

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 15018 of 2010 (O&M)
Date of Decision: 16.1.2015**

Ex. Constable Avtar Singh

....Petitioner

Versus

Union of India and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. M.S.Dhami, Advocate
for the petitioner.

Ms. Ashima Mor, Advocate
for the respondents.

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J. (Oral)

Feeling aggrieved against the alleged inaction on the part of the respondent authorities, while not granting disability pension despite having suffered 70% disability, petitioner has approached this Court by way of instant writ petition under Article 226/227 of the Constitution of India.

Notice of motion was issued and pursuant thereto, written statement was filed on behalf of the respondent.

Learned counsel for the petitioner submits that while serving in the respondent-department, petitioner was on leave and he

suffered 70% disability due to a road accident. However, despite this admitted position on record that petitioner was suffering from 70% disability, he was invalidated out of service and granted only invalid pension whereas, he was entitled for disability pension. In support of his contentions, learned counsel for the petitioner relies upon a Full Bench judgment of this Court in **Union of India and others Vs. Khushbash Singh, Ex. Nabi Subedar, 2010 (3) RSJ 369**, and a Division Bench judgment dated 24.8.2010 passed by this Court in **LPA No. 613 of 2010 (Union of India and others Vs. Smt. Roshni Devi)**, which came to be upheld by the Hon'ble Supreme Court on 10.12.2010 in **Special Leave to Appeal (civil) No. 33614 of 2010**. He prays for allowing the present writ petition.

Per contra, learned counsel for the respondents submits that the petitioner was entitled only for invalid pension and the same has already been granted to him. She further submits that petitioner was not entitled for disability pension because the disability suffered by the petitioner was not directly attributable to the conditions of service. She concluded by submitting that the judgments relied upon by the learned counsel for the petitioners were not applicable to the facts of the present case. She prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is not in dispute that while serving in the respondent-department, petitioner suffered 70% disability. It is also not in dispute that the petitioner has been granted invalid pension. The only issue that arises for consideration of this Court is whether the petitioner was entitled for disability pension, having suffered disability to the extent of 70% because of injury suffered by him in a road accident, while on leave.

A combined reading of the Hon'ble Full Bench judgment as well as Division Bench judgment of this Court relied upon by the learned counsel for the petitioner, would show that the issue involved in the present case is no more res-integra. Under somewhat similar circumstances, the Hon'ble Full Bench of this Court made the following observations:-

*“We have attempted to state the whole law in the context of the Rules as explained by the Hon'ble Supreme Court and by the decisions of Division Bench of this Hon'ble Court. We answer the reference by holding that there is no conflict between the decisions in **Jarnail Singh**, on the one hand and **Gurjit Singh and Pooja and another**, on the other. An Army Personnel, while on casual leave or annual leave, shall be considered to be on duty except when by virtue of Rule 11 of the Leave Rules, he could not be deemed to be on duty, if he had not actually performed duty in that year. If he was on duty and he suffers the disability due to*

natural causes, the issue whether it was attributable to or aggravated by Military Service will be examined by taking the case of the Army Personnel as he was and examining whether it was the intervention of the army service that caused the disability. The decision of the Medical Board in examining the physiological injury or the psychological impacts of military service would obtain primacy and the Court shall normally be guided by such scientific medical opinion. However, in cases where the injury that results in disability is due to an accident, which is not due to natural, pathological, physiological or psychological causes of the personnel, the question that has to be asked is whether the activity or conduct that led to the accident was the result of an activity that is even remotely connected to Military Service. An activity of an independent business or avocation or calling that would be inconsistent to Military Service and an accident occurring during such activity cannot be attributable to Military Service. Any other accident, however, remotely connected and that is not inconsistent with Military Service such as when a person is returning from hospital or doing normal activities of a military personnel would still be taken as a disability attributable to Military Service.”

The matter for consideration before the Hon'ble Full Bench was pertaining to the military service. However, the issue before the LPA Bench in Roshni Devi's case (supra), was just an identical one with the present case, as the matter was pertaining to BSF itself. Husband of Smt. Roshni Devi was serving in BSF. During the service, while he was on leave, he suffered disability which was held attributable to the service. Later on, husband of Smt. Roshni Devi died and she approached this Court placing reliance on an earlier order dated 21.5.2008 passed in CWP No.6351 of 2005 (Ex. Sepoy Sumanjit Singh Vs. Union of India and others) and the writ petition filed by Smt. Roshni Devi was allowed.

Feeling aggrieved, Union of India filed LPA No. 613 of 2010 and the same was dismissed by the Division Bench, vide order dated 24.8.2010. This order came to be upheld by the Hon'ble Supreme Court vide its order dated 10.12.2010 passed in Special Leave to Appeal (civil) No. 33614 of 2010.

Since husband of Smt. Roshni Devi was serving in BSF, it would be appropriate to refer to the order passed by the LPA Bench in extenso and the same reads as under:-

“The instant appeal filed under Clause X of the Letters Patent is directed against judgment dated 26.10.2009 rendered by learned Single Judge holding that the injury sustained by the husband of the writ petitioner-respondent who was on earned leave had to be deemingly attributed to the service of the Border Security Force (in brevity

the 'BSF'). He later on died. Learned Single Judge while placing reliance on the judgment of this Court rendered in the case of Ex. Sepoy Sumanjit Singh vs. Union of India and others (CWP no.6351 of 2005 decided on 21.5.2008), has allowed the writ petition by concluding that while the employee of BSF is on leave, any disability suffered during that period would be attributable to his service.

The only argument raised by the learned counsel for the appellant was that judgment rendered in the case of Ex. Sepoy Sumanjit Singh's case (supra) was entirely on different footing and Regulation 173 of Pension Regulation for the Army, 1961 was applicable, whereas in the present case Rule 4(b) of the Central Civil Services (Extraordinary Pension) Rules, were applicable . While issuing notice of motion, the aforesaid contention of the learned counsel for the appellant has been noticed in order dated 26.7.2010.

Mr. Surinder Sheoran, learned counsel for the respondent, has pointed out that by virtue of provisions of Rule 4(c) and on its comparison with Rule 12 of the Entitlement Rule 1982, it is apparent that the provision is pari materia with Note 2 (f) of Rule 12. As such rule being pari materia would be

open to the same interpretation which has been given to these rules in case of Ex. Sepoy Sumanjit Singh (supra). Learned counsel for the respondent has also placed reliance on a Full Bench Judgment of this Court rendered in the case of Union of India vs. Khushbash Singh (LPA No.978 of 2009 decided on 31.3.2010) for the same proposition.

Having heard learned counsel for the parties, we are of the considered view that the judgment rendered by the learned Single Judge, does not suffer from any legal infirmity because Rule 4(c) of the Central Civil Services (Extraordinary Pension) Rules is pari materia with the provision of Rule Note 2(f) of Rule 12. Both the rules would have to be interpreted in the same manner and therefore, the judgment rendered by the learned Single Judge does not warrant any interference by the Letters Patent Bench. It is further appropriate to mention that in the Full Bench's Judgment in the case of Union of India (supra), a view taken in Ex. Sepoy Sumanjit Singh (supra), has also been proved. The judgment of the Full Bench in case employee covered the issue and held that while an argument to be only that any disability suffered during the period has to be deeminglly attributable to the military service.

Accordingly, appeal fails and the same is dismissed.”

The law laid down by the Hon'ble Full Bench as well as LPA Bench of this Court squarely covers the case of the petitioner. No contrary judgment has been brought to the notice of this Court, at the hands of the respondents. Despite her best efforts, learned counsel for the respondents could not distinguish the judgments relied upon by the learned counsel for the petitioner, particularly the case of Roshni Devi (supra). Having said that, this Court feels no hesitation to conclude that the petitioner was entitled for disability pension and his genuine claim has been illegally denied to him, because of which the impugned action of the respondent authorities cannot be sustained.

Again, another Division Bench of this Court in a recent judgment reported in 2015 (1) RSJ 191 (Barkat Masih Vs. Union of India and others), discussed numerous judgments on the subject, rendered by the Hon'ble Supreme Court of India as well as this Court and finally decided in favour of the employee, reiterating the law laid down by the Hon'ble Full Bench of this Court in Khushbash Singh's case (supra).

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the genuine claim of the petitioner has been illegally denied by the respondents because of which petitioner is declared entitled for disability pension.

Consequently, the respondent authorities are directed to reconsider the matter, grant due benefit of disability pension to the petitioner at an early date and in any case within a period of three months from the date of receipt of a certified copy of this order. Since the genuine claim of the petitioner was illegally denied, he is also entitled for arrears of disability pension alongwith interest @ 9% per annum, from the date when the amount became due till the date of actual payment. If the needful is not done within the stipulated time, the petitioner shall be entitled for interest @ 12% per annum instead of 9% per annum.

Resultantly, instant writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

16.1.2015
AK Sharma