

2024.PHHC.106466-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19571-2024 (O&M)
Date of Decision: 20.08.2024

JYOTI

...Petitioner

Versus

UNION OF INDIA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Sapan Dhir, Advocate for the petitioner.

Mr. Rohit Verma, Sr. Panel Counsel,
for the respondents/Union of India.

SUDHIR SINGH, J.

Challenge in the present writ petition is to the order dated 01.05.2024 (Annexure P-10), passed by the learned Armed Forces Tribunal, Chandigarh Bench, Chandimandir (For short 'the AFT'), whereby the Original Application filed by the petitioner, has been dismissed.

2. Brief facts of the case are that the husband of the petitioner, namely Late SWR Suresh Kumar, No. 15486588N joined Army service on 14.09.2002. In the year 2013, he was granted 29 days casual leave w.e.f. 27.10.2013 to 24.11.2013 by his Commanding Officer. On 09.11.2013, the husband of the petitioner went to the Railway Station, Mohindergarh to drop his maternal uncle

and to make return journey reservation for himself. However, when he found that the return journey voucher was left by him at home, he started his return journey to his home to collect his concession voucher, but on the way, his motorcycle met with an accident, in which he was seriously injured. He was shifted to the Civil Hospital and, thereafter, taken to Army Hospital (R&R), Delhi Cantt, but during his treatment, he expired on 09.11.2013. It is the case of the petitioner that the death of her husband was initially declared as attributable to military service, by the competent authority, but later on, the same was changed. Vide PPO No F/NA/20690/2014 dated 01.07.2014, ordinary family pension was released in favour of the petitioner w.e.f. 09.11.2013, for life. The petitioner served a demand notice upon the army authorities for grant of Special Family Pension, as per the Regulations, but the same was rejected on 13.06.2017.

3. The respondents appeared and filed their written statement contending therein that the husband of the petitioner met with an accident, when he was on casual leave and therefore, the petitioner was not entitled to Special Family Pension.

4. The learned AFT vide the impugned order, dismissed the OA filed by the petitioner.

5. Learned counsel appearing for the petitioner has vehemently argues that on the date when the husband of the petitioner met with an accident, he was on sanctioned casual leave and, therefore, he was on duty. It is further submitted that once the husband of the petitioner is treated to be on duty on the date of accident, the petitioner is entitled to the Special Family Pension.

6. On the other hand, learned counsel appearing for the Union of India, who is present in Court on the service of advance notice, submits that there is no casual connection between the death of the husband of the petitioner and the military service and, therefore, the petitioner is not entitled to the Special Family Pension.

7. We have heard learned counsel for the petitioner and have also gone through the paper book, including the impugned order passed by the learned AFT.

8. The short question that requires determination in the present writ petition is whether the petitioner is entitled to Special Family Pension. Admittedly, on the date of accident, the husband of the petitioner was on casual leave. There is no casual connection between the accident leading to the death of the husband of the petitioner and the military service. The husband of the petitioner being on casual leave could be considered on duty, but not in active military service during that period.

9. In Secretary, Government of India & Ors. Vs. Dharambir Singh, (2020) 14 SCC 582, the Hon'ble Supreme Court, while defining the terms 'duty' and 'service', has held that when Armed Forces personnel is availing casual leave or annual leave, he is to be treated on duty, but not in active in military service. It was further held that there has to be a relevant and reasonable casual connection, however remote, between the incident resulting in the disability/death and military service for it to be attributable. The relevant extracts from the aforesaid judgment read as under:-

“13. Still further, in terms of leave rules, the casual leave and annual leave count as duty. However, in terms of Rule 11(a) of the Leave Rules for the Services, Volume-1 (Army), an individual on casual leave is not deemed to actually perform duty during such leave. 1982 Rules provide that a person is on duty when he is proceeding from his leave station or returning to duty from his leave station. Still further, in terms of clause (f) of Rule 12 of the 1982 Rules, an accident can be said to be attributable to service when a man is not strictly ‘on duty’ as defined, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Therefore, a person if killed or injured by another person for the reason he belongs to the Armed Forces, he shall be deemed to be ‘on duty’.

14. Thus, it is held that when Armed Forces personnel is availing casual leave or annual leave is to be treated on duty.

XX

XX

XX

36. We find that summing up of the following guiding factors by the Tribunal in Jagtar Singh v. Union of India & Ors. T.A. No. 61 of 2010 decided on November 2, 2010 by the Tribunal and approved in Sukhwant Singh and in Vijay Kumar do not warrant any 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 reasonably casual connection, however remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionally 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 generalize 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 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 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.”

10. We find that the husband of the petitioner being on casual leave, though was on duty, yet he could not considered to be in active military service. We also find that there is no casual connection between the accident leading to the death of the petitioner’s-husband and the military service and, therefore, the petitioner was rightly not found to be entitled to the Special Family Pension.

11. In view of the above, we do not find any merit in the present writ petition, the same is hereby dismissed.

12. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

20.08.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No