REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4281 OF 2006

Union of India & Ors. .... Appellant (s)

Versus

Jujhar Singh .... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) This appeal by Union of India is directed against the final judgment and order dated 04.01.2002 passed by the High Court of Punjab and Haryana at Chandigarh in L.P.A. No. 5 of 2002 whereby the Division Bench of the High Court dismissed their appeal *in limine.*

2) **Brief facts:**

(a) The respondent was enrolled in the Army on 27.06.1978. In the year 1987, when he was on annual

leave to his native place, he met with an accident on 26.03.1987 and sustained severe injuries and was admitted in the hospital from 26.03.1987 to 20.01.1989. Subsequently, he was admitted in Military Hospital, Dehradun and after treatment was placed in medical category BEE (Permanent) and percentage of disability was ascertained as 20%. After he joined the duty, he was kept under observation by the Medical Board and his disability was assessed as 60% for two years. The Medical Board also opined that the disability was neither attributable to nor aggravated by the military service.

(b) The respondent was superannuated from service w.e.f. 01.07.1998 and he was granted normal service pension. He made a representation before the authorities claiming disability pension on the ground that he was having disability on the date of retirement. The representation was rejected by the authorities.

(c) Against the rejection of disability pension claim, the respondent preferred a writ petition being C.W.P. No. 14290 of 1999 before the High Court of Punjab and Haryana. Learned Single Judge of the High Court, by order dated 20.07.2001, allowed the writ petition by holding that the respondent herein is entitled for disability pension under Regulation 179 of the Pension Regulations for the Army, 1961 (hereinafter referred to as "the Regulations").

(d) Challenging the said order, the appellants herein preferred L.P.A. No. 5 of 2002 before the Division Bench of the High Court. The Division Bench, by impugned judgment dated 04.01.2002, dismissed the appeal *in limine*. Aggrieved by the said judgment, the appellants preferred this appeal by way of special leave petition before this Court.

3) Heard Mr. R. Balasubramaniam, learned counsel for the appellant-Union of India and Mr. Jujhar Singh respondent, who appeared in person.

4) The questions that arise for consideration in this appeal are:

(a) Whether the case of the respondent for disability is covered under Regulation 179 of the Pension Regulations for the Army (Part I) 1961?

(b) Whether the disability in an accident suffered by the respondent during his annual leave while doing his personal work would amount to the disability attributable to or aggravated by military service?

5) **Discussion**:

We have already narrated the required factual details. It is seen that when the respondent was on annual leave, he met with a road accident at his native place and

sustained grievous injuries resulting in permanent disability. It is further seen that after treatment and returning from his leave, he continued in military service and w.e.f. 01.07.1998, the respondent was superannuated from service and he was granted normal service pension. According to the respondent, since on the date of retirement, he was permanently disabled, he is entitled for disability pension for which he made a representation which was rejected by the authorities.

6) It was contended by the respondent before the learned Single Judge that at the relevant time when he had gone on leave he remained in military service and while attending to his normal duties at home he suffered disability and later superannuated with the said disability, hence eligible for disability pension. The learned Single Judge arrived at a conclusion that the writ petitioner-respondent herein is entitled to disability pension as envisaged under Regulation 179 of the Regulations since

he retired in normal course and he was not invalidated from military service on account of his disability but the fact is that he was suffering from disability on the date of retirement which is above the degree of 20%. He also concluded that as per Defence Service Regulations, when a defence personnel goes on leave, he is counted on duty unless the leave is determined as unauthorized leave. In this way, relying on Regulation 179, the learned Single Judge allowed the writ petition and directed the authorities to process the case of the writ petitioner (respondent herein) for granting disability pension in accordance with law. When this order was challenged by the Union of India before the Division Bench of the High Court, the Division Bench, by impugned order dated 04.01.2002, dismissed their appeal without assigning any reason.

7) In order to answer the above referred questions, it is useful to refer Regulation 179 which reads thus:

> **"Disability at the time of retirement/discharge**
> 179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalidated out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is less than 20 per cent or more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.
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> (2) the disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease."

