

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.12596/2004

% Date of decision: 22.07.2008

EX.HAV.BIDHI SINGH ...PETITIONER

Through: Mr.Rajesh Sehgal, Advocate

Versus

UNION OF INDIA & ORS. ...RESPONDENTS

Through: Mr.S.B.Sharma and Mr.Manoj
Ohri, Advocates with Major
S.S.Pandey for the Respondents.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. Rule DB.
2. At the request of learned counsel for the parties, the petition is taken up for final disposal.
3. The petitioner was enrolled in Indian Army on 20.06.1975 and while posted at Head Quarter No.62, Infantry Brigade on 20/21.07.1995 fell down in the night from the first floor of the barrack accidentally. The petitioner received multiple injuries including head injuries and was admitted to the Airforce Hospital,

Kanpur. The petitioner was downgraded to medical category 'CEE' permanent and was brought before the Medical Board and on its recommendations the petitioner was discharged from service during the period of his extended tenure of service. The petitioner is aggrieved by the rejection of his claim for disability element of pension on account of the fact that the disability occurred when the petitioner was not on duty. The petitioner is in receipt of service element of pension.

4. The only question for consideration is whether the accident which occurred in the barracks when the petitioner was serving the respondents can be said to have occurred in the course of duty.

5. In our considered view, the aforesaid issue is no more *res integra* in view of the judgment of the Apex Court in Madan Singh Shekhawat v. Union of India & Ors; 1999(4) Recent Services Judgments 78. The sepoy in the said case was disabled in an accident while alighting from the train while going to his hometown on authorized casual leave. It was held that since there was no allegation that the sepoy was travelling unauthorizedly, he would be entitled to the benefits of the disability pension which includes the disability and the service element of the pension. The Apex Court emphasized that it is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give a wider meaning rather than a restrictive meaning which could negate the very object of the Entitlement Rules for Casualty Pensionary Awards, 1982 ('Entitlement Rules' for short). In this behalf, a reference was made to Rule 48 {Appendix II of the

Entitlement Rules) of the Pension Regulations for the Army, 1961 ('the Pension Regulations' for short) which dealt with the said aspect. The said provision relates to the officers and the corresponding provision relating to the PBORs is Regulation 173 of the Pension Regulations, which reads as under:

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

6. A reference was also made to Rule 10 of Leave Rules to emphasize that casual leave counts as a duty.

7. The Supreme Court in Madan Singh Shekhawat's case (supra) observed in para 14 as under:

"14. In *Seaford Court Estates Ltd v. Asher* (1949 2 ALL ER 155), Lord Denning, L.J.(as he then was) held:

"When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of dinging the intention of Parliament .. and then he must supplement the written word so as to give "force and life" to the intention of the legislature... A judge should ask himself the question how, if the makers of the Act had themselves come across this truck in the texture of it, they should have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but

he can and should iron out the creases.”

8. We are thus of the considered view that where the provisions have been beneficially construed in a case where a sepoy on leave suffered injuries, it can hardly be said that a person who was in the barracks and deployed on duty will not be entitled to disability pension merely because the injuries suffered were on account of an accident and not while engaged in any particular assigned action.

9. We may notice that a similar view has been taken by the Supreme Court in Civil Appeal No.4257/1993 Joginder Singh v. Union of India & Ors, decided on 16.08.1993 where the injuries were sustained in an accident while the sepoy was on casual leave.

10. A writ of mandamus is thus issued directing the respondents to pay the disability element of pension to the petitioner. The petitioner will be entitled to arrears of pension, on the rates admissible as per law, for a period of three years prior to date of filing the present petition i.e.29.07.2004 and the same be remitted to the petitioner within a period of three months from today

11. The petition is allowed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

JULY 22, 2008
dm

MOOL CHAND GARG, J.