Before Adarsh Kumar Goel, K. Kannan and Alok Singh JJ.

UNION OF INDIA AND OTHERS,—*Appellants*

versus

KHUSHBASH SINGH,—*Respondent*

LPA No. 978 of 2009

31st March, 2010

Constitution of India, 1950—Art. 226—Pension Regulations of the Army, 1961—Para 173—Leave Rules—Rl. 11—Disability in an accident during casual/annual leave—Discharge—Claim for disability pension—Rejection of on ground that injury not attributable to Army Service—Challenge thereto—An Army Personnel, while on casual leave or annual leave, shall be considered to be on duty except when by virtue of Rule 11 of Leave Rules, he could not be deemed to be on duty, if he had not actually performed duty in that year—Decision of Single Judge holding army personnel entitled to disability pension confirmed—Appeals dismissed.

Held, that an Army Personnel, while on casual leave or annual leave, shall be considered to be on duty except when by virtue of Rule 11 of the Leave Rules, he could not be deemed to be on duty, if he had not actually performed duty in that year. If he was on duty and he suffers the disability due to natural causes, the issue whether it was attributable to or aggravated by Military Service will be examined by taking the case of the Army Personnel as he was and examining whether it was the intervention of the army service that caused the disability. The decision of the Medical Board in examining the physiological injury or the psychological impacts of military service would obtain primacy and the Court shall normally be guided by such scientific medical opinion. However, in cases where the injury that results in disability is due to an accident, which is not due to natural, pathological, physiological or psychological causes of the personnel, the question that has to be asked is whether the activity or conduct that led to the accident was the result of an activity that is even remotely connected to Military Service. An activity of an independent business or avocation

or calling that would be inconsistent to Military Service and an accident occurring during such activity cannot be attributable to Military Service. Any other accident, however, remotely connected and that is not inconsistent with Military Service such as when a person is returning from hospital or doing normal activities of a military personnel would still be taken as a disability attributable to Military Service.

(Para 18)

Anil Rathee, Advocate and Hemen Aggarwal, Advocate, *for the appellants.*

Bhim Sen Sehgal, Advocate *for the respondent.*

K. KANNAN J.

I. The issue at stake and the cause for reference to Full Bench.

(1) The above two cases address the same issue with reference to the entitlement of disability pension by an Army Personnel, who suffered a disability in an accident during leave. In both the cases, the disability had arisen through accidents during leave. The entitlement to disability pension is anchored to para 173 of the Pension Regulation of the Army that provides for disability pension arising on account a disability, which is attributable or aggravated by Military Service in non-battle casualty and is assessed at 20% or over. The expressions of a causal connection of disability that is attributable to Military Service in a non-combat situation would take us to examine what types of activities could be taken to have connection to Military Service. The issue would again be whether a person, who is on casual leave or annual leave would be subjected to any different yardsticks in assessing this causal connection. The reference to a Full Bench itself has arisen on account of a Division Bench of which one of us (Justice Adarsh Kumar Goel) was a party, noticed that there had been a conflict of opinions between a Division Bench judgment of this Court in **Jarnail Singh** *versus* **Union of India (1)** on the one hand and the three other decisions of this Court in **Gurjit Singh** *versus* **Union of India and others (2), Pooja and another** *versus* **Union of India and others (3)** and **Pargat Singh** *versus* **Union of India and another** in C.W.P. No. 12434 of 1999 decided on 22nd September, 2006 on the other.

(1) 1998 (1) SLR 418
(2) 2008 (2) S.C.T. 333
(3) 2009 (1) S.C.T. 491

II. Setting the cases in their factual matrix and their litigious journey :

(2) To set the factual position in both the cases correctly in order to appreciate the law involved, in LPA No. 978 of 2009, the respondent Khushbash Singh joined as Sepoy in Army on 8th February, 1974 and was on casual leave when he had gone to his village in the year 1988. He met with an accident while travelling on a scooter that resulted 60% disability leading to his discharge from the year 1991. The service element of pension was given to him but disability pension claimed by him was disallowed on the ground that the same was not admissible. In LPA No. 49 of 2009, the writ petitioner had served the Army from 1979 to 1982, when he was on annual leave in the year 1992 and when he had gone to Mata Chintpurani. He was invalidated out of service on medical ground but denied disability pension on the ground that the injury was not attributable to Army Service.

