

ITEM NO.101

COURT NO.3

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2904/2011

UNION OF INDIA & ANR

Appellant(s)

VERSUS

RAJBIR SINGH

Respondent(s)

(with appln. (s) for condonation of delay in filing appeal and stay)

WITH

C.A. No. 2905/2011

C.A. No. 2903/2011

C.A. No. 3409/2011
(With Office Report)SLP(C) No. 15768/2011
(With Office Report)SLP(C) No. 11251/2011
(With Office Report)SLP(C) No. 14478/2011
(With Office Report)SLP(C) No. 26401/2010
(With Interim Relief and Office Report)C.A. No. 5140/2011
(With Interim Relief and Office Report)C.A. No. 5144/2011
(With Interim Relief and Office Report)C.A. No. 10657-10658/2010
(With Interim Relief and Office Report)

C.A. No. 2279/2011

Signature Not Verified

(With appln.(s) for condonation of delay in filing appeal. and

Digitally signed by

appln.(s) for stay and Office Report)

Shashi Sareen

Date: 2014.11.17

11:09:12 ALMT

Reason:

C.A. No. 1498/2011
(With Office Report)

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SLP(C) No. 6309/2011
(With Office Report)C.A. No. 5090/2011
(With Office Report)

C.A. No. 4409/2011

With Office Report)

C.A. No. 5414/2011
(With Office Report)

C.A. No. 5163/2011
(With Office Report)

C.A. No. 6062/2011
(With Office Report)

C.A. No. 5840/2011
(With Office Report)

SLP(C) No. 17391-17392/2011
(With Office Report)

C.A. No. 7368/2011
(With Office Report)

C.A. No. 7479/2011
(With Office Report)

C.A. No. 7629/2011
(With Office Report)

C.A. No. 5469/2011
(With Office Report)

C.A. No. 10747/2011
(With Office Report)

C.A. No. 11398/2011
(With Office Report)

C.A. No. 183/2012
(With Office Report)

C.A. No. 167/2012
(With Office Report)

SLP(C) No. 22765/2011
(With Office Report)

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C.A. No. 2568/2012
(With Office Report)

C.A. No. 10105/2011
(With Office Report)

C.A. No. 5819/2012
(With Office Report)

C.A. No. 5260/2012
(With Office Report)

C.A. No. 2433/2011
(With Office Report)

SLP(C) No. 32190/2010
(With appln.(s) for c/delay in filing SLP and Interim Relief)

SLP(C) No. 27220/2012
(With Interim Relief and Office Report)

Date: 17/09/2014 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s)

Mr. R. Balasubramanian, Adv.
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Mr. Santosh Kumar, Adv.
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Mrs. Anil Katiyar, Adv.

Mr. Anand Mishra, Adv.
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Ms. Manjeet Chawla, Adv.

Mr. Bhaskar Y. Kulkarni, Adv.

Mr. C. N. Sree Kumar, Adv.
Mr. Rahul Kumar, Adv.

Mr. R. D. Upadhyay, Adv.

Gp. Capt. Karan Singh Bhati, Adv.
Ms. Aishwarya Bhati, Adv.
Mr. Parikshit, Adv.
MS. Sanjoli Mittal, Adv.
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For Respondent(s)

Mr. S.B. Upadhyay, Sr. Adv.
Mr. Kaustuv P. Pathak, Adv.
Mr. Param Misra, Adv.
Mr. Nishant Kumar, Adv.
Ms. Sharmila Upadhyay, Adv.

Mr. S.R. Kalkal, Adv.
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Mr. Bhim Sen Sehgal, Adv.
Mr. Avijit Bhattacharjee, Adv.

Mr. Sanchar Anand, Adv.
Mr. Piyush Hans, Adv.
Mr. Devendra Singh, Adv.

Mr. Gunnam Venkateswara Rao, Adv.
Mr. D.V. Raghuvamsy, Adv.

