Madan Singh Shekhawat vs Union Of India & Ors on 17 August, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3378, 1999 (6) SCC 459, 1999 AIR SCW 3342, 1999 LAB. I. C. 3266, 2000 (1) UPLBEC 347, 2000 (2) SERVLJ 178 SC, 1999 (2) UJ (SC) 1357, (1999) 6 JT 116 (SC), 1999 (8) SRJ 410, 1999 (7) ADSC 459, 1999 (5) SCALE 48, (1999) 4 ALL WC 3369, (1999) 2 CURLR 813, (2000) 96 FJR 343, (1999) 83 FACLR 311, (2000) 1 LAB LN 89, (1999) 4 SCT 89, (1999) 4 SERVLR 744, (2000) 1 UPLBEC 347, (1999) 7 SUPREME 206, (1999) 5 SCALE 48, (1999) 3 ESC 1741, 1999 SCC (L&S) 1150

Bench: S.P.Bharucha, N.Santosh Hegde

PETITIONER:
MADAN SINGH SHEKHAWAT

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 17/08/1999

BENCH:
S.P.Bharucha, N.Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.

This appeal arises from the Judgment of the Appellate Bench of the High Court of Rajasthan at Jodhpur in D.B.Spl.Appeal No.100/98 dated 4th February, 1998 confirming the judgment of the learned Single Judge of the same High Court in S.B.Civil Writ Petition No.4004/91 dated 1st October, 1997. The appellant had joined the Indian Army as a Sawar (Horse Rider) in the 17th Horse Unit in September, 1975. He had completed 11 years and six months of service when he was discharged from the Military Service on medical grounds on 25th of April, 1987. The cause of his discharge on medical grounds arose from an accident in which the appellant was involved on 1.10.1994 while alighting from the train at Didwara Railway Station, consequent to which accident appellant's right hand was amputated just four inches below from the joint of collar pone. At the time of the accident, the appellant was travelling from Jodhpur to his home station on authorised casual leave granted to him. On discharge from service, on the above stated ground, the appellant put forth a claim for special disability pension payable under the relevant rules which though

recommended by higher authorities was rejected by the Controller of Defence Accounts (Pension), Allahabad on 4.10.1988 solely on the ground that at the time of the accident the appellant was not on Military service. The appellant's representation/appeal for grant of disability pension having been rejected, as stated above, he approached the learned Single Judge of the High Court by way of a writ petition. The writ petition came to be dismissed on the ground that the petitioner was not entitled for this disability pension on the limited ground that at the time of the accident the he was travelling at his own expenses, therefore, the relevant rule did not permit the grant of disability pension. The appellant's appeal to the Division Bench having met with the same fate, he is now before us in this appeal by special leave. There is no dispute that at the time of the accident, the appellant was travelling to his home town which is termed as `leave station' under the rules on casual leave granted to him by the Competent Authority. The grant of disability pension is governed by the various rules found in Defence Services Regulation. Rule 10 of the said rules reads thus :- "Casual leave counts as duty except as provided for in Rule 11(a)."

As per this rule when an army personnel is on casual leave, same is counted as duty unless he comes under any one of the exceptions under Rule 11(a) of the rules. It is not the case of the respondents that the appellant comes under any such exceptions. Therefore, as per Rule 10(a), the appellant was on duty at the time of the accident. 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. Rule 48 reads thus :- "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;"

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." (emphasis supplied).

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. The controversy in this case is whether the qualification "at public expense" found in this rule is so mandatory as to deprive an army personnel who is travelling to his leave station or vice versa "on duty", but at his own expense, of the benefit of disability pension if need arises.

If the expression "at public expense" is to be construed literally then under the Rules referred to above, an army personnel incurring a disability during his travel at his own expense will not be entitled to the benefit of Rule 6c (supra). The object of the rule, as we see, is to provide relief to a victim of accident during the travel. If that be so, the nature of expenditure incurred for the purpose of such travel is wholly alien to the object of the rule. It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule.

In Seaford Court Estates Ltd. v. Asher (1949 2 All ER 155), Lord Denning L.J. (as he then was) held :- "When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament . and then he must supplement the written word so as to give "force and life" to the intention of the legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

This rule of construction is quoted with approval by this Court in M Pentiah v. Muddala Veeramallappa (1961 2 SCR 295) and also referred to by Beg, C.J. in Bangalore Water Supply & Sewerage Board v. R Rajappa (1978 3 SCR 207) and in Hameedia Hardware Stores, represented by its Partner S Peer Mohammed v. B Mohan Lal Sowcar (1988 2 SCC 513).

Applying the above rule, we are of the opinion that the rule makers did not intend to deprive the army personnel of the benefit of the disability pension solely on the ground that the cost of journey was not borne by the public exchequer. If the journey was authorised, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself.

We, therefore, construe the words "at public expense"

> used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even an 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, same will not be issued if 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 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.

Since on facts there is no allegation in this case that the appellant while travelling to his leave station on the fateful day was travelling unauthorisedly, we are of the opinion that he is entitled to the

benefit of disability pension as provided under the Rules.

For the reasons stated above, this appeal succeeds and is hereby allowed; the impugned judgments are set aside and Writ Petition No.4004/91 also stands allowed with all consequential benefits.