(3) The respondent in LPA No. 978 of 2009 had filed the writ petition challenging the rejection of his claim for disability pension and it was allowed by learned Single Judge following the judgment of the Hon'ble Supreme Court in **Madan Singh Shekhawat** *versus* **Union of India (4)** and a Division Bench of the Delhi High Court in **Ex. Sepoy Hayat Mohammed** *versus* **Union of India and others (5).** When the appeal came up for hearing before the Division Bench , it was pointed out that the Division Bench judgment of the Delhi High Court in **Ex. Sepoy Hayat Mohammed's** case had been over-ruled by a Full Bench of the Delhi High Court in **Dilbagh Singh and others (Ex. Nk.)** *versus* **Union of India and others (6).** The latter Full Bench judgment was cited in **Union of India and others** *versus* **Sumanjit Singh (7)** which was a subject of appeal in L.P.A. No. 49 of 2009 when originally a Division Bench had, while allowing the appeal filed by the Union of India, held that no disability pension would be claimable by a person, who had suffered the disability in an accident on annual leave. This judgment had been rendered in the absence of the counsel appearing for the respondent (the army employee) and on an application for review, the decision had been set aside and it has also come up for consideration on merit along with other appeal.

(4) AIR 1999 SC 3378
(5) 2008 (1) S.C.T. 425
(6) 2008 (4) S.C.T. 432
(7) 2009 (4) S.C.T. 44

III. The lynchpin Pension Regulations :

(4) To consider the question arising in these two appeals, it will be fruitful to reproduce para 173 of Pension Regulation of the Army, 1961 :

> "*Unless otherwise specifically provided, a disability consisting of service element and disability element may be granted to an individual, who is invalidated out of service on account of disability which is attributable or aggravated by Military Service in non-battle casualty and is assessed at 20% or over.*"

Two other sets of Regulations will have also to be examined, which make reference to the expression "attributable to or aggravated by" and the provisions relating to "leave", since we are considering the question of disability arising out of accidents during casual leave and annual leave. Appendix II to the Pension Regulation to the Army Act of 1961 is directed to be read along with Regulations 48, 173 and 185. Rule 48 of the Pension Regulations provides that Officer, who is retired from Military Service on account of disability, which is attributable or aggravated by such service and is assessed at 20% or over may on retirement be awarded with disability pension. The said Rule provides that the question whether a disability is attributable or aggravated by Military Service shall be determined under the Rules and Appendix II. Regulation 185 refers to the period of grant of disability pension when invalidating disability is capable of improvement and therefore, it addresses a slightly different position and we need not refer to it here. Appendix II outlines the relevant situations for applying the Pension Regulation and Entitlement Rules for Casualty Pensionary Awards of 1982. Rules 1 to 4 deal with the applicability of the Rules to classes of persons, who were in employment between specified periods and Rule 5 sets out the evaluation of disability with certain presumptions of how a person shall be presumed to be in sound physical and mental condition and Rule 6 sets out the nature of certification that would be necessary. Rule 8 is important, which is reproduced: "Attributability/aggravation shall be conceded, if causal connection between death/disablement in Military Service is certified by appropriate Medical Authority ." Rule 9 sets out the issue of onus of proof, which is again of importance and hence reproduced:

"The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimant in field/afloat service cases." Rules 10 and 11 refer to post discharge claims. Rule 10 addresses the situation of a penson's disability that arises within a particular number of years after the discharge of service, which could be recognized as attributable to service. Since we are examining the case of disability arising out of an accident, we are not examining the same. Rule 11 speaks about a disability arising during the time when a person who is receiving disability pension dies at home. We are not again examining the situation of a person dying at home when a disability pension already been assessed. Rule 12 defines "duty" and since the point of reference to the Full Bench is of an interpretation of attributability or aggravation or Military Service, it is required to be reproduced :

"12. Duty.

A person subject to the disciplinary code of the Armed Forces is on 'duty':—

(a) While 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 movement.