Mr. Anikit Swarup, Adv.
Mr. Rohit Kumar Singh, Adv.
Mr. Karan Kapoor, Adv.

Mr. Ranbir Singh Yadav, Adv.
Ms. Anzu K. Varkey, Adv.

Mr. Sajith. P, Adv.

Mr. Prakash Kumar Singh, Adv.

Mr. Nikhil Jain, Adv.
Mr. Abhishek Jain, Adv.
Dr. Vijender, Adv.

Dr. Sukhdev Sharma, Adv.
Dr. Kailash Chand, Adv.

Respondent-in-person

Ms. Usha Nandini. V,Adv.

Mr. Bimlesh Kumar Singh,Adv.

Mr. Saurabh Mishra,Adv.

Mr. Rajat Sharma, Adv.

Mr. Dinesh Verma, Adv.

Mr. Subhasish Bhowmick,Adv.

Mr. Mohan Kumar,Adv.

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Mr. Ghan Shyam Vasisht,Adv.

Mr. Sanjay R.Hegde, Adv.

Mr. Bineesh Karat, Adv.

Mr. Biju P.Raman, Adv.

Ms. Yogmaya, Adv.

Ms. Usha Nandini,Adv.

Major K.Ramesh, adv.

Ms. Archana Ramesh, Adv.

Mr. V.S.Gupta, Adv.

Dr. Kailash Chand, Adv.

Mr. Rakesh Kuamr Singla, RR in-person

UPON hearing the counsel the Court made the following

O R D E R

Delinked:

SLP(C) No.6309 of 2011, SLP(C) No.11251 of 2011 and
C.A.Nos.10657-58 of 2010. To be listed separately.

C.A.No.2903 of 2011:

The appeal is dismissed in terms of the signed order.

Rest of the matters:

Heard in-part.

For continuation of arguments post tomorrow i.e. on

18.09.2014.

(Mahabir Singh)
Court Master

(Shashi Sareen)
Court Master

(Saroj Saini)
Court Master

Dated: 18.09.2014:

C.A. No. 6062 of 2011:

The appeal is dismissed as infructuous in terms of the signed
order.

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C.A. No. 2433 of 2011:

The appeal is dismissed in terms of the signed order.

SLP(C) Nos. 17391-92 of 2011

We see no reason to interfere with the well-reasoned order passed by the High Court, the same is hereby dismissed.

Civil Appeal No. 2568 of 2012 and 5140 of 2011:

Post on 23.09.2014.

C.A. No. 2905 of 2011, 3409 of 2011, , 5144 of 2011, 2279 of 2011, 1498 of 2011, 5090 of 2011, 4409 of 2011, 5414 of 2011, 5163 of 2011, 5840 of 2011, 7368 of 2011, 7479 of 2011, 7629 of 2011, 5469 of 2011, 10747 of 2011, 11398 of 2011, 183 of 2012, 167 of 2012, 10105 of 2011, 5819 of 2012, 5260 of 2012, SLP(C) No. 15768 of 2011, 14478 of 2011, 26401 of 2010, 22765 of 2011, 32190 of 2010, 27220 of 2012, 2904 of 2011 :

Arguments heard.
Judgment reserved.

(Mahabir Singh) (Shashi Sareen) (Saroj Saini)
Court Master Court Master Court Master
(Three separate signed orders are placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2903 of 2011

PENSION SANCTIONING AUTHORITY,
PCDA (P) ALLAHABAD AND ORS.Appellants
Versus

M.L. GEORGE, EX. SGTRespondent

ORDER

This appeal arises out of an order dated 11.06.2010 passed by the Armed Forces Tribunal, Regional Bench, Kochi holding the respondent entitled to disability pension with the benefit of rounding off effective from 21st March, 2005 the date when he was discharged from service. The respondent it appears was on 11.9.1993 returning to his place of duty after availing one day's casual leave. He was driving his own motor cycle on the highway when he hit a lorry parked on the road. He was treated initially in a civil hospital and then at the Military Hospital before being sent on sick leave. While on sick leave he started complaining of hoarseness and

breathlessness. He returned from sick leave to be treated at the Military hospital at Chandigarh. He was found to have

