

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

115+238

CWP-15107-2021 (O&M)

Date of Decision : 09.11.2023

DEVRAJAN P.D GS 171759M MT DVR GRADE-I PETITIONER

V/S

UNION OF INDIA AND ORS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.R.D.Bawa, Advocate
Mr. Samuel Gill, Advocate
Mr.Dipanshu Kapur, Advocate
for the petitioner.

Mr. Shivoy Dhir, Sr. Panel Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 20.07.2016 (Annexure P-14) and directions to the respondents to release payment of Rs.7,51,056/- awarded by the Commissioner under the Employees Compensation Act, 1923 (for short 'ECA, 1923') vide order dated 27.08.2015 (Annexure P-12).

2. The petitioner on 18.11.1988, joined General Reserve Engineer Force, which is part of Armed Forces. The petitioner, on 07.04.2014, proceeded on earned leave to his home town in Kerala. The petitioner met with an accident while boarding the train at Thrissur Railway Station. The petitioner was referred to Government Medical College, Thrissur and from where, he was further referred to Civil Hospital, Kochi. The Medical Board

of respondent lowered the medical category of the petitioner from normal to GREF-III (PMT). The disability of the petitioner was assessed 90%. The Court of Enquiry was held to investigate the circumstances under which the accident took place and as to whether the petitioner is entitled for compensation under ECA, 1923. The enquiry officer prepared his report which came up for consideration before Chief Engineer who vide report dated 04.03.2015 agreed with the opinion of the enquiry officer and held that the petitioner is entitled to compensation under ECA, 1923. The respondent vide communication dated 09.08.2015 referred the matter to the office of Labour Commissioner. In the said communication, it was specifically noticed that the petitioner is entitled to compensation under ECA, 1923. The Labour Commissioner vide order dated 27.08.2015 ordered the respondents to pay a sum of Rs.7,51,056/- to petitioner. It was further directed that if respondents fail to pay said amount within 30 days, the respondents shall be liable to pay interest @12% per annum. Despite aforesaid communication and orders, the respondents vide order dated 20.07.2016 (Annexure P-14) formed an opinion that the petitioner had met with an accident while he was on leave, thus, he was not on government bona fide duty and he was not entitled to compensation under ECA, 1923.

3. Learned counsel for the petitioner submits that all the communications made by respondents indicate that the petitioner is entitled to compensation under ECA, 1923. The Labour Commissioner has passed an order dated 27.08.2015 whereby respondents were directed to pay compensation. The said order was never challenged, thus, respondents were bound to comply with said order. The case of the petitioner is squarely covered by judgment of Full Bench of this Court in Union of

India vs. Khushbash Singh, 2011 (2) SLR 224.

4. Per contra, learned counsel for the respondents submits that the petitioner in terms of office memorandum dated 26.10.2015 is not entitled to compensation under ECA, 1923. The office memorandum is based upon Section 3(1) of ECA, 1923.

5. I have heard the arguments of learned counsel for the parties and perused the record.

6. The conceded position emerging from the record is that since 1988, the petitioner was working with respondents. The petitioner on 07.04.2014 proceeded on earned leave. The petitioner while going to home from his work place met with an accident. The petitioner was seriously injured and he was declared medically unfit. The category of the petitioner was changed from normal to GREF-III. Disability of the petitioner was assessed 90%. The Court of enquiry was conducted by respondents and in the said enquiry, the petitioner was found entitled to compensation. Different authorities prior to passing impugned order formed an opinion that the petitioner is entitled to compensation. The Labour Commissioner passed a specific order directing the respondents to pay compensation under ECA, 1923. The respondents have not challenged the said order.

7. A Full Bench of this Court in **Khushbash Singh's case (supra)** while adjudicating the question whether the accident occurred during casual or annual leave will be considered as 'on duty' held as follows :

18. 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.

19. On the above line of reasoning, the decision of the Single Judge in Khusbash Singh in LPA No. 978 of 2009 is confirmed and the LPA is dismissed. On the same

token of logic, the writ petition filed by the Army Personnel, who suffered an injury during annual leave would also be entitled to disability pension and consequently, the decision of the Single Judge is correct and confirmed and the appeal filed by the Union in LPA No. 49 of 2009 is also dismissed.

8. From the perusal of documents and afore-cited judgments, I am of the considered opinion that the petitioner is entitled to compensation under ECA, 1923. The respondents have not challenged order passed by Labour Commissioner, thus, they were bound to comply with a quasi judicial order. In the absence of setting aside of said order, the respondents were bound to comply with said order. The respondents are directed to release a sum of Rs.7,51,056/- along with interest as ordered by Labour Commissioner within three months from today.

9. The petition stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

09.11.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No