REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6583 OF 2015
(Arising out of CAD No.13923 of 2014)

UNION OF INDIA & ORS. ..Appellants

Versus

3989606 P, EX-NAIK VIJAY KUMAR ..Respondent

J U D G M E N T

R. BANUMATHI, J.

Delay condoned.

2. This appeal is filed against the order dated 13.07.2011 in Original Application No.248 of 2011 and order dated 31.10.2012 in M.A.Nos.795 and 796 of 2012 passed by the Armed Forces Tribunal, Regional Bench, Chandigarh (for short 'the tribunal') whereby the tribunal allowed the application filed by the respondent observing that the respondent is entitled to get disability pension for 75% disability from the date of his invalidation.

3. Brief facts which led to the filing of this appeal are as under:- On 25.02.1989, the respondent was enrolled in Indian Army from Branch Recruiting Office Palampur and after completion of his basic Military Training at Dogra Regiment, the respondent was posted to 12 Dogra on 05.01.1990. The respondent was granted thirty days annual leave from 14.05.2005 to 12.06.2005. However, during the leave period, on 19.05.2005 the respondent went from Himachal Pradesh to Jalandhar Cantt where his sister resides for making purchase of ornaments and clothes and articles for marriage of his younger brother. On the same day, on 19.05.2005 in Jalandhar at the house of his sister which was on second floor at about 8.00 p.m., while the respondent was climbing stairs to go to the roof of the quarter for smoking and at that time lights went off and due to darkness he slipped accidentally and fell down from the stairs and sustained multiple injuries. The respondent was initially admitted to Christian Hospital, Maqsuda where he was given first aid treatment for a night and next day on 20.05.2005, he was transferred to Military Hospital, Jalandhar for treatment of his multiple injuries. The respondent underwent four operations, he was treated in military hospital for three to four months.

However, the respondent was placed in Low Medical Category A3 (T) for 6/12 years. The respondent was sent for six weeks sick leave and he reported back for review. The respondent was brought before the Release Medical Board, wherein the RMB opined that respondent should be released from military service in Permanent Low Medical Category A-3 for six disabilities he sustained. The Release Board assessed the disabilities at Military Hospital Faizabad and composite assessment was assessed at 60%. After due procedure, the respondent was invalidated from service with effect from 28.02.2006 after completion of seventeen years of service.

4. The respondent was paid monetary benefits due and payable to him and also other pensionary benefits. The respondent's claim for disability pension was however rejected by the competent authority stating that respondent's disabilities are neither attributable to nor aggravated due to military service. Aggrieved by the order, the respondent filed an appeal dated 09.05.2007 before the appellate authority for grant of disability pension. The respondent also sent two representations dated 01.10.2007 and December 2007. After due inquiry, appeal was rejected by the Appellate Committee vide order dated 13.04.2007

holding that respondent was not entitled to disability pension in terms of Rule 12 of Entitlement Rule for Casualty Pensionary Award.

5. Aggrieved by the order, respondent filed O.A.No. 248 of 2011 before the tribunal. The tribunal vide impugned order dated 13.07.2011 allowed the application of the respondent holding that the respondent is entitled to disability pension for 75% disability for life by giving the benefit of rounding off from the date of invalidation. This appeal assails the correctness of the impugned order.

6. Mr. P.S. Patwalia, learned Additional Solicitor General appearing for the appellants contended that under Regulation 173 disability pension is granted to an individual who is invalidated out of service on account of disability which is either attributable to or aggravated by military service. It was submitted that in the facts of the case, the act of the respondent was not even remotely connected to his military duty and while so, the tribunal erred in directing grant of disability pension to the respondent.

7. Per contra, learned counsel for the respondent submitted that the Medical Board opined that the disability of

the respondent is aggravated "due to stress and strain of military service" and once the Medical Board gives its finding to the advantage of the disabled soldier, it cannot be changed by any other authority and hence the respondent is entitled for grant of disability pension and tribunal rightly directed payment of disability pension to the respondent.

8. We have heard learned counsel for the parties and have gone through the orders passed by the tribunal and the material placed on record.