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developed what is called "supraglottic web" which was excised by surgery on 17th December, 1993. He was operated thrice for laryngeal web but the web recurred/reformed. The Senior Advisor Surgery at Command Hospital Air Force, Bangalore opined that any further surgical intervention on the supraglottic web was likely to cause more scarring and a thicker web. Conservative management only was, therefore, advised. The Court of Inquiry ordered into the incident found that there was no negligence or misconduct on the part of the respondent. It was also found that the respondent was not intoxicated at the time of the accident. All the same since the accident had taken place at a 'peace station', the disability was held to be not attributable to Military service. Disability pension claimed by the respondent was on that basis denied to him.

Appeals preferred by the respondent before the Appellate Authority having failed, the matter eventually landed in the Armed Forces Appellate Tribunal who upon a re-appraisal of the factual matrix and the rule position came to the conclusion that the disability suffered by the respondent was attributable to military service. The Tribunal in support of that

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finding placed heavy reliance upon the decision of this Court in Madan Singh Shekhawat v. Union of India and Ors. (1999) 6 SCC 459 where this Court was dealing with a similar question. The appellant in that case was serving in the army as a Sawar (Horse Rider). He was discharged from service after 11 years and six months on account of a disability that arose out of an accident in which he was involved while alighting from a train at Didwara Railway Station, resulting in the amputation of the appellant's right hand. At the time of the accident, the appellant Madan Singh Shekhawat was travelling from Jodhpur to his home station on

authorized casual leave sanctioned to him. The question that fell for consideration was whether the appellant in that case was on duty and whether the disability was attributable to military service. Relying upon the provisions of Rule 10 of Defence Service Regulation this Court held that casual leave counts as duty except as provided in Regulation 11 (a) and that since the case of the respondent did not fall under any one of the exceptions under Regulation 11(a) of the Regulations, the appellant was on duty at the time of the accident. This Court further placed reliance upon Regulation 10 48 of the Regulations aforementioned to hold that a person is deemed to be on duty during the period of participation in recreation, organised or permitted by service authorities and while travelling in a body or singly under organised arrangements. A person was on duty even when proceeding to his leave station or returning to duty from his leave station at public expense. This Court observed:

"9. Rule 48 of the said regulation contemplates admissibility of disability pension. It has enumerated various cases under which an army personnel is entitled to the grant of disability pension.

10. Rule 48 reads thus:

"48. Disability pension when admissible.--An officer who is retired from military service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section;"

11. In respect of accidents the following rules will be observed:

"(a)-(b) * * *

(c) A person is also deemed to be 'on duty' during the period of participation in recreation, organised or permitted by service authorities and of travelling in a body or singly under organised arrangements. A person is also considered to be 'on duty' when proceeding to his leave station or returning to duty from his leave station at public expense."

12. This rule is a deeming provision which provides for situations under which a person on duty, if he suffers disability, is entitled to the grant of disability pension. The last part of this sub-rule provides that a person incurring disability when proceeding to his leave

station or returning to duty from his leave station at public expense is also entitled to the grant of disability pension."

(emphasis supplied)

The Court next held that since Regulations for payment of disability pension were beneficial in nature the same had to be interpreted liberally. Relying upon several earlier decisions, this Court declared that the words "at public expense" used in Regulation 48 had to be construed to mean a travel which is undertaken authorisedly. The Court noted that even an army personnel entitled to casual leave by not be authorised to leave his station of posting without permission. Generally, when authorised to avail leave by leaving station of posting, any army personnel uses travel warrant which is issued at public expense, which will not be issued if person concerned is travelling unauthorisedly. It was in that context held that the expression "at public expense" is used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly meaning thereby that if such journey is undertaken during casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of disability pension since his act of undertaking the journey would be unauthorised.

The decision in Madan Singh Shekhawat's case (supra) is, in our opinion, a complete answer to the case at hand. The respondent in the present case also was returning to his place of duty after availing casual leave when he met with an accident. It is not the case of the respondent that he had left the place of his duty unauthorisedly. It cannot, therefore, be said that he was not on duty in terms of the provision of Regulations 10 and 48 referred to in Madan Singh Shekhawat's case (supra).

In the circumstances we have no hesitation in holding that the Tribunal committed no error in directing payment of

disability pension to the respondent. There is no merit in this appeal which fails and is hereby dismissed. No costs.

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

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

New Delhi
September 17, 2014

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2433 OF 2011

UNION OF INDIA & ANR

Appellants

VERSUS

EX NAIK SURENDRA PANDEY

Respondent

O R D E R

This appeal arises out of an order dated 10th May, 2010 passed by the Armed Forces Tribunal, Regional Bench, Lucknow whereby Transferred Application no.191 of 2009 filed by the respondent has been allowed, orders passed by the appellants herein set aside and the respondent held entitled to claim disability pension to the extent of 20% with effect from the date of his discharge.

Respondent was serving as a Sepoy in the Indian Army's Air Defence Corps. Having served for nearly 17 years he was discharged from service on 1st July, 2004 upon completion of the tenure. It is not in dispute that service pension admissible to

him has been released in his favour. Since, however, the

respondent had suffered a disability while in service he appears to have claimed disability pension also which was declined by the

appellants on the ground that the disability was neither

attributable nor aggravated by military service. Aggrieved by the said refusal the respondent filed W.P. No.3649 of 2008 before the

High Court of Judicature at Allahabad, Lucknow Bench, which came

to be transferred to the Armed Forces Tribunal, Regional Bench,

Lucknow, after setting up of the said Tribunal under the Armed

Forces Tribunal Act, 2007. Respondent's case in the writ petition

and so also before us is that while posted in a field area in the

State of Jammu and Kashmir he was authorised to go on annual leave

for a period of two months. His further case is that having

started his homeward journey from Jammu on 25th March, 1997 he

travelled to Hajipur, ahead of Sewan in the State of Bihar, by

train. On 27th March, 1997 while boarding a bus from Hajipur to

reach Patna to join his family he met with an accident that

resulted in a disability, assessed at 20% by the Medical Board

concerned. A Court of Inquiry ordered into the incident recorded a

finding that the accident and the resultant injury suffered by the

respondent were not attributable to military service. The claim

for payment of disability pension was on that finding declined by

the appellants, according to whom the respondent was authorised to

travel upto Gopalganj-his home station via Lucknow, Gorakhpur and

Sewan. Any accident involving the respondent at Hajipur was

according to the appellants, in no way related to military service

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or the time requisite for completing the homeward journey which

the respondent was authorised to undertake.

The respondent approached the Armed Forces Tribunal in T.P.

No.191 of 2009 to challenge the order rejecting his claim. The

Tribunal examined the rival versions and held that the disability

was indeed attributable to military service inasmuch as the respondent was on annual leave hence deemed to be on duty at the time the same was suffered. The Tribunal has consequently set aside the orders passed by the appellants refusing the pension and issued directions for payment of the dues with effect from the date of his discharge from service. The present appeal filed by the appellants assails the correctness of the said order of the Tribunal, as noticed earlier.

We have heard learned counsel for the parties at some length who have taken us through the orders passed by the Tribunal as also other documents on record. Apart from the fact that an appeal under the provisions of Section 31 of the Act, aforementioned, is maintainable only in case the same involves a substantial question of law of general/public importance/interest which does not appear to be arising in this case, we are of the view that the order passed by the Tribunal does not even otherwise warrant any interference by us. We say so because in terms of Rule 12 of the Entitlement Rules for Casualty Pensionary Awards, 1982 a person subject to the disciplinary code of the Armed Forces is treated on duty while performing any one of the functions mentioned in paras (a), (b) and (c) of the Pension Regulations.

