A SECRETARY, M/O DEFENCE & ORS.

*v.*

AJIT SINGH

(Civil Appeal No. 16 of 2003)

B MAY 6, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]**

*Service Law:*

C *Armed forces:*

*Army – Disability pension – Armyman having put in 4 years 11 months Military service – While on casual leave he suffered injuries due to electric shock – Resulting in 20%* D *disability – HELD: Would not be entitled to disability pension.*

**The respondent, an Armyman, after about 4 years and 11 months Military service suffered injuries due to electric shock while on casual leave. He was declared** E **medically unfit and was accordingly discharged from service. He filed a suit for declaration to the effect that he was entitled to disability pension as according to him he sustained 20% disability. The trial court decreed the suit. The first appellate court and the High Court affirmed the** F **decree.**

**In the instant appeal filed by the Department it was contended for the appellant that since apart from the facts that the incident took place while the respondent was on casual leave and he had not completed 10 years of** G **service, the disability was not attributable to the Military service, the courts below erred in decreeing the suit.**

**Allowing the appeal, the Court**

**HELD: Keeping in view the law laid down by this**

H

**Court in *Keshar Singh** and *Surinder Singh* the judgment of the High Court is clearly unsustainable and is set aside. [Para 5] [936-F]** A

***Union of India & Ors. vs. Kehsar Singh 2007(12) SCC 675 and *Union of India & Ors. v. Surinder Singh Rathore* 2008(5) SCC 747, relied on.** B

**Case Law Reference:**

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|---|---|---|
| **2007(12) SCC 675** | **relied on** | **Para 4** |
| **2008(5) SCC 747** | **relied on** | **Para 4** C |

CIVIL APPELLATE JURISDICTION : Civil Appeal No.16 of 2003.

From the Judgment & Order dated 30.8.2001 of the High Court of Punjab & Haryana at Chandigarh in RSA No. 4703 of 1999. D

B. Datta, ASG, T.V. Ratnam, M. Chandrashekhar, B.K. Prasad, B.V. Balaram Das for the Appellants.

Manish Raghav Nitin Jain, Dr. Vipin Gupta for the Respondents. E

The Judgment of the Court was delivered

**DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the Judgment of the Learned Single Judge of the Punjab & Haryana High Court. The appellants had filed an appeal before the High Court challenging the judgment dated 27-07-1999 of the District Judge, Bhiwani by which the appeal filed by the Union of India against the Judgment and decree passed by the learned Additional Civil Judge (Sr. Divn.), Charkhi Dadri was dismissed. F G

2. Respondent who was enrolled in the Military service on 29-09-1985 had filed a suit for declaration to the effect that he is entitled to disability pension with effect from 31-03-1990. H

According to him, during the course of his service, he has sustained 20% disability on account of electric shock suffered by him while he was on casual leave. On account of this he was declared medically unfit and ultimately discharged on 31-03-1990. According to the present respondent he was entitled to disability pension.

3. Stand of the present appellants was that he suffered an electric shock while he was on casual leave and working in his house near the tube well. It was pointed out that in any event he had not completed 10 years of service and had been discharged after four years eleven months and two days of service. Therefore, there is no question of granting any disability pension. The Trial Court held that the respondent was entitled to disability pension. Same view was maintained in appeal by the District Judge, Bhiwani and the High Court.

4. Placing reliance on the decisions of this Court in *Union of India & Others Vs. Keshar Singh* [2007 (12) SCC 675] and *Union of India & Others Vs. Surinder Singh Rathore* [2008 (5) SCC 747, it is submitted by learned Counsel for the appellants that the disability is not attributable to or aggravate by military service. In addition he had not completed the period of requisite service and therefore not entitled to disability pension. Learned Counsel for the respondent submitted that the High Court's view does not suffer from any infirmity.

5. Keeping in view what this court has stated in the case of *Keshar Singh* and *Surinder Singh* (supra), the judgment of the High Court is clearly unsustainable and in the circumstances, we set aside the impugned Judgment of the High Court.

6. However, on the facts and circumstances of the case payment, if any, already been made to the respondent by way of disability pension shall not be recovered.

7. The appeal is allowed to the extent indicated above.

R.P. Appeal allowed.