

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

**LPA No.1089 of 2015 (O&M)
Date of decision: July 27, 2015**

Union of India and others -----Appellants

Versus

Ex. Constable Avtar Singh -----Respondents

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- Mr. Vivek Singla, Advocate
for the appellants

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the order dated 16.01.2015, whereby, the writ petition filed by the respondent seeking direction to the appellant to grant disability pension, has been allowed.

Though there is delay of 156 days in filing the appeal and the appellant-State has filed an application (CM No.2287-LPA-2015) for condoning the delay, yet we have heard learned counsel for the appellant on merits and have gone through the order passed by the learned Single Judge.

The respondent was enrolled in the Border Security Force as Constable on 03.09.1993 and joined 120 Battalion at Srinagar. He served for more than 13 years and 6 months. During his service on 09.08.2001, he was sanctioned two months leave as his wife was

pregnant and during the leave period, he met with an accident in which he received a head injury leading to loss of his hearing capacity. After leave, he joined his Battalion but was placed in low medical category.

On 23.11.2006, he appeared before the Review Medical Board, which assessed 70% disability and opined that he was unfit for further retention in service. On 31.03.2007, he was discharged from service on medical grounds with entitlement of invalidation pension. He submitted representation that he was entitled for disability pension. Receiving no positive response, he filed the writ petition, which was allowed by the impugned order.

Before the learned Single Judge, the appellant had submitted that the respondent was not entitled for disability pension because the disability suffered by him was not directly attributable to Government duty. Ld. Single Judge rejected this contention. The writ petition was allowed.

The learned Single Judge relied on various judgments. These included Full Bench decision in **Union of India and others Vs. Khushbash Singh, Ex. Naib Subedar, 2010 (3) RSJ 369**, a Division Bench judgment dated 24.8.2010 in LPA No.613 of 2010 (**Union of India and others Vs. Smt. Roshi Devi**), which was upheld by the Hon'ble Supreme Court on 10.12.2010 as Special Leave to Appeal (Civil) No. 33614 of 2010 filed in that case was dismissed.

In the Full Bench decision, it was observed that 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 the duty in that year. It was observed that 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. Thus the Full Bench was dealing with a person in Military Service.

Roshni Devi's case (supra) was a matter pertaining to BSF. The issue in the said case was identical with the present case. The husband of Smt. Roshni Devi, was serving in BSF. During service, while he was on leave, he suffered disability, which was held attributable to service. After his death, Smt. Roshni filed writ petition which was allowed. LPA filed thereagainst was dismissed. The decision in LPA was upheld by Hon'ble the Supreme Court. In the LPA, the observations of the learned Single Judge that while an

employee of BSF is on leave, any disability suffered during that period would be attributable to his service, were approved. It was held that though different Rules are applied in the Army and BSF but on comparison, they are found to be *pari materia* and hence, similar interpretation had to be given in both the cases. It was observed as under:

*“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 is 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 deemingly attributable to the military service.”*

Learned counsel for the appellant has argued that the learned Single Judge has not considered the later decisions on the point. In particular, he has referred to a decision of Hon'ble the Supreme Court in the case of **Sukhwant Singh Vs. Union of India and others 2012(12) SCC 228.**

We have gone through the aforesaid decision. In this case, Hon'ble the Supreme Court has affirmed the legal position on the issue of entitlement of disability pension, which was summed up by the Tribunal as under:

“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 during the time the individual is on authorised 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 conditionality 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 is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission of 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, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military 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 causal 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 omissions 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 matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief 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 force. At least remote attributability to service would be the condition precedent to claim under Rule 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 behaviour.

(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."

In our view, the said judgment can be of no help to the appellant.

In the writ petition, it was stated that when the respondent was on sanctioned two months' leave, he met with an accident and received head injury, which resulted in loss of hearing capacity.

In para 4 of the written statement filed on behalf of the appellant, it was stated as under:

"4. The petitioner met with an accident on 13.08.2001 and sustained internal injury causing hearing impairment while he was on 60 days earned leave w.e.f. 10.08.2001 to 08.10.2001. A COI was conducted in this regard. As per opinion of the Court, since the injury was sustained by him during leave period, the same was not attributable to Govt. Service. The petitioner was produced before medical board and awarded Low Medical Categories as under:

- i) SIH3 (T-24) AIPiEI on 26.03.2002*
- ii) SIH3 (T-48) AIPiEI on 30.05.2003*
- iii) SIH3 (P) AIPiEI on 20.10.2004*
- iv) SIH5 (P) AIPiEI on 23.11.2006"*

From this, it is clear that the Court of Inquiry formed its opinion regarding the disability not being attributable to the Government Service solely on the ground that the injury was sustained by him during the leave period.

In **Sukhwant Singh's** case (supra), which has been

relied upon by the Ld. Counsel for the appellant, it has been specifically held that 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 or disability/ death. There has to be a relevant and reasonable cause and connection howsoever remote between the incident resulting in disability/death and Military service for it to be attributable. This condition applies both when the person is posted and present in his unit or when he is on leave.

In our view, the Court of Inquiry appears to have wholly misdirected itself in law by concluding that merely because the respondent was on leave at the relevant time when the accident took place, the injury caused has to be necessarily taken to be as one not attributable to Service. There was no evidence before the Court of Inquiry to show that the injury had no causal connection, howsoever remote, with the service, which could be the basis to deny disability pension. The decision of the Court of Inquiry, hence, cannot sustain as it is based on a consideration which is alien to such determination.

Thus, we find no cause or reason to disagree with the decision of the Ld. Single Judge.

Accordingly, this appeal is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

July 27, 2015
Atul