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

**CWP No.13088 of 2014 (O&M)
Date of Decision: 12.02.2015.**

Ex. Hav. Devender Singh

.....Petitioners

Vs.

Union of India & others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. R.A. Sheoran, Advocate
for the petitioner.

Mr. Brijeshwar Singh Kanwar, Advocate
for 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?*

SURYA KANT, J. (ORAL)

The short question that arises for consideration in this case is whether the injury suffered in a road accident while the petitioner was on annual leave and on the basis of which he was downgraded in low medical category and boarded out, is attributable to Military Service?

[2]. The petitioner approached the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir (hereinafter referred to as 'the Tribunal') seeking a direction for the grant of disability pension on the premise that the cause of disability was attributable

to the Military Service. The Tribunal vide order dated 15.05.2012 (Annexure P-4) has turned down the petitioner's claim, giving rise to the instant petition

[3]. The facts are broadly admitted. The petitioner joined the Indian Army on 04.03.1986. He was on sanctioned annual leave w.e.f. 12.04.2005 to 10.06.2005. On 18.05.2005 while he was going on motorcycle to visit one of his relative, he met with a road accident while he was trying to save a child who was riding bicycle, due to which the motorcycle skidded and the petitioner fell down and got injured his right foot.

[4]. The petitioner was admitted to Base Hospital, Delhi Cantt. whereafter the treatment he was downgraded in 'low medical category' and was boarded out of Military Service. The petitioner claimed disability pension which was declined and that action of the Authorities has been upheld by the Tribunal.

[5]. It is undeniable that the petitioner's claim for disability pension has been rejected only on the ground that the accident in which he suffered injury was not attributable to the Military Service as on that date he was on annual leave.

[6]. The aforesaid hyper-technical objection raised by the Authorities, in our considered view, deserves to be repelled in view of various decisions of this Court including (i) Full Bench decision in **Union of India and others v. Khushbash Singh 2010(3) SLR 103,** ruling that "the fact that a person had been away from the duty station on casual leave or annual leave would not, therefore, make

any difference so long as the activity could not be seem to be an *unmilitary* activity.....”

[7]. Somewhat similar situation arose in the case of **Barkat Masih v. Union of India and others (CWP No.17792 of 2013)** decided on 23.05.2014 where the writ-petitioner while on casual leave met with a road accident and his disability pension claim was rejected on the ground that the accident was not attributable to Military Service. A Co-ordinate Bench after referring to the relevant case law, accepted his claim observing as follows:-

“Even otherwise, in view of the Larger Bench judgment of this Court in Khushbash Singh's case (supra), we find that reliance of learned counsel for the respondent on the Full Bench of Delhi High Court in Dilbag's case (supra) does not merit acceptance. Recently in Akhtari Khatun's case (supra), the appellant was claiming special family pension for the reason that her husband died because of injury attributable or aggravated by military service.

In view of the judgment of Hon'ble Supreme Court in Madan Singh Shekhawat's case (supra), Balbir Singh's case (supra) and that of Full Bench judgment of this court in Khushbash Singh's case (supra), we find that the injuries suffered by the petitioner when on casual leave entitles the petitioner for a disability pension as the injury would be deemed to have been attributed to military service. Consequently, the writ petition is allowed.”

[8]. In view of the fact that the Full Bench of this Court in **Khushbash Singh's case** has rightly drawn no distinction between casual leave or annual leave and the petitioner in the instant case

did not suffer injury as a result of any *unmilitary* i.e. unlawful, illegal or an activity for which he alone is responsible, we see no reason to take a different view as the injury suffered by the petitioner was not on account of an activity which is prohibitive or incompatible to Military Service. The said injury is accordingly held to be attributable to the Military Service only. As a sequel thereto, we hold the petitioner entitled to the disability pension.

[9]. For the reasons afore-stated, the writ petition is allowed. The order passed by the Tribunal is set aside. The respondents are directed to release the disability element of pension along with arrears in accordance with Rules and Instructions within a period of four months from the date of receipt of certified copy of this order, failing which the petitioner shall be entitled to interest @7% per annum on the arrears of pension.

[10]. Ordered accordingly.

(SURYA KANT)
JUDGE

February 12, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE