

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

C.W.P.No.9985 of 2009

Date of Decision:- 30.04.2010

Kashmir Singh

....Petitioner(s)

vs.

The Union of India and others

....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present:- Mr.R.D.Bawa, Advocate,
for the petitioner.

Mr.Ram Chander, Sr.Panel Counsel,
for the respondents.

AUGUSTINE GEORGE MASIH, J. (Oral)

Prayer in the present writ petition is for issuance of a writ in the nature of Certiorari for quashing of order dated 17.2.2009 (Annexure P-7) passed by the Principal Controller of Defence Accounts (P), Allahabad (for short PCDA(P), Allahabad) rejecting the claim of the petitioner for grant of disability pension as per the Central Civil Services (Extraordinary Pension) Rules, 1972 (for short CCS (EOP) Rules) and for a prayer to issue a writ of Mandamus for considering the claim of the petitioner as per grant of disability pension as per CCS (EOP) Rules.

Counsel for the petitioner contends that the petitioner was appointed and joined the General Reserve Engineering Force (GREF) on 3.12.1963. The petitioner was posted at Headquarters 32 BRTF (GREF) in Kashmir Valley in December, 1997. During the days of Kargil Operations

in the insurgency area, the petitioner met with an accident on 9.9.1998 while on duty. The petitioner at the relevant time after taking his lunch in JCOs'/Supervisors' Mess of 32 BRTF was walking down the steps to return to his office when he slipped and fell down. He sustained a fracture injury on his right leg. He was evacuated to Central Medical Inspection Room of Headquarter's Chief Engineer Project Beacon (GREF) and was further transferred to 92 Base Hospital of Army at Srinagar on the same day. Because of the said injury, there was shortening of leg by 5 cms. which resulted in 40% disability at the time of his superannuation. In support of these contentions, counsel relies upon Annexures P-1 to P-3. He contends that the claim of the petitioner for grant of extraordinary pension as per the 1972 Rules was forwarded by the Competent Authority after holding of the Court of Inquiry which had concluded that the injury sustained by the petitioner was in the course of bona fide Government service. This recommendation was accepted by the Commandant 32 Border Road Task Force (GREF) vide order dated 3.12.1998 (Annexure P-4). This was further accepted by the Chief Engineer, being the Competent Authority for recommending the claim of the disability pension under the CCS (EOP) Rules vide letter dated 14.6.2008 (Annexure P-6) which was further forwarded by the Director General, Border Roads to the PCDA (P), Allahabad. On consideration of the claim for payment of disability pension as per CCS (EOP) Rules, the PCDA (P), Allahabad vide order dated 17.2.2009 (Annexure P-7) rejected the claim of the petitioner on the ground that there is no casual connection between the disablement and the government service as the accident had occurred in the normal course of action and is not covered by the ambit of Government of India, Decision

No.1 category 'C' under Rule 13 of the CCS (EOP) Rules.

Counsel for the petitioner while referring to the policy decision of the respondents dated 3.2.2000 (Annexure P-5) applicable with effect from 1.1.1996 contends that the rejection of the claim of the petitioner is not in accordance with law and on all fours is covered by a Full Bench judgment of this Court rendered in LPA No.978 of 2009 titled as **Union of India and others vs. Khushbash Singh** decided on 31.3.2010. He, on this basis, prays that the present writ petition may be allowed and the petitioner be held entitled to disability pension under the CCS (EOP) Rules.

On the other hand, counsel for the respondents has submitted that for grant of extraordinary pension, the injuries should have been sustained during the actual performance of the active duty, which ingredient is missing in the present case as the petitioner was going back to office after having his lunch and, therefore, it cannot be said that it was in any manner performed/attributable to active service but was in normal course of action and thus, not covered by the policy. He, on this ground, supports the impugned order dated 17.2.2009 (Annexure P-7) and prays that the present writ petition deserves to be dismissed. He further submits that the petitioner had retired from service on 28.2.2005 whereas the present writ petition had been preferred by him on 30.6.2009 and, therefore, there is a delay on the part of the petitioner which itself disentitles him to claim the benefits as prayed for by him in the present writ petition.

I have heard counsel for the parties and have gone through the records.