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Notes 1 and 2 to the entitlement Rules elaborate the scope and the purport of the term "duty". Para (f) to note 2 deals with accidents which occur when a man 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 speaking on duty is also deemed to be on duty provided it involves risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service so long as the same was not a risk common to human existence in modern conditions in India. Para (a) to (f) to Notes 1 and 2 under Rule 12 of the said Entitlement Rules may be extracted at this stage:-

"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.

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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 authorised 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. Thus for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed 'on duty' at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act."

The question here is whether the extended meaning of the expression "on duty" within the purview of para (f) above, is attracted to the facts and circumstances of the case at hand.

Tribunal has, it appears relying upon two decisions one each

The

rendered by the High Courts of Allahabad and Himachal Pradesh, taken the view that any accident involving a person serving in the army while he is on annual leave, is deemed to be attributable to military service. That proposition appears to us to be rather

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broadly stated. In our view the expression "duty" as set out in Regulation 12 postulates only specified situations in which an Army personnel can be said to be performing his duty for purposes of Entitlement Rules. But by reason of the extended meaning given in terms of Notes 1 and 2, situations in which a person is not strictly speaking "on duty" are also by a legal fiction presumed to be tantamount to discharging military duty.

Before we advert to the case at hand we may briefly refer to a few decisions which appear to us to be touching the issues that fall for consideration in this appeal. In Sukhwant Singh v. Union of India, through the Secretary, Ministry of Defence and Ors. (2012) 12 SCC 228, a two-Judge bench of this Court upon a review of the case law, summed up the legal position in the following words:

"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, however remote, between the incident resulting in such disability/ death and military service for it to be attributable. This conditionally 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 in no way be connected to his being on duty as understood in the

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sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible statement that every injury suffered during such period of

leave would necessarily be attributable.

c. The act omission or commission 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 function as a member of Force nor is remotely 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 casual 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 omission 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 matter connected aggravated or attributable to military service and the matter entirely private act cannot be treated as legitimate basis for claiming the 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 nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 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

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by nature conditions obligations or incidents of military service."

Though not in exactly similar context the question whether an injury has been sustained "out of and/or in the course of employment" has often arisen in the Courts both in India and in England. True the expression interpreted in those cases, appears in legislations like National Insurance (Industrial Injuries) Act, 1965 in UK and the Industrial Disputes Act 1947 applicable to workmen in this Country but what is noteworthy is that spirit in

which provisions for compensation to pension are made appears to be common to such legislations. In Regina v. National Insurance Commissioner (Ex parte Michael 1977 (1) Weekly Law Reports 109, the Court of Appeal in England had to construe phrase "caused by accident arising out of and in the Course of employment" appearing in the 1965 Act mentioned above. Lord Denning M.R. started his judgment with the observation:

"So we come back, once again, to those all too familiar words 'arising out of and in the course of his employment'. They have been worth-to lawyers-a King's ransom. The reason is because, although so simple, they have to be applied to facts which vary infinitely. Quite often the primary facts are not in dispute; or they are proved beyond question. But the inference from them is matter of law. And matters of law can be taken higher. In the old days they went up to the House of Lords. Nowadays they have to be determined, not by the courts, but by the hierarchy of tribunals set up under the National Insurance Acts."

Construing the meaning of the phrase "in the course of his employment", it was noted by Lord Denning that the meaning of the phrase had gradually been widened over the last 30 years to

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include doing something which was reasonably incidental to the employee's employment. The test of "reasonably incidental" was applied in a large number of English decisions. But, Lord Denning pointed out that in all those cases the workman was at the premises where he or she worked and was injured while on a visit to the canteen or other place for a break. Lord Denning, however, cautioned that the words "reasonably incidental" should be read in that context and should be limited to the cases of that kind. Lord Denning observed:

"Take a case where a man is going to or from his place of work on his own bicycle, or in his own car. He might be said to be doing something "reasonably incidental" to his employment. But if he has an accident on the way, it is well settled that it does not "arise out of and in the course of his employment". Even if his employer provides the transport, so that he is going to work as a passenger in his employer's vehicle (which is surely "reasonably incidental" to his employment), nevertheless, if he is injured in an accident, it does not arise out of and in the course of his employment. It needed a special "deeming" provision in a statute to make it "deemed" to arise out of and in the course of

his employment."

It was also pointed out by Lord Denning in the aforesaid case of Regina v. National Insurance Commissioner, Ex. Parte Michael (supra) that the extension of the meaning of the phrase "in the course of his employment" has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was "reasonably incidental" to employment, may be extended even to cases while an

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employee is sent on an errand by the employer outside the factory premises. But in such cases, it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his work place in the usual course of his employment. Latham, C.J. in South Maitland Railways Proprietary Limited v. James 67 CLR 496 observed that when the workmen on a hot day in course of their employment had to go for short time to get some cool water to drink so enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for water.

In India the Courts have recognized the principle of notional extension of time and space, while determining whether an injury has been caused in the course of the employment of workman.

The

principle was stated in Saurashtra Salt Manufacturing Co. v. Bai Valu Raja AIR 1958 SC 881 in the following words:

"As a rule, the employment of a workman does not commence until he had reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in

order to determine whether the accident arose out of and in the course of the employment of a workman keeping in view at all times this theory of notional extension."

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The above was reiterated in General Manager, B.E.S.T. Undertaking Bombay v. Mrs. Agnes AIR 1964 SC 193.

In the case at hand, the accident has taken place while the respondent was travelling from the place of his duty to the place where his family was residing at Patna. It is the specific case of the respondent that although the respondent's hometown is Gopalganj, his family was residing at Patna. It was for that reason that he claims to be travelling by train beyond Sewan upto Hajipur by train to catch a bus to reach Patna to join his family. The Court of Inquiry conducted into the accident has not found that version to be false or otherwise unacceptable. There is no finding by the Court of Inquiry that the respondent's family was not actually residing at Patna. There is also no finding to the effect that the respondent's version that he was boarding a bus at Hajipur to reach Patna, was factually incorrect. That apart the respondent had started his homeward journey from Jammu on the 25th March, 1997. In the ordinary course and keeping in view the distance between the place from where he started the journey and the place he eventually intended to reach to join his family, would have taken the respondent a minimum of three days. This implies that even on 27th March, 1997 while the respondent met with the accident he was in the process of performing his journey to join his family at Patna. The question is whether the extension of journey from Sewan (which would be the ordinary rail terminus for his travel) to Hajipur for his onward travel to Patna would be an incidental extension of the authorised journey in

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terms of time and space of what was authorised by the appellants.

Our answer to that question is in affirmative.

We say so keeping

in view the language used in para (f) to Note 2 of Rule 12 of the Entitlement Rules and in particular the expression "provided that

it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service". One of the incidents of the military service which the respondent was rendering in the Army was his remaining away from his family for long intervals on account of the nature of the duties enjoined upon him in larger national interests. When authorised to proceed on an annual leave of two months that incident would extend to his obligation to join his family for such moral and material support as the family would require of him and as would be expected of a disciplined soldier serving in the armed forces. Suffice it to say that the expression "obligations or incidents of service" appearing in Note 2 (supra) are wide enough to include a situation where personnel travel on authorised leave to join their family at a place other than the place for which he is given a railway warrant. In the instant case the Railway warrant issued to the respondent may have authorised his journey only upto Sewan, but the fact that he continued his journey by train upto Hajipur to reach Patna to join his family is incidental to the primary object for which he was authorised annual leave. We hardly need mention that Entitlement Rules for Casualty Pensionary Awards, 1982 are beneficial in nature and ought to be liberally construed as was done by this Court in Madan Singh Shekhawat v. Union of India and others (1999) 6 SCC 459 and

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in Union of India and others v. Jujhar Singh (2011) 7 SCC 735.
In

