
(1998) 03 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 6407-C of 1997 in Regular Second Appeal No. 1628 of 1995
(O and M)

Amar Nath

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 12-03-1998

Acts Referred:

Citation : (1998) 118 PLR 847

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : B.L. Sehgal, for the Appellant; Tribhuvan Dahiya, for the Respondent

Judgement

1. This is an application filed by the present appellant u/s 151 C.P.C. for hearing the case on an actual date. Notice of this application was issued to the other side. Learned counsel for the appellant contended that inspite of the order dated May 17, 1996 passed by the Hon"ble Acting Chief Justice directing the appeal to be heard within six months, the appeal s not been heard till date and pressed that the matter be heard. As the learned counsel appearing for the non-applicant-respondent had no objection, the appeal itself was heard on merits and judgment was reserved vide order dated March 3, 1998. Consequently, I proceed with the judgment.

2. The controversy which arises for consideration in this Regular Second Appeal relates to the scope of the authority exercisable by the] respondents in grant or refusing to grant the disability pension to a person subjected to armed forces, who has been released on medical ground. The challenge is to the action of the respondent in withdrawing disability pension alongwith service element which was being paid to the appellant and thereafter declining to grant the disability pension with effect from May 22, 1953 when the appellant was admittedly examined by the medical board and his disability was described as 40% on the ground of arbitrariness.

3. The facts giving rise to the present appeal which falls in a very narrow compass are :- that the appellant was enrolled in the army as a Jawan. He was found unfit on medical ground and was discharged on May 10, 1949. As the appellant was released on medical ground, the disability pension at the rate of Rs. 15/- per month was paid to him with effect from May 11, 1949 to May 22, 1953 on which date the said benefit was withdrawn without affording an opportunity of hearing to the appellant. However, the appellant was subjected to re-survey medical board on June 25, 1988 and it was noticed that the appellant had disability to the extent of 40 % and disability certificate exhibit P.1 was issued in favour of the appellant. However, this benefit was not again given to the appellant and the Controller of Defence Accounts (P), Allahabad at his own level, on some advice given by him, treated the disability of the appellant to be less than 20% and vide letter dated October 17, 1988 exhibit D. 3 stating that the disability of the appellant was found to be between 11 % to 14% and the appellant was not entitled to any element of disability pension. On these facts, the appellant has filed a suit for mandatory injunction praying for direction to the respondents to pay the disability pension alongwith other benefits and interest etc. In view of the above case pleaded by the respective parties, learned trial Court framed the following issues :

"1. Whether the plaintiff is entitled to disability pension alongwith other benefits of arrears of pay and allowances and interest as alleged ? OPP.

2. Whether the suit barred by time ? OPP.

3. Whether the suit is not maintainable in the present form ? OPD.

4. Whether the plaintiff has no locus standi to file the present suit ? OPD.

5. Whether the Civil Court has no jurisdiction to decide the matter in dispute ? OPD.

6. Whether the plaintiff has no cause of action as alleged ? OPD.

7. Relief."

Learned trial Court after affording opportunities to the parties to lead evidence recorded its findings against the plaintiff and in favour of the defendants and thus dismissed the suit of the plaintiff with costs, vide judgment and decree dated September 17, 1993. Appeal against the same was also dismissed vide judgment and decree dated March 31, 1995. It is this judgment of the learned first appellate Court that has been to assailed in the Regular Second Appeal.

4. As is clear from the above narrated facts the parties are hardly at variance with regard to the basic facts. It is not disputed that the appellant was released from the army on the medical ground and was granted disability pension initially. This pension, however, was withdrawn in the year 1953, but was not challenged by the appellant till 1989. The appellant was subjected to re-survey by medical board in the year 1988 and his disability was found to be 40% vide exhibit P. 1.

It is also not disputed before me that the appellant would be entitled to disability pension but for the opinion expressed by the Controller of Defence Accounts (P), Allahabad, which was recorded at the back of the appellant, was withdrawn. The appellant instituted the suit in the year 1989 basing his cause of action for the medical board held in 1988. The suit was obviously filed within limitation as far as the relief with regard to disability pension with effect from 1988 is concerned and it was so held by the learned trial Court and affirmed by the first Appellate Court. Exhibit P. 1, is the document dated July 18, 1988 issued by the competent authority clearly declaring the disability to the extent of 40% on re-assessment. The relevant portion of exhibit P. 1 reads as under :

"(b) List percentage accepted (i) 40%

(c) Composite percentage of all above IDs accepted 40%.

(d) Whether ID accepted attributable on aggravation with reference to initial disability award, PPO PC-144-II.

Sd/- Bankara Pillai Lieut. Assistant Record Officer for Officer-in-Charge".