(c) During the period of participation in recreating and other unit activities organized or permitted by service authorities and during the period of travelling in a body of single by a prescribed or organized route.

Note.

(a) Personnel of the Armed Forced participating in:—

(i) Local/National/International sports tournament as member of service team, or

(ii) mountaineering expeditions/gliding organized by service authorities with the approval of service Headquarter will be deemed to be 'ON DUTY' for purpose of these rules.

(iii) Personnel of the Armed Forces participating in the abovenamed sports tournaments or in privately organized mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be on duty for the purpose of these rules, even though prior permission of the competent service authorities may have been obtained by them.

Note 2.

The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorized professional courses or exercises for the Defence Service for the purpose of the grant of disability/family pension on account of the disability/death sustained during the courses.

(d) When proceeding from his duty station to his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional vouchers, on cash TA is (Irrespective of whether railway warrant/cash T.A. is admitted for the whole journey of for/a portion only), in Government transport or when road mileage is paid/payable for the journey.

(e) When journeying by reasonable route from one's quarter to and back from the appointed place of duty, under organized arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available.

(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, when a person is killed or injured by another part by reason of belonging to the Armed Forces, he shall be deemed 'On Duty' at the relevant time. This benefit will also be given more liberally to the claimant in case occurring on active service as defined in the Army/Navy/Air Force Act.

IV. Notional extension of duty dispels the need to prove causal connection in accident situations :

(5) Rule 12 has relevance to us for considering the issue of the attributability to Military Service since we are literally applying a deeming provision. In both the cases, the petitioners were on duty and they were not actually engaged in military operations nor were they confined within areas of military activity. Each one of the situations, which Rule 12 contemplates, assumes that a person is on duty not merely by marking his attendance in the register. For instance, participation in sports tournament as a member of service team, mountaineering expedition, his travel from his duty station to his leave station or when his accident occurs by the identification of a person as an Army Personnel, which is not normally a risk common to human existence in modern conditions. This deeming provision contained in Rule 12 given us a clue that it takes a certain realistic approach that an Army Personnel who obtains a disability need not always prove that he was within the confines of his calls of duty. If any of the attendant circumstances existing within Rule 12 is attracted, no further question would require to be asked regarding the causal connection. A disability arising during the circumstances specified within Rule 12 would perforce be taken as a disability attributable to or aggravated by military service.

V. Pension on casual leave or annual leave shall be considered on duty, except when the person did not perform duty in that year

(6) The issue simply does not end there. We are trying to examine whether beyond Rule 12, a normal activity of a person during leave that results in disability would also qualify for an expression of disability attributable to Military Service. Since we are examining the issue of disability arising

during leave, the reference relating to Leave Rules also become relevant. Rule 10 refers to casual leave and Rule 11 refers to annual leave. It is apposite to reproduce to both the Rules :

Casual Leave

"10. Causal leave counts as duty except as provided for in Rule 11(a).—

It cannot be utilized to supplement any other form of leave or absence,except as provided for in clause (A) of Rule 72 for personnel participating in sporting events and tournaments.

Causal leave due in a year can only be taken within that year. If, however, an individual is granted casual leave at the end of the year extending to the next year, the period falling in the latter year will be debited against the casual leave entitlement of that year."

Annual Leave :

"11. (a)Annual leave is not admissible in any year unless an individual has actually performed duty in that year. For purposes of this rule, an individual on casual leave shall not be deemed to have actually performed duty during such leave. The period spent by an individual on the 'Sick List Concession", shall however, be treated as actual performance of duty.

(b) Annual leave, for the year may at the discretion of the sanctioning authority, be extended to the next calendar year without prejudice to the annual leave authorized for the year in which the extended leave expires, but further annual leave will not be admissible until the individual again performs duty.

(c) Annual leave may be taken in instalments within the same year.

(d) The annual leave year is the calender year, viz. 1st January to 31st December."

(7) In so far as, there is an express statement that a casual leave would count as duty, it should be taken as providing an additional feature

to Rule 12. Rule 11 specifically states that a person on casual leave will not be deemed to be on duty during a leave that was not admissible in any year, if the individual had not actually performed duty in that year. Mode of consideration of a person on annual leave as on duty is itself not in doubt, for the exception contained in Rule 10 stated above is only when an individual had not performed duty in that year.

