

CHANDIMANDIR

(arising out of CWP No.15618 of 2008)

Vs

U.O.I & ors.

ORDER

For the respondents: Mr. Sandeep Bansal, CGC, for
Ms. Anjali Kukkar, CGC.

JUSTICE GHANSHYAM PRASAD

This case has been received on transfer from Hon'ble Punjab and Haryana High Court and it has been treated as application under Section 14 of the Armed Forces Tribunal Act, 2007.

The petitioner was enrolled in Infantry as Sepoy on 05-12-1994. In 2002, he proceeded on annual leave w.e.f. 15-05-2002 to 13-06-2003. While the petitioner was on annual leave, he was recalled to his Unit. When he was returning to his Unit on his scooter, he met with an accident causing injuries to his right hand.

The petitioner underwent 'Release Medical Board', who assessed the disability of the petitioner attributable to military service and its degree was 60%. However, the P.C.D.A. (P) did not accept the claim of the petitioner for grant of disability pension. The petitioner preferred an appeal. During the pendency of the appeal, the petitioner underwent the Appellate Medical Board. The Appellate Medical Board

found the degree of disability of the petitioner as 30%. However, in spite of that, the petitioner was denied the disability pension on the ground that he suffered the injuries during the period while he was on annual leave.

The issue involved in this case is well settled by the various decisions of the High Courts and Hon'ble Supreme Court. The latest decision is of the Punjab and Haryana High Court **reported in 2009 (2) RSJ 345 (Pooja & another Vs. UOI & Ors.)**, which is based on the decision of the Apex Court reported in **2003 (3) SLR 327 (Ex.Naik Klishan Singh vs. UOI & Ors)** as well as **AIR 1999 S.C.3378 (Madan Shekhawat Vs. UOI & Ors)**. In those decisions, it has been held that the injury caused while the person is on annual leave is deemed to be attributed to military service and the individual concerned is entitled to get disability pension.

In the case in hand also, the petitioner was on annual leave and was being recalled from the leave. While returning to his Unit, he suffered injuries as a result of the accident. Therefore, naturally, his case is fully covered under the decisions referred to above. So far as the percentage of the disability is concerned, the Appellate Medical Board assessed his disability as 30%. In the facts and circumstances, it is quite apparent that the case of the petitioner squarely falls under paragraph 173 of the Pension Regulations for the Army, 1961.

Accordingly, this application is allowed. The respondents are directed to assess and release the disability pension in favour of the petitioner as per Rules and Regulations within three months from the

date of receipt of this order. The petitioner is also entitled to arrears, but the same shall be confined to a period of three years prior to the date of filing of the original writ petition. Interest @ 10% is also allowed on the arrears.

(Justice Ghanshyam Prasad)

(Lt Gen H S Panag (Retd))

15-02-2010

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