9. The primary conditions for grant of disability pension are mentioned under Regulation 173 of the Pension Regulations for the Army 1961. Regulation 173 reads as under:-

> "Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty or is assessed at 20% or over."

10. In terms of Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982, a person subject to the disciplinary note of the armed forces is treated on duty while performing anyone of the functions mentioned in paragraphs (a), (b) and (c) of the Pension Regulations. Notes (1) and (2) of the Entitlement Rules elaborate the scope and purport of the term

'duty'. Para (b) to Note (2) deals with accident which occurs when the armed forces personnel is not strictly "on duty" as defined in Rule 12. For such situations, the expression "on duty" is given an extended meaning inasmuch as an accident which occurs when the person concerned is not strictly "on duty" is also deemed to be on duty. We may usefully extract Rule 12 of Entitlement Rules and para (a) to (f) of Notes (1) & (2) as under:-

"Rule 12: Duty:- The Entitlement Rules 1982

A person subject to the disciplinary code of the Armed Forces is on duty:-

(a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him;
(b) When moving from one place of duty to another place of duty irrespective of the mode of movement;
(c) During the period of participation in recreation and other unit activities organized or permitted by service authorities and during the period of travelling in a body or singly by a prescribed or organized route.

Note 1: xx xx xx xx
xx xx xx xx

Note 2: (d) Personnel while travelling between place of duty to leave station and vice versa to be treated on duty irrespective of whether they are in physical possession of railway warrant/concession vouchers/cash TA etc or not. An individual on authorized leave would be deemed to be entitled to travel at public expense.

(e) The time of occurrence of injury should fall within the time an individual would normally take in reaching the leave station from duty station or vice versa using the commonly authorized mode(s) of transport. However, injury beyond this time period during the leave would not be covered.
(f) An accident which occurs when a man is not strictly 'on duty' as defined may also be attributable to service, 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."

11. This Court in *Sukhwant Singh* vs. *Union of India through the Secretary, Ministry of Defence And Ors*., (2012) 12 SCC 228 after referring to the judgment of the tribunal affirmed the legal position as summed up by the tribunal and the same reads 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 authorized 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."

The principles enunciated in the above judgment were referred to and reiterated by this Court in *Union of India And Anr.* vs. *Ex Naik Surendra Pandey*, 2015 (2) SCALE 361 to which both of us were parties.

12. Entitlement Rules for the Casualty Pensionary Awards 1982 are beneficial in nature and ought to be liberally construed. In terms of Rule 12, the disability sustained during the course of an accident which occurs when the personnel of the armed forces

is not strictly on duty may also be attributable to service on fulfilling of certain conditions enumerated therein. But there has to be a reasonable causal connection between the injuries resulting in disability and the military service.

13. Applying the ratio of various cases in *Secretary, Ministry of Defence* & Ors. vs. *Ajit Singh, (2009) 7 SCC 328* and relying upon the principles laid down in *Union of India & Ors.* vs. *Keshar Singh,* (2007) 12 SCC 675 and *Union of India* & Ors. vs. *Surinder Singh Rathore*, (2008) 5 SCC 747, this Court rejected the claim of the respondent for disability pension on account of electric shock sustained by him while he was on casual leave.

14. In *Union of India And Ors*. vs. *Jujhar Singh* (2011) 7 SCC 735, this Court was dealing with the question whether the respondent who had met with an accident in his native place and sustained grievous injury resulting in permanent disability was entitled to disability pension. The respondent in that case had upon recovery from injury continued in military service and superannuated with normal service pension. In the said case, this Court held that the member of armed forces who is claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury to

the person and the normal expected standard of duties and a way of life expected from a member of armed forces.