VI. Disability arising out of accidents and out of natural causes-Primacy of medical opinion in letter cases.

(8) It is in this context that the reference to several other decisions, as regards the interpretation of the causal connection that Regulation 173 envisages, obtains relevance. A greater reliance that could be possible on medical evidence with reference to a disability as arising from the natural causes when a person is in service, may not be necessary in a case where we are examining causes of disability due to accident. Reliability of a medical evidence in the former may be necessary in view of the particular scientific knowledge that a medical professional may have in tracking the natural causes of particular progression of disability as resulting from military service or is aggravated by such service. Medical evidence may not even be relevant in cases where we are examining cases or disability arising from accidents where the proximate cause for the disability is not far to seek. It is the accident itself that results in disability but the question is whether even an accident could be stated to be attributable to or aggravated by Military Service.

(9) We will, therefore, try to keep out of reckoning those decisions where the disability was occasioned due to natural causes and not arising out of accidents and where there has been already a decision rendered by the Medical Board regarding the causal connection of the Military Service to the disability. Doubtless in such circumstances, the medical report itself will obtain primacy, for an assessment by a scientific medical examination whether the particular disability was attributable to Military Service or could have been aggravated by Military Service would require little intervention from Court as held in **Union of India** *versus* **Surender Singh Rathore (8)** in that case, the Army Personnel was suffering from Maculopathy (RT) Eye, for which treatment had been given to him but there was no improvement

(8) 2008 (5) SCC 747

found. He was referred to the Release Medical Board and the Board recommended the respondent's release in Medical Category "CEE Permanent", which was lower than the category "AYE". The Board opined that disability was neither attributable to nor aggravated by Military Service and the proceedings of the Board have been approved by the Competent Authority. Consequently, the respondent had also been discharged from service. The High Court interferred with the said decision and the Hon'ble Supreme Court held that there ought to have been no scope for intervention in such like matters. **Union of India** *versus* **Dhir Singh China (9)** was again a case where the primacy of consideration of the Medical Board was noticed and the case of the particular disability is not attributable to or aggravated by Military Service was upheld while allowing the appeal filed by the Union and setting aside the decision of the Division Bench of the High Court. In **Controller of Defence Accounts (Pension)** *versus* **S. Balachandran Nair (10)** an Army Personnel working in the office of Radio Machine in border area of Punjab was found to have developed 'Anxiety Neurosis" and after prolonged treatment was found to be unfit for continuing in service. Disability pension was claimed by him when the Medical Board opined that he was suffering from a constitutional disease in nature unconnected with service conditions. The opinion of the Medical Board, which was an expert body, was set aside by the High Court when the Hon'ble Supreme Court intervened again to say that an interference with opinion of expert body under Article 226 could not have been undertaken in such a case and characterized the interference with opinion as not called for. In all the above cases, it could be noticed that there was a disability above the particular percentage. This disability again arose when the person had been in service. The attributability test failed in each of these cases where the proximate cause of the disability was required to be assessed and found that the disability was not connected with the service condition. If a physiological defect or illness spurred by psychological factor exists, Doctor's certification and his/her opinion would obtain the highest credibility.

VII. Disability during 'duty' of army personnel-attributability shall be examined in the context of whether the act leading to accident is incompatible with military duty.

(10) Disability arising to an Army Personnel during occasions, which even the Rules specify as 'on duty' would be the second type of

