
(2001) 02 P&H CK 0139

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17864 of 1997

Baldev Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 27
Pension Regulations for Army, 1961 — Regulation 173(A), 179

Citation : (2001) 02 P&H CK 0139

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. Bhim Sen Sehgal, for the Appellant; Mr. Kamal Sehgal, for the Respondent

Judgement

R.L. Anand, J.—The cry of the petitioner-Baldev Singh is that his disability is being reduced by CCDA(P) without opinion of the Re-Survey Medical Board. This contention of the petitioner stands fortified in the present case. Some facts can be described in the following manner :-

2. Baldev Singh-petitioner has given challenge to Annexure P-5 dated 25.9.1980 and Annexure P-6 dated 7.11.1996 vide which the appeals of the petitioner for disability pension have been rejected and he has been deprived of the benefit of disability pension.

3. The petitioner's date of birth is 27.7.1950. He was enrolled in the Army on 27.7.1970. The petitioner suffered the disease which was diagnosed as POLIOMYELITIS EFFECTS OF. Injury was declared as attributable to the military service as the percentage of the disability was assessed at more than 20% and the petitioner was placed in category "EEE" and the benefit of his disability was given to the petitioner from 11.6.1971 and upto 10.11.1974. Subsequently, the petitioner appeared before the Re-Survey Medical Board and his disability was assessed at 20% but the CCDA(P) reduced the said disability. As a result of that, disability pension of the petitioner discontinued with effect from 11.11.1974 and

it was reduced for a period of 2 years. On the expiry of 2 years, the petitioner again appeared before the Re-survey Medical Board on 8.1.1976 and his disability was again assessed at 20% final. On account of this declaration, the petitioner became eligible for the benefit of disability pension but when the papers were sent to CCDA(P), it again rejected the claim of the petitioner by reducing the extent of disability to less than 20%. The petitioner's appeal was rejected. Hence this petition.

4. Notice of writ petition was given to the respondents. The stand of the respondent is very naked and very clear. According to them, the disability of the petitioner has been reduced to less than 20%, therefore, he is not entitled to the benefits of disability pension. It is further pleaded by the respondents in para 6 of their reply that "as per rule 27(c) of Entitlement Rules for Casualty Pensionary Awards 1982, Medical Board shall give findings and recommendations on entitlement and assessment in case of all disabilities. They are, however, not statutory bodies and their recommendation can be reviewed and revised by the medical authorities viz. DG AFMS attached as medical advisor (Pensions) in the office of CCDA(P) Allahabad, who is a specialist and ensures consistency in assessment of the disabilities. In the instant case also reassessment of disability element claim in respect of petitioner forwarded vide respondent No. 3 letter No. 1450233 I/ RA-9/Pen dated 15.6.1994 (not July 15, 1995, as mentioned by the petitioner in this para) was considered by CCDA(P) Allahabad on the basis of clinical notes of the board in consultation with Medical Advisor (Pension) and after review, reassessed his disability on June 10, 1994, at less than 20% (11 to 14%) permanently for life and discontinued his disability element under rules.

5. I have heard Mr. Bhim Sen Sehgal, Advocate, for the petitioner and Mr. Kamal Sehgal, Advocate, for the respondents and with their assistance I have gone through the record of the case.

6. In this case, I am of the opinion that arbitrary decision has been taken by the CCDA(P) on the advise of the Medical Advisor, Pensions. Neither the CCD A(P) nor the Medical Advisor, (Pensions), had given opportunity to medically examine the petitioner. The petitioner was examined by the Re- Survey Medical Board. They were the persons fully qualified in medical profession. Their findings cannot be doubted so easily nor this fact can be brushed aside in a casual manner. When the petitioner has been examined, how they are in a position to scuttle the disability percentage which has been opined by the Re-Survey Medical Board. We cannot lose sight of the fact that the Re-Survey Medical Boards are constituted in order to assess the medical evidence including the disability of a soldier. Instead of respecting the opinion of the Re-Survey Medical Board, this Court has come across that their opinions are scuttled without any cogent basis. The plea which has been taken by the respondents in para 6 of their reply is not available to them because the petitioner suffered injury in the year 1971 and he was boarded out from the military service on 10.6.1971.

7. Be that as it may, this Court is of the opinion that the petitioner is entitled to

the benefit of disability pension with effect from 8,10.1976. This Court has purposely given this benefit from this date keeping in view the fact that the act of the CCDA(P) in declining or reducing or arbitrarily taking the action and the petitioner cannot be allowed to suffer for the default or inaction on the part of the respondent-authorities.

8. Directions are given to the respondents to release the benefit of disability pension to the petitioner within 6 months from the date of receipt of the copy of this order, failing which, they shall be liable to pay interest to the petitioner at the rate of 12% per annum. The petitioner shall appear before the Re-Survey Medical Board as and when required by the respondent-authorities.

9. With me above directions, this writ petition is disposed of accordingly. However, there shall be no order as to costs.

10. Petition allowed