15. In yet another case, *Union of India And Anr.* vs. *Talwinder Singh,* (2012) 5 SCC 480, the disability pension was claimed by the individual enrolled in the army who was on annual leave for a period of two months in his home town, got injured during the leave period by a small wooden piece *"Gulli"* while playing with children which seriously damaged his left eye. This Court in para (12) observed thus:-

> **"12.** A person claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from such person. As the military personnel sustained disability when he was on an annual leave that too at his home town in a road accident, it could not be held that the injuries could be attributable to or aggravated by military service. Such a person would not be entitled to disability pension. This view stands fully fortified by the earlier judgment of this Court in *Ministry of Defence* v. *Ajit Singh, (2009) 7 SCC 328."*

16. Applying these principles and Rule 12 and mandate of Regulation 173, admittedly in the instant case as mentioned in the proceedings before the Board Officer that during the annual leave respondent went to Jalandhar on 19.05.2005 from Himachal Pradesh to purchase ornaments and clothes for his brother's marriage. He was staying at his sister's place and in

the night at about 8.00 p.m. while he was climbing the stairs to get to the roof for smoking and at that time the lights went off and due to sudden darkness he lost his balance and fell down and lost his senses. He was admitted in civil hospital in Jalandhar and after first aid, he was transferred to military hospital Jalandhar for multiple fracture injuries. It is apparent that the injury sustained by Vijay Kumar was accidental in nature and nobody can be blamed for the same. Respondent's act of going towards the roof for smoking at his sister's house and falling down at no stretch of imagination can be attributed to military service.

17. Learned counsel for the respondent heavily placed reliance upon the judgment of this Court in *Union of India* & *Anr.* vs. *Ex Naik Surendra Pandey*, (2015) 2 SCALE 361, in which the respondent went on annual leave and was travelling from the place of his duty to the place where his family was residing (Sewan). The respondent boarded the bus from Hajipur to reach Patna to join his family and at that time, he met with an accident which resulted in disability assessed at 20% by the Medical Board. In the said case, it was the specific case of the respondent that although the respondent's hometown is Gopalganj, his

family was residing at Patna and it was for that reason he claimed to be travelling by train beyond Sewan upto Hajipur by train to catch a bus to reach Patna to join his family. Considering the facts and circumstances of the said case and that respondent's family was residing at Patna, this Court held that there was a reasonable nexus and causal connection between the disability and the military service of respondent at the relevant time. In para (12), it was held that ".....*The case may have been different if the respondent had reached the destination engaged in some activity, unrelated to military service and in the course of such activity met with an accident resulting in a disability....".* Thus, *Ex Naik Surendra Pandey case* is clearly distinguishable on facts.

18. Learned counsel for the respondent contended that the composite assessment for the respondent's disability was assessed at 60% by the Medical Board and the same was found to be attributable and aggravated "due to stress and strain of military service" and as per settled law once medical board gives its finding to the advantage of the disabled soldier, findings of the Medical Board cannot be changed. The above contention does not merit acceptance. By perusal of record issued by Medical

Board AFMSF-16/17, it is seen that the assessment by the Board is recommendatory in nature and is subject to acceptance by the Pension Sanctioning Authority. It is also mentioned in the Medical Abstract Records as:-

> "**1**. Though the disablement has been mentioned in percentage in para 6 of Part V, this does not mean eligibility for disability pension since the Invalidating Disabilities is/are neither attributable to nor aggravated by service."

When the opinion of the assessment by the Board is recommendatory in nature and is subject to acceptance by the Pension Sanctioning Authority, the opinion of the Medical Board by itself cannot confer right upon the respondent to claim disability pension. Further, after accident the respondent was treated in the military hospital for three to four months and he was placed in low medical category. The respondent went for six weeks sick leave and reported back for review and invalidated from service with effect from 28.2.2006. After the accident when the respondent was not actually performing military service, the opinion of the Medical Board *"aggravated due to stress and strain of military service"* does not appear to be in proper perspective. After the accident, when the respondent was not actually

performing his duties and therefore disability cannot be attributed to military service nor can it be said to have been aggravated due to stress and strain of military service.

19. In the light of the above discussion, it is clear that the injury suffered by the respondent has no causal connection with the military service. The tribunal failed to appreciate that the accident resulting in injury to the respondent was not even remotely connected to his military duty and it falls in the domain of an entirely private act and therefore the impugned orders cannot be sustained.

20. In the result, the impugned order of the tribunal is set aside and the appeal is allowed. In the facts and circumstances of the case, we make no order as to costs.

.....J.
(T.S. THAKUR)

.....J.
(R. BANUMATHI))

New Delhi;
August 26, 2015