Madan Singh's case (supra) the question that fell for consideration was whether a person was on duty while he was travelling back to join at the place of his posting on a motorcycle which mode of transport was strictly speaking not at public expense. This Court relying upon certain earlier decisions referred to therein, held that the expression "at public expense" ought to be liberally construed and should include a return journey that was authorised no matter it was undertaken by a means other than a travel warrant issued at public expense. This Court

observed:

"We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even as army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorised to avail the leave for leaving the station of posting, an army personnel uses what is known as "travel warrant" which is issued at public expense, the same will not be issued if the person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly, meaning thereby that if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised."

In Jujhar Singh's case (supra) this Court was dealing with the question whether the respondent who had met with a road 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 the injury continued in military service and superannuated with normal service pension. Disability pension was however declined to him despite representation although it was admitted that during his tenure in the army he had suffered a permanent disability. This Court held that although the respondent was entitled to claim service pension he would not be entitled to any disability pension in the absence of a nexus between the disability and the act of omission or commission resulting in the injury suffered by him. Inasmuch as the respondent had sustained the injury and consequent disability when he was on annual leave that too in his home town in a road accident, he was not entitled to any disability pension as the disability was not attributable to military service, observed this Court. What is important to note is that the Court declined relief of disability pension in that case in the absence of any causal connection between the 'injury/disability' and 'military service'. That, however, is not the position in the

case at hand. There is a reasonable nexus and causal connection between the disability and the military service of the respondent at the relevant time. He was authorised to perform a journey

commencing 25th March, 1997 and the accident that led to his disability occurred within two days from the commencement of the journey from Jammu on 25th March, 1997.

The proximity in point of time between the homeward journey that started from Jammu and the date when he met with the accident as also the distance between the place from where the journey was started and the place to

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which he was travelling would give rise to a reasonable inference that the authorised journey had not ended when he met with the incident. 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. In Jujhar Singh's case (supra) the accident occurred in his home town causing a disability having no causal connection with the military service of the claimant. The present is not a case of that type. We are inclined in the present case to accept the respondent's version that he had not reached the destination when he on 27th March, 1997 met with the accident that caused a disability to him. We therefore see no reason to interfere with the order passed by the Tribunal, no matter for reasons different from those recorded by the Tribunal.

This appeal accordingly fails and is, hereby, dismissed. No costs.

.....J

(T.S. THAKUR)

.....J

(R. BANUMATHI)

NEW DELHI

DATED 18th SEPTEMBER, 2014

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.(S). 6062

OF 2011

UNION OF INDIA & ANR

Appellant(s)

VERSUS

MULAKH RAJ

Respondent(s)

O R D E R

The Armed Forces Appellate Tribunal has while allowing the petition filed by the respondent and setting aside an order declining disability pension to him, assessed the respondent's disability at 20 %, held the same to be attributable and aggravated by military service and directed the appellant herein to calculate and release the benefits within a period of six months failing which the amount has been made payable with interest at the rate of 12 % per annum.

Our attention is now drawn to the Review Medical Board held by the Authorities concerned and the report submitted by the Board, produced as Annexure R-3 to the Additional Affidavit filed by the respondent. From a perusal of the re-assessment/review proceedings of the Medical Board, it is evident that the respondent's disability on account of generalized seizure has been

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assessed at 20 % and found to be attributable to military service.

Learned counsel for the respondent submits that pursuant to the order passed by the Tribunal as also the findings recorded by the Board, the amount of disability pension due to the respondent has already been calculated and released in his favour on 7th September, 2012, thereby rendering this appeal infructuous. Mr. R. Balasubramanian, learned counsel appearing for the

appellant-U.O.I., submits that in the light of the said subsequent development, this appeal has indeed become infructuous and may be dismissed. We order accordingly leaving the parties to bear their costs.

.....J

(T.S. THAKUR)

.....J

(R. BANUMATHI)

NEW DELHI

DATED 18th SEPTEMBER, 2014