

(2004) 03 DEL CK 0028

In the Delhi High Court

Case No : Writ Petition (C) No. 5603 of 2002

Col. B.S. Dhanda

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-03-2004

Acts Referred:

Citation : (2004) 73 DRJ 500 : (2004) 3 SLJ 319

Hon'ble Judges : V.K. Jain, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : S.M. Hooda and S.R. Kalkal, for the Appellant; Rekha Palli and Major Yaseen, for the Respondent

Judgement

Vijender Jain, J.—Rule D.B.

2. This batch of writ petitions bearing WP (C) Nos.5603/2002, 7361/2002, 7010/2002, 7351/2002, 1995/2003, 3440/2003, 109/2004, 745/2004, 1847/2004 and 1848/2004 can be disposed of by a common order.

3. In WP (C) No.5603/2002, the case of the petitioner is that the petitioner was granted permanent commission in the Army on 23rd June, 1968. On 24th October, 1994, the petitioner developed chest pain and was admitted to the Army Hospital, Belgaum. The petitioner was diagnosed as a case of Angina Chest. The petitioner was treated by army medical authorities and was placed in a low medical category. The petitioner was brought before the properly constituted medical board and the medical board recommended 20% disability and the petitioner retired from service on superannuation. The petitioner was released disability pension at the rate of 20% on 25th May, 2001. In this writ petition, petitioner has prayed for enhancement of disability pension from 20% to 50% on the basis of certain notifications.

4. Mr. Hooda, learned counsel for the petitioner has contended that the respondent has issued a notification dated 31st January, 2001 and the disability element for 100% disability for various ranks was revised pursuant to the said

notification. He has contended that for grant of disability pension component of the rate of disability element and the percentage of disability assessed has to be taken together for assessing the disability pension of the petitioner. Mr. Hooda has relied upon para 7.2 of the aforesaid notification/circular which is to the following effect :-

"Where an Armed Forces Personnel is invalided out under circumstances mentioned in Para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element :-

Percentage of disability Percentage to be reckoned As assessed by invaliding for computing of disability Medical Board Element

Less than 50 50

Between 50 and 75 75

Between 76 and 100 100"

5. Mr. Hooda has further contended that as the percentage of petitioner's disability was assessed to 20% in view of the aforesaid circular the percentage of disability should be assessed at 50% and on that basis his pension should be paid. Mr. Hooda has also contended that the rationalisation of pension structure was not only for the pensioners who were boarded out from the army on or after 1st January, 1996 but also applicable for those pensioners who had retired prior to 1st January, 1996. In this regard, Mr. Hooda has placed reliance on the notification of the respondent dated 16th May, 2001. It was further contended by learned counsel for the petitioner that as per the circular issued by Principal, CAD (P), Allahabad dated 26.8.2001 both the notifications dated 31st January, 2001 and 16th January, 2001 were applicable to all Pre-1996 army officers and personnel and in this regard quoted General Guidelines and the applicability of the said circular no. 282 issued by the Principal, CAD (P), Allahabad, which is to the following effect :-

" APPLICABILITY :- These orders are applicable to all Pre-96 Armed forces family/ Disability/War injury Pensioners who were/are in receipt of Special Family Pension/Liberalised Family Pension/Dependant/Disability/ War Injury Pension as on 1.1.96."

6. Mr. Hooda has further contended that those pensioners who retired prior to 1st January, 1996 and the disability assessed was less than 20% or even less than that, still they would be entitled for assessment of percentage @ of 50% on the basis of the notification dated 31st January, 2001 and 16th May, 2001.

7. On the other hand, Ms. