming the under these provisions At best the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force so far it has some connection and nexus to the nature of the nature of the force. At least remote attributability to service would be the condition precedent to claim under

Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence reasonableness and expected standards of behavior.

f. The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India unless such risk is enhanced in kind or degree by nature conditions obligations or incidents of military service."

5. Though not in exactly similar context the question whether an injury has been sustained "out of and/or in the course of employment" has often arisen in the Courts both in India and in England. True the expression interpreted in those cases, appears in legislations like National Insurance (Industrial Injuries) Act, 1965 in UK and the Industrial Disputes Act 1947 applicable to workmen in this Country but what is noteworthy is that spirit in which provisions for compensation to pension are made appears to be common to such legislations. In *Regina v. National Insurance Commissioner (Ex parte Michael)* 1977 (1) Weekly Law Reports 109, the Court of Appeal in England had to construe phrase "caused by accident arising out of and in the Course of employment" appearing in the 1965 Act mentioned above. Lord Denning M.R. started his judgment with the observation:

"So we come back, once again, to those all too familiar words "arising out of and in the course of his employment". They have been worth-to lawyers-a King's ransom. The reason is because, although so simple, they have to be applied to facts which vary infinitely. Quite often the primary facts are not in dispute; or they are proved beyond question. But the inference from them is matter of law. And matters of law can be taken higher. In the old days they went up to the House of Lords. Nowadays they have to be determined, not by the courts, but by the hierarchy of tribunals set up under the National Insurance Acts."

6. Construing the meaning of the phrase "in the course of his employment", it was noted by Lord Denning that the meaning of the phrase had gradually been widened over the last 30 years to include doing something which was reasonably incidental to the employee's employment. The test of "reasonably incidental" was applied in a large number of English decisions. But, Lord Denning pointed out that in all those cases the workman was at the premises where he or she worked and was injured while on a visit to the canteen or other place for a break. Lord Denning, however, cautioned that the words "reasonably incidental" should be read in that context and should be limited to the cases of that kind. Lord Denning observed:

"Take a case where a man is going to or from his place of work on his own bicycle, or in his own car. He might be said to be doing something "reasonably incidental" to his employment. But if he has an accident on the way, it is well settled that it does not "arise out of and in the course of his employment". Even if his employer provides the transport, so that he is going to work as a passenger

in his employer's vehicle (which is surely "reasonably incidental" to his employment), nevertheless, if he is injured in an accident, it does not arise out of and in the course of his employment. It needed a special "deeming" provision in a statute to make it "deemed" to arise out of and in the course of his employment."

7. It was also pointed out by Lord Denning in the aforesaid case of Regina v. National Insurance Commissioner, Ex. Parte Michael (supra) that the extension of the meaning of the phrase "in the course of his employment" has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was "reasonably incidental" to employment, may be extended even to cases while an employee is sent on an errand by the employer outside the factory premises. But in such cases, it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his work place in the usual course of his employment. Latham, C.J. in South Maitland Railways Proprietary Limited v. James 67 CLR 496 observed that when the workmen on a hot day in course of their employment had to go for short time to get some cool water to drink so enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for water.

8. In India the Courts have recognized the principle of notional extension of time and space, while determining whether an injury has been caused in the course of the employment of workman. The principle was stated in Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, in the following words:

"As a rule, the employment of a workman does not commence until he had reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman keeping in view at all times this theory of notional extension."

9. The above was reiterated in General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, .

10. In the case at hand, the accident has taken place while the Respondent was travelling from the place of his duty to the place where his family was residing at

Patna. It is the specific case of the Respondent that although the Respondent's hometown is Gopalganj, his family was residing at Patna. It was for that reason that he claims to be travelling by train beyond Sewan upto Hajipur by train to catch a bus to reach Patna to join his family. The Court of Inquiry conducted into the accident has not found that version to be false or otherwise unacceptable. There is no finding by the Court of Inquiry that the Respondent's family was not actually residing at Patna. There is also no finding to the effect that the Respondent's version that he was boarding a bus at Hajipur to reach Patna, was factually incorrect. That apart the Respondent had started his homeward journey from Jammu on the 25th March, 1997. In the ordinary course and keeping in view the distance between the place from where he started the journey and the place he eventually intended to reach to join his family, would have taken the Respondent a minimum of three days. This implies that even on 27th March, 1997 while the Respondent met with the accident he was in the process of performing his journey to join his family at Patna. The question is whether the extension of journey from Sewan (which would be the ordinary rail terminus for his travel) to Hajipur for his onward travel to Patna would be an incidental extension of the authorised journey in terms of time and space of what was authorised by the Appellants. Our answer to that question is in affirmative. We say so keeping in view the language used in para (f) to Note 2 of Rule 12 of the Entitlement Rules and in particular the expression "provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service". One of the incidents of the military service which the Respondent was rendering in the Army was his remaining away from his family for long intervals on account of the nature of the duties enjoined upon him in larger national interests. When authorised to proceed on an annual leave of two months that incident would extend to his obligation to join his family for such moral and material support as the family would require of him and as would be expected of a disciplined soldier serving in the armed forces. Suffice it to say that the expression "obligations or incidents of service" appearing in Note 2 (supra) are wide enough to include a situation where personnel travel on authorised leave to join their family at a place other than the place for which he is given a railway warrant. In the instant case the Railway warrant issued to the Respondent may have authorised his journey only upto Sewan, but the fact that he continued his journey by train upto Hajipur to reach Patna to join his family is incidental to the primary object for which he was authorised annual leave. We hardly need mention that Entitlement Rules for Casualty Pensionary Awards, 1982 are beneficial in nature and ought to be liberally construed as was done by this Court in Madan Singh Shekhawat Vs. Union of India and Others, and in Union of India (UOI) and Others Vs. Jujhar Singh, . In Madan Singh's case (supra) the question that fell for consideration was whether a person was on duty while he was travelling back to join at the place of his posting on a motorcycle which mode of transport was strictly speaking not at public expense. This Court relying upon certain earlier decisions referred to therein, held that the expression "at public expense" ought to be liberally construed and should include a return

journey that was authorised no matter it was undertaken by a means other than a travel warrant issued at public expense. This Court observed:

"We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even as army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorised to avail the leave for leaving the station of posting, an army personnel uses what is known as "travel warrant" which is issued at public expense, the same will not be issued if the person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are 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 even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised."

11. In Jujhar Singh's case (supra) this Court was dealing with the question whether the Respondent who had met with a road accident in his native place and sustained grievous injury resulting in permanent disability was entitled to disability pension. The Respondent in that case had upon recovery from the injury continued in military service and superannuated with normal service pension. Disability pension was however declined to him despite representation although it was admitted that during his tenure in the army he had suffered a permanent disability. This Court held that although the Respondent was entitled to claim service pension he would not be entitled to any disability pension in the absence of a nexus between the disability and the act of omission or commission resulting in the injury suffered by him. Inasmuch as the Respondent had sustained the injury and consequent disability when he was on annual leave that too in his home town in a road accident, he was not entitled to any disability pension as the disability was not attributable to military service, observed this Court. What is important to note is that the Court declined relief of disability pension in that case in the absence of any causal connection between the "injury/disability" and "military service". That, however, is not the position in the case at hand. There is a reasonable nexus and causal connection between the disability and the military service of the Respondent at the relevant time. He was authorised to perform a journey commencing 25th March, 1997 and the accident that led to his disability occurred within two days from the commencement of the journey from Jammu on 25th March, 1997. The proximity in point of time between the homeward journey that started from Jammu and the date when he met with the accident as also the distance between the place from where the journey was started and the place to which he was travelling would give rise to a reasonable inference that the authorised journey had not ended when he met with the incident. The case may have been different if the Respondent had reached the destination engaged in some activity, unrelated to military service and in the course of such activity met with an accident resulting in a disability. In

Jujhar Singh's case (supra) the accident occurred in his home town causing a disability having no causal connection with the military service of the claimant. The present is not a case of that type. We are inclined in the present case to accept the Respondent's version that he had not reached the destination when he on 27th March, 1997 met with the accident that caused a disability to him. We therefore see no reason to interfere with the order passed by the Tribunal, no matter for reasons different from those recorded by the Tribunal. This appeal accordingly fails and is, hereby, dismissed. No costs.