8) It is clear that if a person concerned found suffering from disability attributable to or aggravated by military service, he shall be granted disability pension. The other condition is that the disability is to be examined/assessed by Service Medical Authorities and based upon their

opinion a decision has to be taken by the authority concerned. The respondent should satisfy the conditions specified in the Regulation. In this case, it is the definite stand of the authorities that disability has neither occurred in the course of employment nor attributable to or aggravated by military service. We have already pointed out and it is not in dispute that the respondent was on annual leave when he met with a scooter accident as a pillion rider and sustained injuries on 26.03.1987 at his native place. He was not on military duty at the time of the accident in terms of Para 12 (d) of Entitlement Rules, 1982 as clarified vide Government of India, Ministry referred letter No.1(1)/81(PEN)C/Vol.II dated 27.10.1998. In view of the same, the injuries sustained cannot be held to be attributable to the military service.

9) In this background, it is useful to refer decision of this Court in ***Regional Director, E.S.I. Corporation and Another*** vs. ***Francis De Costa and Another***, (1996) 6

SCC 1. Though this decision arose under the Employees' State Insurance Act, 1948, we are of the view that since there is a similar provision in the Employees' State Insurance Act, namely, that the accident should have its origin in the employment and the same should have arisen out of and in the course of employment, the same is applicable to the case on hand. In that case, the respondent employee while going to his place of employment (a factory), met with an accident at a place which was about only one kilometer away from the factory. The accident occurred at 4.15 p.m. while his duty-shift was to commence at 4.30 p.m. As a result of the accident, the respondent's collar bone was fractured. The question before this Court was whether the said injury amounted to "employment injury" within the meaning of Section 2(8) of the Employees' State Insurance Act, 1948 entitling the respondent to claim disablement benefit. Answering in the negative, this Court held "a road

accident may happen anywhere at any time. But such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something incidental to his employment."

10) In ***Union of India and Another*** vs. ***Baljit Singh*** (1996) 11 SCC 315, the respondent therein was enrolled in the Army as an Apprentice on 30.03.1975 and was appointed in the service on regular basis w.e.f. 27.03.1977 in the EME 177 Battalion. While he was in service he had sustained moderately severe injury. On the basis of the opinion of the Medical Board, he was discharged from service as an invalidated man on 31.05.1981. In the writ petition filed by him, the High Court of Himachal Pradesh directed the authorities to pay him disability pension. This was challenged by the Union of India before this Court by way of appeal by special leave. From the materials placed, this Court concluded that it cannot be said that the sustenance of injury *per se* is on account of

military service. The report of the Medical Board of doctors shows that it is not due to military service. Finally, it was held by this Court as under:

> "In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service. Accordingly, we are of the view that the High Court was not totally correct in reaching that conclusion".

11) In ***Secretary, Ministry of Defence and Others*** vs. ***A.V. Damodaran (dead) through LRs. and Others***, (2009) 9 SCC 140, the opinion of the Medical Board and acceptability or otherwise for awarding disability pension was considered. The short question that was considered in that case was whether the High Court was justified in ignoring the report of the Medical Board in which it was clearly mentioned that disability of A.V. Damodaran was neither attributable to nor aggravated by military service. On examination, the Medical Board had opined that the disability of A.V. Damodaran was not attributable to the

military service nor has it been aggravated thereby and it is not connected with the service as schizophrenia is a constitutional disease. The legal representatives of A.V. Damodaran filed original writ petition before the High Court praying for grant of disability pension. By order dated 20.12.2000, the learned Single Judge allowed the original petition and declared that the individual was eligible to get disability pension under the provisions contained in the Pension Regulations for the Army, 1961 and such other enabling provisions. The Department filed a writ appeal before the High Court. The Division Bench dismissed the said appeal finding no reason to interfere with the discretion exercised by the learned Single Judge. After considering Regulation 173 which speaks about primary conditions for the grant of disability pension and various other earlier decisions, this Court concluded that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. In

that case, the Medical Board has clearly opined that the disability of late A.V. Damodaran was neither attributable nor aggravated by military service. In this way, this Court concluded that the legal representatives of A.V. Damodaran are not entitled to disability pension. However, in the facts and circumstances of that case, this Court directed that the amounts which have already been paid to the LRs of deceased A.V. Damodaran towards disability pension may not be recovered from them.

12) In ***Ex. N.K. Dilbag*** vs. ***Union of India and Others***, 2008 (106) Delhi Reported Judgment 865, a Full Bench of the Delhi High Court had an occasion to consider the similar issue and eligibility of disability pension by Armed Forces Personnel. After adverting to various decisions of this Court as well as of the High Courts, it concluded thus:

> "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 causal 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 Supreme 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."

In the light of our discussion, we fully endorse the views expressed by the Full Bench.