The facts are not in dispute, as have been stated by the counsel for the petitioner and recorded herein-above. The only question which

requires consideration by this Court is as to whether the petitioner is entitled to the grant of disability pension as per the CCS (EOP) Rules? Reference at this stage can be made with advantage to the recommendation/opinion of the Court constituted as per the Rules which reads as follows:-

“Recommendation/Opinion of the Court

The court recommends that GS-057607-L UDC Kashmir Singh be paid suitable compensation for the injury sustained by him in the course of bonafide Government service notwithstanding applicability of WCA-1923 to the ministerial staff. However question of compensation to be determined with reference to percentage of disability on receipt of injury report from 92 Base Hospital, Srinagar. The period of hospitalization may be regularized by granting special disability leave under Rule 45 of CCS (Leave) Rules, 1972 as applicable to the Central Govt. employees, on production of a certificate from the medical authority.

Presiding Officer: Sd/- AS Malik CO III
CC 553 (I) Tpt P1

Members: 1. Sd/- Sh.RK Sukumaran
AE(E&M), 1053 Fd. Wksp)
2. Sd/-Sh.OR Vagi, Asst
HQ 32 BRTF”

This recommendation/opinion was accepted by the Commander

vide letter dated 3.12.1998 (Annexure P-4) which was further accepted and forwarded by the Chief Engineer vide letter dated 14.6.2008 (Annexure P-6) which was further forwarded by the Director General, Border Roads, to the PCDA (P), Allahabad on 17.10.2008. The Competent Authorities under the Rules had duly recommended the claim of the petitioner, however, the said claim has been rejected by the PCDA(P), Allahabad vide impugned order dated 17.2.2009 (Annexure P-7) only on the following grounds:-

“The case has been examined and it is observed that there is no casual connection between disablement and Govt.service, as the accident has occurred in the normal course of action and is not covered under ambit of G.O.I. decision No.1 Category 'C' under Rule 13 CCS (EOP) Rules, reproduced at APPX-3 of CCS (P) Rules, 1972. For grant of disability pension under E.O.P. Rules, accidents must have occurred in the actual performance of the duties.

In the instant case, the individual sustained injuries while walking down the steps in routine, therefore, this case will be covered under normal course of action and will not be entitled for disability pension.

All the documents received are returned herewith.

Sd/-

Sd/- AO (P)”

This very issue and the ground of rejection which has been pressed into service by the PCDA(P), Allahabad has been considered and decided by this Court in its judgment dated 31.3.2010 in **Khushbash Singh's case** (supra), which has been relied upon by the counsel for the petitioner. Counsel for the respondent is unable to contradict the argument of the counsel for the petitioner or distinguish the judgment. I have gone through the said judgment and am of the considered view that the claim of the petitioner is fully covered by the judgment of this Court in the above-mentioned case. In para 18 of the Full Bench, it has been 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.”

Accordingly, it is held that the petitioner is entitled to disability pension as per CCS (EOP) Rules.

As regards the objection raised by the counsel for the respondents that the petitioner stood retired from service on 28.2.2005 and the present writ petition had been filed in June, 2009 and, therefore, there is an inordinate delay on the part of the petitioner in approaching this Court dis-entitling him to the claim so made by him in the present writ petition,

suffice it to say that the claim of the petitioner for grant of disability pension as per CCS (EOP) Rules was rejected by the respondents vide order dated 17.2.2009 (Annexure P-7). The petitioner had within a period of four months approached this Court after the said rejection order and, therefore, the stand of the respondents is without any basis and, thus, stands rejected.

In view of the above, the present writ petition is allowed; the impugned order dated 17.2.2009 (Annexure P-7) passed by the Principal Controller Defence Accounts (P), Allahabad is hereby quashed. A direction is issued to the respondents to release to the petitioner the disability pension as per Central Civil Service (Extraordinary Pension) Rules, 1972 within a period of three months from the date of receipt of certified copy of this order.

Counsel for the petitioner states that there has been a delay on the part of the respondents in considering the claim of the petitioner and, therefore, the petitioner would be entitled to interest on the delayed payment.

Liberty is granted to the petitioner to file a representation claiming such interest which shall be considered and decided by the respondents within a period of three months from the date of filing of such representation in accordance with law.

April 30, 2010
poonam

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether referred to Reporters

Yes/No.