

2024:PHHC:142559-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-918-2024
Reserved on: 25.09.2024
Pronounced on: 23.10.2024

Union of India and Ors.Petitioners

Versus

Ex Nk Shri Ram ShalpadRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Ms. Neha Jain, Advocate
for the petitioner.

Mr. Navdeep Singh, Advocate with
Mr. Ajay Sheoran, Advocate and
Mr. Roopam Atwal, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for setting aside the order dated 04.01.2023
(Annexure P-6), as passed by the learned Armed Forces Tribunal
concerned, whereby the claim of the respondent for grant of disability
pension was allowed.

Factual Background

2. The respondent joined Army on 17.04.1961 in a fit state of
health and was invalidated out from service on 20.08.1974 in Low
Medical Category on completion of 13 years, 4 months and 3 days of

2024:PHHC:142559-DB



service with disability "Below Knee Amputation RT Effects of E-819, N-897. The medical board considered the disability as 'attributed to service and assessed the same @ 70% for two years'.

3. The respondent sustained injuries in MT accident in field area, while he was driving car 5CWT 4x4 Jeep Willys BA No. WB-33-996 of 5 Sikh Regiment which was going to 10 Garhwal Rifle Location for conveyance of personnel of 10 Garhwal near village Ratanpur. A Court of Inquiry was constituted and during inquiry, they found that at the relevant time, the respondent was driving vehicle under the influence of alcohol and without obtaining the permission of the competent authority.

4. Accordingly, the disability pension claim of the respondent was rejected by PCDA (P) Allahabad vide order dated 04.02.1976, by stating that the disability was neither attributable to nor being aggravated by military service.

5. Thereafter, in the year 2019, the respondent filed O.A. before the learned Tribunal concerned for setting aside the afore rejection order and to grant him the war injury pension @ 70 % for life. The said O.A., became allowed vide order dated 04.01.2023. The operative part of the said order is extracted hereinafter.

"6. The crux of the law laid down in the judgments cited supra is that an authority like Principal Controller of Defence Accounts cannot sit over the expert opinion given by a duly constituted Medical Board. Considering the law laid down by the Hon'ble Supreme Court and also the attending circumstances, the rejection of the claim of the

2024:PHHC:142559-DB



applicant for disability pension is neither legally nor factually sustainable. The applicant, therefore, is entitled to the grant of disability pension which consists of disability element and disability pension (Both) for life instead of invalid pension already sanctioned from the date of invalidation from military service i.e. 19.08.1974.

7. *For all the reasons, hereinabove, this application succeeds and is accordingly set aside and quashed. The applicant is held entitled to the grant of disability pension @ 70 % from the day next to the date of invalidation i.e. 20.08.1974 to 31.12.1995 and @ 75 % as against 70 % for life after being rounded off as per the ratio of the judgment of the Supreme Court in Civil Appeal No. 418/2012 titled Union of India Vs. Ram Avtar decided on 10.12.2014..... ”*

6. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra) by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Inferences of this Court.

7. Before proceeding to make an effective adjudication upon the present writ petition, it is relevant to extract the opinion of the Commander 52 Infantry Brigade, on the proceedings of the Court of Inquiry. The relevant contents whereof, are extracted hereinafter.

“ I concur with the opinion of the Court. The accident to Car 5 cwt 4 x 4 Jeep Willys BA No. WB-33996 belonging to 5 SIKH has occurred primarily due to the poor judgment on the part of No 7045450 Nk (Veh Mech) SHRI RAM who was driving the veh under the effects of alcohol at the time of accident.

2024:PHHC:142559-DB



2. I direct that disciplinary action be taken against the following personnel for reasons stated against each :-

a) No 7045450 Nk (Veh Mech) Shri Ram for driving a veh under the effects of alcohol and without obtaining the permission of competent authority.

b) No 3348885 L/Hav Kapur Singh for negligent performance of duties as P1 MT Hav in that he did not effectively prevent No. 7045450 Nk (Veh Mech) Shri Ram from driving the said veh. The fact that the vehicle with key was available for Nk (Veh Mech) Shri Ram to drive point to the negligent performance of his duties.

c) No 3363127 Sep Kuldip Singh for leaving the key in the veh against existing unit orders on the subject.

3. ***The injury sustained by No. 7045450 Nk (Veh Mech) Shri Ram and death of No 7072303 Brij Lal both of 5 Sikh are attributable to military service in a field area.”***

8. The reason assigned by the learned Armed Forces Tribunal to conclude that the disability supra, as became entailed upon the respondent, became so entailed during service, became banked upon the opinion supra made by the medical board. The opinion supra of the expert body, thus became declared to be unamenable to become tinkered or reviewed by the Principal Controller of the Defence Accounts, who however was not an expert. Moreover, with the Court of Inquiry also concluding that ***'the injury sustained by No. 7045450 Nk (Veh Mech) Shri Ram and death of No 7072303 Brij Lal both of 5 Sikh are attributable to military service in a field area.'*** If so, the reliance(s) made upon the said findings were required to be revered, as aptly done by the learned Armed Forces Tribunal concerned.

2024:PHHC:142559-DB



9. Though, it appears that the Court of Inquiry also recorded a finding that at the relevant time, the present respondent was inebriated, therebys, the ill fated accident which resulted in the entailment of the apposite disability upon him, became concluded to arise from his negligence arising from his consuming alcohol. However, since there is no evidence to support the said fact, therebys, the said findings cannot be accepted nor thereby the opinion of the medical board rather can become annulled.

10. Moreover, when the findings which occur at the end of the Court of Inquiry, and which are to be also revered when declare that the disability, as became entailed upon the present respondent became so entailed during the performance of his military service, therebys, besides when no cogent rebuttal thereto evidence became adduced nor when any further evidence became adduced, thus suggestive, that the said entailed disability was a sequel of his driving the vehicle in an evident state of intoxication. Consequently, it has to be declared that the present respondent was driving the vehicle concerned, in a fit state of mind, or he was driving the apposite vehicle while he was not inebriated, rather the accident which resulted in the entailment of the apposite disability, hence was a sequel of emergence of a fortuitous circumstance(s).

Final Order of this Court.

11. In aftermath, this Court finds no merit in the writ petition and with observations above, the same is dismissed.

2024:PHHC:142559-DB



12. The impugned order, as passed by the learned Tribunal
concerned, is maintained and affirmed.
13. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

23.10.2024
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No