

(2001) 05 P&H CK 0178

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 12697 of 2000

Ex-Major Bachan Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: May 3, 2001

Acts Referred:

- Army Pension Rules, 1961 - Rule 12(A)
- Pension Regulations for Army, 1961 - Regulation 173, 27(C)

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: Mr. Pritam Singh Saini, for the Appellant; Mr. S.K. Sharma, for the Respondent

Final Decision: Allowed

Judgement

Swatanter Kumar, J.

On 27.7.1983 the petitioner who was serving in the territorial army met with an accident and suffered multiple fractures while on military duty. The petitioner suffered disability to the extent of 20% as per the certificate issued by the respondent-authorities, copy thereof is annexed to the writ petition as Annexure P. 1. He retired from the service on 31.3.1987. Petitioner prayed for grant of disability pension which was rejected by the respondents on 26.2.1990 vide Annexure P.3 to the writ petition. The petitioner filed representation against that rejection which was also declined on 28.6.1994 vide Annexure P.4. Thus, the petitioner was compelled to file this writ petition praying that the respondents be directed to grant to the petitioner disability pension on the basis of the disability suffered by him during the course of his duty.

2. Upon notice the respondents contested the petition. It was argued on behalf of the respondents that the competent authority, in exercise of its discretion vested in it under Rule 27(C) read with Section 173 of the Pension Regulations for the Army, 1961, and the instructions dated 20.6.1996 had rightly rejected the case of the

petitioner for grant of disability pension. In Annexure P.4 it is stated as under :-

"The First Appeal Committee found after examining your treatment/service papers that you received the injury on 26.6.1983 when you went your house to get the key of the Almirah on your own scooter. As your case relates prior to the amendment of Rule 12(A), therefore, the first appeal Committee found that the benefit which requires to be given under this rule cannot be given under the unamended rules. When the accident took place, you were not entitled for use of military vehicle and for going home you were using your own vehicle. Thus, the disability occurred during the service is not attributable to military service.

It is regretted that it is not possible to accept your appeal."

3. Learned counsel for the petitioner argued that on the date of the accident the petitioner was on duty and was to produce certain documents before the enquiry officer. After reaching the office the petitioner noticed that he had left certain documents and keys at this residence. Thus, after coming to the office, he again left for his place of residence to bring the documents and keys, but unfortunately met with an accident on the way. Apparently the petitioner was neither unauthorisedly absent nor was doing any act which was impermissible under the rules while on duty.

4. It must be noticed at this stage that the respondents themselves had constituted a Court of enquiry. The Court of Enquiry was presided over by Capt, J.S. Kalsy. Copy of the said report has been filed by the petitioner on record as Annexure P.2. The respondents admit the correctness of this report. The findings of the Court have been recorded and in that it has been specifically stated as under :-

"1. TA-41188 Major Bachan Singh has gone to collect keys for confidential Almirah from his residence at about 0816 hrs. on 27th Jul 83.

2. TA-41188 Major Bachan Singh met with his scooter accident at about 0835 hrs. on 27 Jul 83 near Central Bus Stand, Ajmer.

3. The officer was evacuated to MI Room, Military Hospital, Ajmer in Auto Rickshaw.

4. The officer sustained severe injuries including fracture on clavicle (Rt.), Fracture upper end of TIBIA (Knees) and fracture 6th and 7th Ribs (Rt) on 27 Jul 83.

5. The officer was evacuated to MH Nasirabad at about 4.15 hrs. on 27th Jul 83 in the Ambulance."

"The Court is of the opinion that TA-41188 Major Bachan Singh met his scooter accident at about 0835 hrs. on 27 Jul 83 and sustained severe injuries including multiple fracture. The officer was on bona fide Military duty to collect keys for Confidential Almirah. The injury is attributable to Military service in peace area and has been caused in and for performance of Military duty."

5. It is also not disputed before the Court by learned counsel for the Union of India that the disability of the petitioner was 20% and under Rule 173 of the relevant rules, a person who had suffered a disability to the extent of 20% or more and such injury was attributable to or aggravated by military service, was entitled to receive disability pension. Both these ingredients are satisfied in the case of the petitioner. In fact the very documents prepared by the respondents themselves support case of the petitioner on all counts.

6. It hardly lies in the mouth of the respondents to state that the injury was not attributable to military service more particularly in face of the report of the Court of enquiry referred above, The Court of enquiry was conducted under orders of competent authority and in accordance with law. The said report was obviously accepted by the authorities. Resultantly, all other wings of the Army including the C.D.A. cannot over-look the said findings and reject claim of the petitioner for a reason which is total contradiction to the findings recorded by the competent Court.

7. The argument of the learned counsel for the respondents that the injury was not attributable to military service because the petitioner was using his own scooter and his visit to his residence to fetch the keys and papers cannot be construed as "during the course of service or duty" is without any basis and is misconceived. A Division Bench of this Court in the case of Shri Krishan Dahiya v. Union of India and another 1996 (4) SCT 426 : 1996(4) RSJ 503, held that where a person was travelling from his place of posting to his home at his own expense during the casual leave and met with an accident and suffered injuries resulting in disability was entitled to disability pension. Reference in this regard can be made to the judgment of the Supreme Court in the case of Joginder Singh (Lance Dafadar) v. Union of India and others 1997(2) R S J 403 and to the judgment of this court in the case of Ex.-Naik Manjit Singh v. Union of India and others 2000(1) SCT 385 : 2000(1) R S J 154.

8. In view of the above undisputed facts and the above enunciated principles of law, I have no hesitation in allowing this petition and quashing Annexure P.4, which to say the least, was passed in complete contradiction to the findings of the court of Enquiry by the officer concerned.

9. Resultantly, this writ petition is allowed. Letter/order Annexure P.4 dated 28.6.1994 is quashed and set aside. The respondents directed to consider the case of the petitioner afresh in accordance with law and in the light of this judgment within a period of two months from today and pass appropriate order granting benefit to the petitioner as permissible in law. Such order would be communicated to the petitioner by registered post at the address given in this petition. However, the parties are left to bear their own costs.

10. Petition allowed.