

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

LPASWP No. 361/2001

CMA No. 405/2001

Union of India & another

Versus

Gurdass Singh

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Hon'ble Mr. Justice Hasnain Massodi, Judge

Appearing counsel:

For petitioner(s)/appellant(s): Mr. Rameshwar Singh Jamwal, CGSC

For respondent(s) : Mr. Rahul Bharti, Advocate-

Whether approved for reporting in

Press/Journal/Media	:	Yes/No/Optional
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Whether to be reported in

Digest/Journal	:	Yes/No
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Per Massodi J

1. Letters Patent Appeal on hand is directed against writ court judgment dated 16th October 2000, in writ petition titled *Ex- Subedar Gurdass Singh versus Union of India and Others (SWP No. 204/1999)*, whereby writ court has allowed writ petition, held writ petitioner/ respondent entitled to disability pension and interest on the arrears of disability pension to be worked out, at the rate of 12%

per annum till its payment. The appeal arises in the following background.

2. The writ petitioner/respondent was enrolled in Indian Army on 21st February 1969 and by dint of his hard work and dedication rose to the position of Subedar in the Army. On 15th December 1996, he while posted at *Nagrota* left his place of posting with the permission (out pass) of the competent authority, for *Keran* a nearby town to attend religious function. On his way back, the scooter on which he was travelling was hit by speeding truck (tipper) bearing registration no. JKOIB - 4325. He suffered multiple injuries in the accident. He was exonerated in the departmental enquiry and liability of accident fixed on the driver of the aforementioned truck.
3. Multiple injuries sustained by writ petitioner/respondent, led to his discharge from the service on medical grounds. He approached authorities with the request for disability pension. His request was not entertained / executed on the ground that the disability was neither attributable nor aggravated by military services.
4. Aggrieved with refusal to allow disability pension, writ petitioner/respondent approached this court with a writ petition being SWP No. 204/1999, and sought a direction

to the respondents commanding them to grant him disability pension in accordance with rules. The respondents/appellants though given adequate opportunity to oppose the writ petition opted not to file any counter. The writ court therefore took up writ petition for final disposal in absence of counter affidavit.

5. The writ court after going through the grounds urged in the writ petition and scanning case law on the subject, held petitioner/respondent entitled to disability pension and accordingly directed respondents/appellants to work out disability pension whatever due to the respondent/petitioner and release it along with interest of 12% per annum, in his favour.
6. The writ court order is questioned in the LPA on hand on the grounds that appellants were not given a reasonable and adequate opportunity to file their reply to the writ petition. It is pleaded that learned Single Judge while disposing of the writ petition did not appreciate that injuries suffered by writ petitioner/ respondent i.e. Fracture, Shaft and Femur RT(OPTD) was not related to military service and therefore his case did not fall within the purview of Regulation 173, Pension Rules, 1972.
7. It is insisted that writ petitioner/respondent was not performing any official duty at the time he met with

accident and sustained multiple injuries. The writ court judgment is in particular held to be in conflict with law laid down by Hon'ble Supreme Court in ***Union of India and Ors. versus Baljit Singh, CA 1327 of 1996 (judgment dated 11th October 1996).***

8. We have gone through the appeal as also writ court judgment questioned in appeal. We have heard learned counsel for the parties as well.
9. Learned counsel for the appellant while addressing his arguments reiterated the grounds urged in the memo of appeal and insists that as the writ petitioner/respondent at the time of accident was on leave and not performing any official duty, he was not entitled to any disability pension, much less interest on any such amount. Learned counsel to buttress his argument seeks support from the law laid down in ***Secretary, Ministers of Defence and others versus Damodaran A. V. (Dead) Thr. L. Rs. and Ors, AIR 2009 SC (Supp) 2751*** and ***Union of India and Ors versus Jujhgar Singh AIR 2011 SC 2598.***
10. Learned counsel for the respondent on the other hand relies upon law laid down in ***Jitendra Kumar versus Chief of Army Staff and Others 2007 LAB. I.C. 141 (Delhi High Court)*** and also ***Jujhar Singh's case (supra)*** also relied upon by the learned counsel for the

appellant, to defend writ court judgment and maintain that writ petitioner/respondent was rightly held entitled to disability pension.

