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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-17215-2024
Date of Decision: 25.10.2024

UNION OF INDIA AND ORS.Petitioners
Versus

EX SEPOY MADAN LAL AND ANOTHERRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE ALOK JAIN

Argued by: Mr. Amit Arora, Advocate
for the petitioners-UOI.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant writ petition, the petitioner herein- Union of India, prays for the setting aside of the order dated 08.07.2022 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, whereby the claim of the respondent for the grant of disability pension was allowed.

Factual Background

2. Respondent No. 1 was enrolled into the Indian Army on 25.07.1984 and was discharged from service on 31.07.2006 and was granted service pension from service rendered in the Army. Thereafter, respondent No. 1 was enrolled in the Defence Security Corps (DSC) w.e.f 31.08.2007 and was discharged from there on 31.08.2017 after completion of 10 years and 01 day service on being placed in low medical category A-3 (permanent) against the injury '**Fracture Tibia**

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injury owing to his becoming struck by a motor cycle. However, the claim of the applicant was rejected on the ground that the disability was neither attributable to nor became aggravated by military service.

3. Respondent No. 1 preferred first appeal against the afore rejection order. The said appeal became dismissed vide letter dated 16.05.2019.

4. Feeling aggrieved, the respondent filed O.A., before the learned Armed Forces Tribunal concerned, wherebys he cast a challenge to the above made rejection order and also sought the benefit of rounding off his disability element @ 50 % against 30 %. The said O.A., became allowed vide order dated 08.07.2022. The operative part of the said order is extracted hereinafter.

“Now if coming to the main issue in this case, learned counsel for the applicant has submitted that he was on his way to canteen to buy the daily used items. He was not any where out and rather within the premises of his unit. He was hit by a motor cycle at that time. There is no denial thereto even on behalf of the respondents also. Their plea that he was not on duty and rather on the way to canteen, hence there is no causal connection in between his service in the Army and the injury he sustained in the accident is neither legally nor factually sustainable for the reason that in our opinion, a soldier in the unit and not on leave has to be treated on duty even if he was going to canteen and for that matter mess, zim etc. It is nowhere contemplated nor brought to our notice that for the purpose of causal connection between the Army Service and Navy Service injury sustained by a soldier when not on duty at the

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relevant time, but in his unit itself cannot be said to be attributable to service and rather in our opinion such a soldier in his unit has to be treated on duty. The applicant's claim for grant of disability pension as such has been erroneously rejected."

5. 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.

Submissions of the learned counsel for the petitioners.

6. The learned counsels for the petitioners submit, that the learned Tribunal had failed to appreciate the fact that there is no general rule or presumption that a person who suffers an injury while he is in the unit, thus ipso facto rendering open inference that he was on duty and as such, the injury sustained by him is to be treated to be attributable to rendition of military service.

7. Further, the learned Tribunal had failed to appreciate the law laid down by the Apex Court in case titled as ***Secretary, Govt of India and Ors. Vs. Dharambir Singh***, reported in ***(2020) 14 SCC 582*** wherein it becomes expostulated that for an injury to be considered as being attributable to military service, thereupon, it must bear a causal connection with the rendition of military service, even when the injury was sustained while the military personnel was on duty.

36) We find that summing up of the following guiding factors by the Tribunal in Jagtar Singh v. Union of India & Ors and approved in Sukhwant Singh and in Vijay Kumar do not warrant any

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change or modification and the claim of disability pension is required to be dealt with accordingly:-

*“(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 in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be 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 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 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 casual 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 un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of

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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 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 Rules 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.”

Inferences of this Court.

8. For the reasons to be assigned hereinafter, the supra submissions addressed before this Court by the learned counsel for the petitioners are rejected.

9. The fact that there is no evidence on record that the injury sustained by respondent No. 1 was sustained as a sequel of his being negligent nor when any evidence exists on record displaying that at the relevant time, the respondent was not within the precincts of the unit nor when any further evidence becomes adduced that at the relevant time, when he was so positioned inside the unit, he became so positioned in an evidently declared prohibited area.

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10. The omission of the above evidence leads to a categorical conclusion that since the present respondent was not the tortfeasor, rather when he evidently sustained injuries upon his becoming struck by a motorcycle, besides when at that stage, he was within the precincts of the Army unit. Therefore, even if assumingly the present respondent was not performing any duty at the relevant time, yet when the position occupied by respondent No. 1, thus within the precincts of the unit, is not disclosed by any cogent evidence to be an evidently declared prohibited area, rather for becoming occupied only by the personnel who become deputed to perform duties there.

11. In aftermath, when the respondent is not the tortfeasor besides for omission of adduction of cogent evidence (supra), thereby, this Court is led to conclude that irrespective of the fact that even if the respondent was not on duty at the relevant place, yet when he was within the unprohibited precincts of the unit concerned, thereupon, the injury sustained by him is deemed to be so sustained while he was rendering military service. Consequently, the injury so sustained is to be declared to become attributable to or becoming aggravated by rendition of military service, dehors the fact that then he was not performing active military duty. Moreso, when performance of active military duty is not mandated in the apposite regulations to be the solitary striking reason for allowing the claim for disability pension.

12. Conspicuously thereby reiteratedly there is but naturally a causal connection inter-se the presence of the respondent inside the

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unit, thus with the injuries sustained by him, irrespective of the fact that at the relevant time, he may not have been on active duty.

13. Even otherwise, if the above inference is not permitted to be made, therebys, the tortfeasor(s) concerned, who are astride the relevant offending vehicle and who make the offending vehicle collide with the defence personnel concerned, even when the latter is/are not on active duty, but become positioned in an un-prohibited area within the unit, rather would go scot free besides therebys the injury sustained by the defence personnel would remain un-redeemed. Conspicuously when the monetary redemption of the injury sustained by the defence personnel concerned, thus in the above factual scenario, rather palpably is the holistic objective behind the relevant regulations.

14. Further, since in terms of the judgment rendered by the Apex Court, in case titled as '*Union of India Vs. Ram Avtar*', reported in **2014 SCC Online 1761**, wherein, a declaration is made to the extent, that the benefit of rounding off, rather has to become endowed to the concerned. Resultantly also thereunders an indefeasible right became vested in the present respondent for his seeking qua the apposite roundings off being made in his favour.

15. Even otherwise since the declaration of law made in verdict (supra) makes the said declaration to be an expostulation of law in rem, therebys, the expostulation of law in rem, as made in verdict (supra) also makes the thereunders conferred benefits vis-a-vis the defence personnel concerned, to, *prima facie*, also entitle the

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concerned, thus to at any time seek the granting of the endowments as made thereunders, and that too, in the fullest complement, as spelt thereunders, besides irrespective of the bar of delay and laches.

16. Therefore, the granting of the benefit of the apposite roundings off, in terms of the verdict (supra) by the Tribunal concerned, also do not suffer from any illegality and is required to be upheld.

Final Order of this Court.

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

18. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.

19. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

25.10.2024
kavneet singh

(ALOK JAIN)
JUDGE

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