(9) 2003 (2) SCC 382
(10) 2005 (13) S.C.C. 128

situations, which we need to examine. Here again, like in the first set of cases above, the fact that injury arose during the service or when he was on duty itself could not be in doubt. We have already outlined a deeming fiction obtained through the definition of "ON DUTY" as specified in Clause 12 of the Appendix II. They are simpler situations where although not actually on duty but by a fiction, the Army Personnel would be treated on duty and a disability arising during such time, as for example, when a person suffers a disability on transit from his duty station to the leave station when he was travelling by train, the disability should only be taken as attributable to army duty. This situation was addressed by the Hon'ble Supreme Court in **Madan Singh Shekhawat** *versus* **Union of India (11).** The Hon'ble Supreme Court was examining the issue from the standpoint of what was contained under Regulation 48, of a person suffering injury while on duty and by reading it in the context of a person, who shall be considered to be on duty when proceeding to his leave station or returning to duty for his service station at public expense. The Hon'ble Supreme Court held that a person, who on casual leave travelled at his own expense to his home station and during journey met with an accident, which resulted in amputation of his hand, though not at public expense, that person could not be denied disability pension. The Hon'ble Supreme Court held that the expression public expense must be read down to mean that the Army Officer had been authorized to undertake journey for leave station.

(11) It is the decision of the Hon'ble Supreme Court in **Madan Singh Shekhawat's case** (supra) that introduces the need to discard literal inter pretation and to a consideration of the fact of a person who suffered a disability through an accident, during casual leave which through a legal fiction shall be treated as on duty. The proximate cause for the disability was, in this case, an accident. Here, while awarding disability pension, the attributability or aggravation test takes a back seat, although still a relevant test. The first issue is to see whether to a person, who is on duty, has an accident injury which is still treated as attributable to Army Service only, by inverting the approach from a negative standpoint, namely, whether the Army Personnel had done any act, which the Military Service could not have permitted him to do. If it was inconsistent with an activity which is normally in Military Service,then a disability suffered by such conduct could

(11) 1999 (6) SCC 459

not be attributed to or aggravated by medical service. If it was not inconsistent but an accident when he was still deemed to be on duty, such disability would make possible a claim for disability pension.

(12) The above interpretation could be explained in the context of how a person, who while on duty engages himself in a brawl due to drunkenness. It cannot certainly be termed to be an act which is consistent with a Military Service. Again, there could be a situation where he could be engaged in an activity, which if he had been on duty, he could not have engaged in such as, when he is carrying on a different avocation or when he is attending to some other business. To take another illustration, suppose he is attending to agriculture. In each one of the above types of activites the Army Personnel is doing an activity, which, he as a person in defence service could not have done if he has stayed back in the place of duty, say, the army camp. This difference is illustrated through some of the decisions, which the Hon'ble Supreme Court has itself considered. In **Secretary, Ministry of Defence and others versus Ajit Singh (12)** the respondent-defence personnel suffered 20% disability due to an electric shock received by him while he was on casual leave and working in his house near a tube-well. Besides, the respondent had also not completed 10 years of service. The Hon'ble Supreme Court held that he was not entitled to disability pension, while setting aside the judgment of the High Court. It could be noticed in this case that he was on casual leave and therefore, he was entitled to be treated as on duty. He had an accident of an electric shock but that accident was when he was attending to an act inconsistent with an act of a person in Military Service. Although the facts given in the case are not full, we venture to believe that the shock in a bore-well was not for a domestic activity. It was an agricultural operation, which was inconsistent with Military Service. We believe that such a distinction exists, for the Hon'ble Supreme Court itself has in yet another case in **Lance Dafadar, Joginder Singh versus Union of India and others (13)** held in a case, where the petitioner, while serving in Army as Lance Dafadar sustained severe injuries in an accident during the time when he was on casual leave. The accident took place while boarding a train when he fell down from the train and suffered severe injuries. His right leg came under the wheels of

(12) (2009) 7 S.C.C. 328
(13) 1995 (Sup.) (3) S.C. 232

the moving train and thus, he was crushed below the knee. In this case, the Army Personnel had at least the advantage of showing that he was going on casual leave and therefore, was on duty. Again, the Appendix II, clause 12 itself made the deeming provision for him that an injury suffered during a travel from his duty station to his leave station, would be treated to be attributable to the Army duty. The situation was similar what we have seen already in **Madan Singh Shekhawat's case.**

(13) A non-accident injury leading to disability is always different, for the issue will have to be considered from scientific proof available through Medical Board regarding whether such a disability has arisen on account of a Military Service or not, as examined in **S. Balachandran Nair, Surinder Singh Rathore and Dhir Singh China** (supra). Learned counsel appearing for the Union also referred a decision in **Union of India** *versus* **Baljit Singh (14),** which was subsequently followed by the Hon'ble Supreme Court in **Secretary, Ministry of Defence and others** *versus* **A.V. Damodaran (dead) through LRs and others (15).**

