
(2000) 11 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12415 of 1998

Brig. (Retd.) S.N. Gulati

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 11 P&H CK 0082

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

Bench : Single Bench

Advocate : Mr. V.S. Sehgal, for the Appellant; Mr. Anil Malhotra, for the Respondent

Judgement

R.L. Anand, J.—Brig. (Retd.) S.N. Gulati, the petitioner of this case, has filed the present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for the quash-ment of the order dated 14.2.1997, passed by respondent No. 3 (Annexures P-4), vide which the disability of the petitioner has been re-assessed making the petitioner disentitled to the disability pension and the petitioner has prayed that he be granted disability pension with effect from 1.2.1997.

2. The case set up by the petitioner is that he was commissioned into the Regiment of Artillery as an officer on 2.6.1955 and due to his outstanding career he was duly promoted to higher selection grade rank in the army in his own turn and he held the rank of Brigadier. On 1st of April, 1987, at the time of his superannuation, the petitioner was holding the rank of Brigadier. During the Indo-Pak war of 1971, petitioner was posted in Chhamb Jaurian Sector of Jammu and Kashmir where due to exposure to risk and professional hazards of an Artillery Officer, he developed pain and deafness in his ears which was diagnosed by the Medical authority as "Bilateral Sensori-Neural Deafness due to acoustic trauma" for which he was treated regularly after the war. The petitioner on account of his prolonged treatment, was placed in medical category H2 (permanent) w.e.f. June

1979. The disability of the petitioner was declared by the medical board which held its meeting in Military Hospital Delhi Cantt and the disability was attributed to the military service. The petitioner was granted disability pension with effect from 1.4.1987. The arrears of disability pension was also released to him. In the month of January 1997, a Re-Survey Medical Board was constituted and the disability of the petitioner was again examined and it was found to be 20% and it again recommended for the release of the disability pension but in the month of February, 1997 the petitioner received an order from Chief Controller of Defence Account (Pension), Allahabad that his disability has been accepted at 11-14% and since it was less than 20% he was not entitled to the benefit of disability pension w.e.f. 1.2.1997.

3. The petitioner filed an appeal before the authorities but the same has not been disposed of. With this background the petitioner has filed the present writ petition and prayed that the action on the part of respondent No. 3 reducing his disability is against the law, arbitrary and against the principles of natural justice and, therefore, it should be quashed.

4. Notice of the writ petition was given to the re-spondents who filed the reply and supported the action of respondent No. 3 and according to the respondents, respondent No. 3 is competent to pass the order reducing the disability of the petitioner.

5. I have heard Shri V.S. Sehgal, learned counsel, appearing on behalf of the petitioner and Shri Anil Malhotra, Advocate, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of the case.

6. It is the common case of the parties that the petitioner was found suffering from the disability which was assessed twice by the two Medical Boards and at both the times the petitioner's disability was found at 20% entitling him to get the benefit of the disability pension. Before passing the order dated 14.2.1997, the petitioner was never got examined by respondent No. 3. He has formulated the opinion unilaterally superseding the opinions of the Medical Boards and this action on the part of respondent No. 3 is illegal and arbitrary. If any law is required on this point the assistance can be taken from the order of the Hon'ble Supreme Court dated 14.1.1993 passed in Civil Appeal No. 164 of 1993 Mohinder Singh v. Union of India.

7. Resultantly, this writ petition is allowed by setting aside the order dated 14.2.1997 passed by respondent No. 3. It is hereby declared that the petitioner is entitled to the benefit of disability pension with effect from 1.2.1997. The benefit of disability pension shall be released to the petitioner within three months from today failing which the petitioner shall also be entitled to interest at the rate of 12%. There shall be no order as to costs. The petitioner shall appear before the Re-survey Medical Board as and when called upon by the respondent authorities.

8. Petition allowed.