Once this certificate was issued in favour of the appellant entitling him to receive the disability pension, this benefit could not have been withdrawn by the Controller of Defence Accounts (P), Allahabad on his own without holding appellate medical board in accordance with law. Exhibit D. 3 while rejecting the claim of the appellant referred to period of 10 years of June 25, 1988 and disability being less than 20%. This was never put to the appellant prior to the passing of the order. If the appellant was entitled to the benefit in accordance with the rules on the strength of the disability certificate Ex. P. 1, the appellant could not be divested of the same without following due process of law and after giving proper opportunity to the appellant which admittedly has not been done in the present case. The corollary to this main issue is as to whether the Controller of Defence Accounts (P), Allahabad at all was justified in assuming the jurisdiction which is not vested in it under the rules. Under the relevant rules and instructions, the respondents have the authority to constitute an Appellate Board and disturb the findings arrived at by the first medical board which again was not done, it would not be permissible to disturb the findings without taking recourse to the relevant rules and instructions governing the subject

5. In this regard reference can be made to the judgment of a Division Bench of this Court rendered in C.W.P. No. 17688 of 1996 Ex-Sepoy Ujagar Singh v. Union of India and Others, (Decided on October 9, 1997) : 1997 (4) R.S.T. 587 where this Court in somewhat similar circumstances, after discussing in detail the matter governing the subject held as under :

"We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line and comment upon the extent of disability without making any reference to a detailed or higher medical board which can be constituted under the relevant instructions and rules

by the Director General of Army Medical Core."

Somewhat similar defence was raised on behalf of the Union of India before the Hon"ble Apex Court in the case of Ex-Sepoy Mohinder Singh v. Union of India, Civil Appeal No. 164 of 1993 decided on January 4, 1993, where the Court held as under :

"We have examined the relevant materials and we do not feel satisfied with the plea taken in the counter affidavit. No details of the consultation has been disclosed by the respondent nor it is claimed that the Appellant has been re-examined by any higher medical authority. We are not prepared to set on the vague allegations in the counter affidavit referred to above. In view of all the relevant circumstances of the case we are of the opinion that the Disability Pension assessed at the rate of 40% by the Medical Board which had examined the appellant, should be respected until fresh Medical Board examined the appellant again and reached different conclusion."

An identical stand was taken by the Union of India in the case of Mam Raj v. Union of India, C.W.P. No. 2302 of 1997 decided on September 10, 1997 by this Court where this Court held as under :

"Instruction No. 27 under the head of "functions and responsibilities" of Appendix-II of these instructions at best empowers the Medical Authority so constituted to give its view about assessment of disablement restricted to the medical issues. The Medical Board's views and findings could be subjected to an appellate view by the Director General, Armed Forces Medical Services whose view would be final. Nothing has brought on record before us which would show that subsequent to the Medical Board, as a result of which the petitioner was discharged from Army, was held by the competent authority and that gave any findings contrary to the view expressed by the earlier Medical Board.

Reference can also be made to the decision rendered in LPA No. 82 of 1997 titled as Union of India and Others v. E-x. Captain Harbhajan Singh, decided on April 25, 1997. In the present writ petition, no details have been stated in the counter affidavit filed on behalf of the Union of India nor any documents have been produced before us which could satisfy the above enunciated principles. It has also been held that pension and likewise the disability pension is recurring cause of action and mere delay will not frustrate the claim of the petitioner."

Learned counsel for the appellant has also relied upon the case of Ram Singh Jaggi v. Union of India and Others 1995 (4) R.S.J. 807 where a Division Bench of the Himachal Pradesh High Court took the same view.

6. From the above settled principles of law, have no hesitation in coming to the conclusion that the learned Courts below have fallen in error in coming to the conclusion that the Controller of Defence Accounts (P), Allahabad can disturb the finding of the medical board in the present manner. Admittedly no evidence has been brought on record much less an expert evidence recorded by the medical

officer to show that the findings recorded by the medical board were incorrect factually or otherwise.

7. Moreover, from the record, which has been produced by the learned counsel for the parties, I find that a specific ground was raised before the learned first Appellate Authority that Controller of Defence Accounts (P), Allahabad had no authority to express view contrary to the medical board. This contention has not been properly dealt with by the learned first Appellate Court. Keeping in view the instructions aforestated there is no escape from setting aside the contents of exhibit D. 3 being against the rule and settled law.

8. Reliance placed by the learned Courts below on exhibit D. 3 is not well founded. Exhibit D. 3 is a letter written by the Accounts Officer, Pension, Allahabad, who in no way could be considered to be an appellate authority on the finding of the medical board. The relevant rule postulates re-survey by medical board after a given period which can increase or decrease the disability of a person who has been discharged from armed forces on re-assessment. This position of law is not even disputed by the learned counsel for the parties. In any case the aforestated judgments of the Division Bench are binding on this Bench.

9. In view of the above reasons, I accept the appeal and set aside the judgments and aside the judgments and decree passed by the learned Courts below. Further a decree for mandatory injunction is granted in favour of the plaintiff-appellant against the defendants-respondents directing the defendants to pay disability pension to the appellant with effect from June 25, 1988 in accordance with rules.

10. However, in the facts and circumstances of the present case, the appellant would not be entitled to any interests or costs. The appeal is accordingly allowed to the above extent.