(14) The focus of attention in cases of disablity arising out of accident weans us away from medical opinions only to see whether the activity is prohibited or incompatible to military service. It has to be only seen whether the accident would have been occured when an Army Personnel had been in Military Service. A travel from a hospital towards home by motor-cycle or cycle or even as a pedestrian could well be consistent with the conduct of an Army Personnel undertaking such an activity even if he had been at the duty station. The fact that a person had been away from the duty station on causal leave or annual leave would not, therefore, make any difference so long as the activity could not be seem to be an unmilitary activity, if we may use such an expression. We have already seen in the Leave Rules 10 and 11 regarding casual leave and annual leave, both of which situations will have to be taken only as on duty. If only the casual leave or the annual leave has continued at a time, when in that year, the Army Personnel had not been on duty at all, such a leave could not be treated as on duty. Any other leave could not take away the character of person as on duty. If, therefore, an accident takes place by person riding a cycle or a motor-cycle when he was performing an act which was not

(14) 1996 (11) S.C.C. 315
(15) (2009) 9 S.C.C. 140

inconsistent with an act of a Military Personnel, then a disability that arises from such an act, would always be only a disability attributable to Military Service. We are, after all, examining the situation of a disability arising in a non-combat situation. If a person gets hit by a bullet at the war front and there is a disability that is wholly a different situation and principle of *res ipsa loquitur* could easily be invoked. It would be stating the obvious that an injury that leads to a disability in such an operation shall always be taken to be attributable to army service. The forensic exercise becomes necessary only when we examine how even in a non-combat situation, the disability pension could still be sourced to Military Service as being attributable to it or aggravated by it. If we adopt the above reasoning, it could be noticed that the decision of Division Bench of this Hon'ble Court in **Pooja and another** *versus* **Union of India and others (16)** was perfectly justified when it was examining a case of an Army Personnel, who met with an accident while on annual leave. The Court found that the accident was beyond his control and further held that it could not be stated that it would disentitle him for grant of disability pension merely because he was on annual leave. The Division Bench relied on an earlier ruling in **Ex. Naik Kishan Singh versus Union of India (17),** where the facts were similar, except that in the further case the Court was dealing with an injury suffered when the Army Personnel was on casual leave. The latter decision referred to a decision in **Madan Singh Shekhawat's case,** which dealt with a slightly a different situation of an Army Personnel suffering from an accident, while he was on a transit and it also referred to a decision of the Delhi High Court in **Ex. Sepoy Hayat Mohammed** *versus* **Union of India and others (18).** Learned counsel appearing for the Union would point out that **Ex. Sepoy Hayat Mohammed** *versus* **Union of India and others** was itself set aside by a Full Bench decision of the same High Court.

(15) This Full Bench of the Delhi High Court adopted a reasoning, when in its pursuit for seeing the causal connection of the disability to military service, chose to blunt the reasoning in **Madan Singh Shekhawat,** as having obtained through counsel's concession ; it said that it made no difference that a person was on casual leave or annual leave and it took no notice of the difference between a disability arising out of accident and

(16) 2009 (1) S.C.T. 491
(17) 2008 (2) S.C.T. 378
(18) 2008 (1) S.C.T. 425

while doing an act that was not incompatible with military service. It found, while considering the issue of a person who met with an accident during casual leave from the standpoint of how the treatment of the Rules relating to casual leave must be taken only for the purpose of how the leave should be treated and not for examining any other consideration such as whether a disability is an accident could be said to be attributable to military duty or not. We respectfully differ in the view taken by the Full Bench of the Delhi High Court, for according to us, a person on casual leave or annual leave does not cease to be on military duty and the injury that he sustains in an accident could only be examined from the context of whether it was inconsistent with a person in Military Service or not. On more or less an identical situation in **Williams** *versus* **Minister of Pensions (19),** the King's Bench Division dealing with the provisions under Pensions Appeal Tribunals Act, 1943, considered the issue of entitlement to disability pension arising out of injury by raising the question whether it was 'attributable to' Military Service. In that case also, an injury had been sustained by a soldier while actually on leave, the compulsions of service playing no part in the circumstances. He had an accident not while riding a motor-cycle or cycle but while he was dusting and wiping a rifle, when he held its butt upwards with the barrel resting on his left foot. It was brought out in evidence that he was careless in not seeing whether the rifle was loaded. But it was a serious injury and he was discharged on account of it. When a claim for pension was made, Denning, J. ruled :—