13) Mr. R. Balasubramaniam, learned counsel appearing for the Union of India has pressed into service the opinion of the Medical Board which reads as under:

> "1. Did the disability/ies exist before entering service?
>
> No.
>
> 2. (a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether?
>
> (i) It is attributable to service during peace or under field service condition; or
>
> (ii) It has been aggravated thereby and remains so; or
>
> (iii) It is not connected with service.
>
> The Board should state fully the reasons in regard to each disability on which its opinion is based.

Disability	A	B	C
1. FRACTURE SHAFT OF TIBIA FEBULA (Lt) LOWER 1/3 2. SUPRA CONDYLAR FRACTURE FEMUR (Lt)"	No	No	Yes

It is pointed out that A, B and C refers (i), (ii) and (iii) which is not in dispute. The above opinion makes it clear that the injury, particularly, the fracture is not attributable to service and it is not connected with service.

14) The proceedings of the Court of Inquiry are as under:

"Proceedings of a	Court of Inquiry
Assembled at	19 GUARDS (ATGM) C/o 56 APO
On the day of	10 Jul 90
IN the order of	Commanding Officer 19 Guards (ATGM)
For the purpose of	Enquiring into the circumstances Under which No. 1367100 H NK Jujhar Singh met with an accident on 26 Mar 87 during his Annual leave.

(Vide BROS No. 160 dt. 06 May 89)
PRESIDING OFFICER 10-4743
Lt. KK Singh
Members 1. JC-115678A Sub
P.C. Sharma
2. JC-166001 XNb.Sub
Diwani Chand

The Court having assembled pursuant to order proceed to examine the witnesses.

<u>OPINION OF THE COURT</u>
The opinion of the court is as under:-

a) Inquiry of severe nature sustained by No.13677100 H. NK Jujhar Singh during his Annual Leave is not attributable to the Military Service.

b) No. 1367100 H NK Jujhar Singh is not be blamed for the injury sustained to him during accident.

Presiding Officer Sd xxx
IC47438 F Lt. KK Singh
Member Sd xx
JC-115678A Sub PC Sharma
Sd xx
JC 16600 I X Nb Sub Diwani Chand."

15) The above factual details and materials show that first of all, the respondent herein sustained injuries in a road accident at his home town during his annual leave which was not attributable to the military service. It was strengthened from the opinion of the Medical Board that the injuries were not attributable to the service and it was also not connected with the service. In ***A.V. Damodaran's case*** (supra), this Court has emphasized the importance of the opinion of the Medical Board which is an expert body and its opinion is entitled to be given due weight, value and credence.

16) We are of the view that the learned Single Judge failed to appreciate that under Regulation 179 a personnel can be granted disability pension only if he is found suffering from disability which is attributable to or aggravated by military service and recorded by Service Medical Authorities. In the case on hand, medical authorities have recorded a specific finding to the effect

that disability is neither attributable to nor aggravated by the military service. This fact has not been appreciated either by the learned Single Judge or by the Division Bench of the High Court. The High Court has also failed to appreciate that the Medical Board is a Specialized Authority composed of expert medical doctors and it is the final authority to give information regarding attributability and aggravation of the disability to the military service and the condition of service resulting in the disablement of the individual. These relevant facts have not been considered by the learned Single Judge and the Division Bench of the High Court.

17) As rightly pointed by the counsel for the Union of India, the High Court failed to appreciate that even though the respondent sustained injuries while he was on annual leave in 1987, he was kept in service till superannuation and he was superannuated from service w.e.f. 01.07.1998. It is relevant to point out that he was also granted full

normal pension as admissible under the Regulations. In the case on hand, inasmuch as the injury which had no connection with the military service even though suffered during annual leave cannot be termed as attributable to or aggravated by military service. The member of the Armed Forces who is claiming disability pension must be able to show a normal 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 member of such forces. Inasmuch as the respondent sustained disability when he was on annual leave that too at his home town in a road accident, the conclusion of the learned Single Judge that he is entitled to disability pension under Regulation 179 is not based on any material whatsoever. Unfortunately, the Division Bench, without assigning any reason, by way of a cryptic order, confirmed the order of the learned Single Judge.

18) In view of our discussion, the judgments of the learned Single Judge as well as the Division Bench are set aside. We make it clear that the respondent is entitled to "full normal pension" which he is already getting as per the Regulations, but not entitled to "disability pension". The appeal is allowed. No costs.

.....J.
(P. SATHASIVAM)

.....J.
(A.K. PATNAIK)

NEW DELHI;
July 15, 2011.