11. The controversy in the present case is whether an armed forced personnel, who sustains injuries while on leave or on 'out pass' from his place of posting would be entitled to disability pension.
12. In Damodran case (supra) it was held that opinion of Medical Board cannot be ignored, as it is an expert body and its opinion is entitled to be given credit due weightage. The facts of Damodran's case are distinguished from the facts of the present case. In the present case the controversy is not whether having regard to the nature of injuries sustained and the duties being performed at the time respondent met with accident, the injuries can be held attributable to military service. Here the controversy is notwithstanding gravity of injuries sustained, the army personnel would be entitled to disability pension having regard to the status i.e. on duty, casual leave, out pass at the time of accident.
13. In Jujhar Singh's case (supra) respondent an Army Forced Personnel, met with an accident while he was on annual leave to his native place. It was held that the injuries sustained had no connection with military

service and injuries suffered during annual leave cannot be termed as attributable to and aggravated by Military Service. The orders of learned Single Judge and Division Bench were accordingly set aside.

14. The facts of Jujhar Singh's case again are different from the facts of the present case. In Jujhar Singh's case respondent sustained injuries and suffered disability while he was on annual leave to his native place. In present case respondent was not on annual leave. He had gone with the permission of competent authority on "out pass" to attend religious ceremony at a nearby town and during his return to the camp/station his scooter was hit by speeding vehicle, resulting in multiple injuries. The disability acquired led to his discharge from the duty. The writ petitioner/respondent travelling on his scooter along with his wife was on his way to resume his duty. His travel from the place where he was permitted to go to his duty, is to be taken as part of duty. The law laid down in Jujhar Singh's case therefore not applicable to the case on hand.

15. It is well settled that travel 'to and fro' to place of posting is an exigency of military service. In Jujhar Singh's case (supra) Supreme Court quoted with approval principles governing sanction of disability pension as laid down by Delhi High Court in *Ex. N. K.*

Dilbag versus Union of India & Others, 2008 (106). It

would be apt to reproduce the observations;

24. *“To sum up our analysis, the foremost feature, consistently highlighted by the Hon’ble Supreme Court, is that it requires to be established that the injury or fatality suffered by the concerned military personnel bears a causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the concerned personnel was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the casual connection which alone is relevant, Fourthly, since travel to and fro the place of posting may not appear to everyone as an incident of military service, a specific provision has been incorporated in the Pension Regulations to bring such travel within the entitlement for Disability Pension if an injury is sustained in this duration. Fifthly, the Hon’ble*

Court has simply given effect to this Rule and has not laid down in any decision that each and every injury sustained while availing of casual leave would entitle the victim to claim Disability Pension. Sixthly, provisions treating casual leave as on duty would be relevant for deciding questions pertaining to pay or to the right of the Authorities to curtail or cancel the leave. Such like provisions have been adverted to by the Supreme Court only to buttress their conclusion that travel to and fro the place of posting is an incident of military service. Lastly, injury or death resulting from an activity not connected with military service would not justify and sustain a claim for Disability Pension. This is so regardless of whether the injury or death has occurred at the place of posting or during working hours. This is because attributability to military service is a factor which is required to be established”.

16. It would be equally advantageous to quote the observations made in *Jitindra Kumar’s case* (supra). After detailed reference to the case law on the subject including *Union of India and another versus Baljit Singh (1996) II SCC 315* court held.

18. “ On proper analysis of the above discussion the position that emerges is that an accident or injury suffered by a member of the Armed forces must have some casual connection to the aggravation or attributability to 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. The nexus between the two is not apparently one so as to cover every injury or accident. 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. The fine line of distinction has to be drawn between the matters connected, aggravated or attributed to military service and the matters entirely alien to such service. What falls ex facie in the domain of an entirely private act which may even extend to the sphere of undesirable and unlawful activity of such member 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 force. At least remote attributability to service and expected standards of behaviour and living of the member of the forces appears to be the condition precedent to claim under Rule 173. The act of omission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

19. *“ We may elucidate the above principle by giving a very simple example that if a person on casual leave and subject to this act goes to canteen to buy things or takes his children for treatment to hospital and in the way meets with an accident, may be arising out of his negligence or contributory negligence, suffers injuries causing permanent disability, in our view, would be entitled to claim the benefit under Rule 173. Similarly a person who joins Army is not found to be suffering from any disease, but subsequently suffers from a disease which renders him liable for being invalidated out of Army on such ill health, such a disease would be attributable and or aggravated by military*

service and would entitle him to take benefit of these regulations”.

17. Examining respondent's case on the touch stone of case law on the subject, only irresistible conclusion is that respondent at the time of accident was proceeding towards his place of posting to perform his duties, his act i.e. proceeding towards his place of posting is related to military service, making respondents entitled to disability pension under Pension Regulations.
18. We for the reasons discussed find writ court judgment well reasoned and in tune with law on the subject. We are convinced that a case for interference with the writ court judgement is not made out.
19. Appeal is accordingly dismissed.

(Hasnain Massodi)
Judge

(M.M. Kumar)
Chief Justice

Jammu
/ /2014.
M. Amin