> "The first question that arises is whether, as a matter of causation, the injury was attributable to war service. The second question that arises is, whether even if it was attributable to war service, it was due to the appellant's serious negligence or misconduct. On the first point, the tribunal held that the injury was not attributable to war service. In doing so, they relied on Command Paper No. 6459, published in July, 1943, in which it was stated that an injury sustained while a man is actually on leave, the compulsions of service playing no part, cannot properly be regarded as attributable to service. That statement, however, has no legal force at all. These cases have to be decided by the tribunals and by this court according to the Royal Warrant, and not by reference to that Command Paper. The words "compulsions of service" do not occur in the Royal Warrant and are in no sense a guide to these cases.

(19) 1947 (2) All Eng. L.R. 564

> This accident happended while the man was on leave. It was plainly attributable to war service. It may be that he was not compelled to clean his rifle at the moment in question, but it was an incident of his war service. It may be that he was negligent, but that does not mean that the accident was not attributable to war service. On the first point the decision of the tribunal was wrong."

(16) It could be noted that the Court was examining a situation of how he was not compelled to do the act, which he was doing at the moment in question. It was an accident ; he was on leave and he was negligent. The Court still said that it did not mean that the accident was not attributable to service. In Halsbury's Laws of England, Fourth Edition, Reissue 2(2), 2003 Edition, in para 278, the meaning to the expression 'attributable to service' has been brought out as :

> "On the issue of whether an injury is attributable to service, two questions must be answered: first, when did the injury occur ? ; secondly, what were the causes of its occurrence ? If it existed before service, it cannot be attributable to service, but may be aggravated by it. If it occurred during service and if service was one of the causes of its occurrence then it is attributable to service ; but if service was not a cause of its occurrence, it cannot be attributable to service, although it may aggravated by service. For the injury to be attributable to service, the service must be a cause of the injury, as distinct from being merely a part of the circumstances in or on which the cause operates. However, if the injury does not arise during service and service, is one of its causes, the injury is attributable to service, notwithstanding that other causes also exist, co-operating with service to produce the injury."

The above observations would show that if any disability arises during service and if service was one of the causes of its occurrence, the issue of attributability becomes too easy to discern. It could be typically a situation, where the injury is occasioned in the course of or out of service, the expressions we are familiar in industrial jurisprudence dealing with Workmen's Compensation Act. An injury suffered in the course of and out

of employment does not actually answer the situation, which we are examining now. Thus an act, which is entirely within the man's personal sphere is not attributable to service, such as, say, suicide itself is such an act, which cannot be attributable to service. Suicide is an intervening and an extraneous event constituting so powerful a cause of death that other circumstances are not causes at all but only part of the circumstances in or on which the cause operated (**XY** *versus* **Minister of Pensions. (20).** We are not examining situations where due to the compulsions of service, a person's condition leading to disablement gets aggravated. We are also not examining situations where a pre-disposition to a particular disease, which during Military Service gets aggravated and results on some diability. Pre-disposition to a disease itself not a disease, for it has always been held that Armed Forces must take a man as they find him unless, it is shown that service conditions played no part at all in producing the disease, pension must be awarded (**Brown** *versus* **Ministry of Pensions (21)** cited in Halsbury's Laws of England para 278). We have set out several examples of what would be attributable to military service and what will not be, only analyse threadbare the meaning of the expression in all its diverse facets.

VIII. Examination of the decisions that gave place to the reference :

(17) Now it is time to take stock of how the varying views that gave rise to this reference could be resolved. **Jarnail Singh** *versus* **Union of India (supra)** held that a person subject to the provisions of the Army Act even when he proceeds on casual leave would be treated as on duty and he would be entitiled to benefits accruing there from in accordance with law. If there was a remote nexus to the attributability and aggravation of disability by Military Service, even if accompanied by an element of negligence or misconduct on the part of the member of Force, it would not itself frustrate the right of the member to rise such a claim. However, the Division Bench said that working in the fields or keeping himself occupied in agricultural activity of occupation during casual leave would not be an act attributable to Military Service. This accords with our own reasoning that if an act is not even remotely connected to military duty, such as a person working in the fields and occupying himself in agricultural activity of occupation even

(20) (1947) 1 All ER 38
(21) (1946) 2 WPAR 461

during casual leave, would not be considered as doing an act attributable to Military Service. Having found that the injury had been suffered by the petitioner when he was operating wheat thresher resulting in amputation of his right hand, the Bench reasoned that the hazards of Army Service cannot be stretched to the extent of unlawful and entirely unconnected activities when he was on leave. The Bench drew the distinction and in our view, correctly that member of a force could claim disability pension if he suffered disability from an injury while on casual leave even if it arose from some negligence or misconduct on his part, so far as it had some connection or nexus to the nature of the Force. Even the remote attributability to service and expected standards of behaviour and living as a member of the Force appears to be the condition precedent to claim under Rule 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. The claim for disability pension in that case was rejected only because the causal connection to the Army Service was lacking. The issue was not that he was still considered to be on duty ; it was not also whether there was a negligent act on the part of the Army personnel. The issue, on the other hand, was whether the particular type of activity could have any bearing to the armed service. The Bench found that it did not have. **Gurjit Singh versus Union of India and others (supra)** as we have examined already, is a case of accident during the time when the Army Personnel had come on leave. The Court had upheld the claim of disability pension. This decision, by the reasoning that we have adopted, is not out of sync with what has been held in **Jarnail Singh's case (supra), Pooja and another** *versus* **Union of India and others (supra)** dealt with an identical situation like in **Gurjit Singh's case** and therefore, it could not also be said to be inconsistent with the line of reasoning in **Jarnail Singh's case. Pargat Singh's case** had adopted a reasoning, which we do not need to consider now because the judgment itself was recalled and we have given a reasoning as to how the reasoning adopted in the said judgment rejecting the claim of disability pension which was addressed before this Court as submissions of the counsel appearing for the Union could not be accepted.

IX. The present disposition :

(18) We have attempted to state the whole law in the context of the Rules as explained by the Hon'ble Supreme Court and by the decisions of Division Bench of this Hon'ble Court. We answer the reference by holding that there is no conflict between the decisions in **Jarnail Singh,** on the one hand and **Gurjit Singh** and **Pooja and another,** on the other. An Army Personnel, while on casual leave or annual leave, shall be considered to be on duty except when by virtue of Rule 11 of the Leave Rules, he could not be deemed to be on duty, if he had actually performed duty in that year. If he was on duty and he suffers the disability due to natural causes, the issue whether it was attributable to or aggravated by Military Service will be examined by taking the case of the Army Personnel as he was and examining whether it was the intervention of the army service that caused the disability. The decision of the Medical Board in examining the physiological injury or the psychological impacts of military service would obtain primacy and the Court shall normally be guided by such scientific medical opinion. However, in cases where the injury that results in disability is due to an accident, which is not due to natural, pathological, physiological or psychological causes of the personnel, the question that has to be asked is whether the activity or conduct that led to the accident was the result of an activity that is even remotely connected to Military Service. An activity of an independent business or avocation or calling that would be inconsistent to Military Service and an accident occurring during such activity cannot be attributable to Military Service. Any other accident, however, remotely connected and that is not inconsistent with Military Service such as when a person is returning from hospital or doing normal activities of a military personnel would still be taken as a disability attributable to Military Service.

(19) On the above line of reasoning, the decision of the Single Judge in Khusbash Singh LPA No. 978 of 2009 is confirmed and the LPA is dismissed. On the same token of logic, the writ petition filed by the Army Personnel, who suffered an injury during annual leave would also be entitled to disability pension and consequently, the decision of the Single Judge is correct and confirmed and the appeal filed by the Union in LPA No. 49 of 2009 is also dismissed.

R.N.R.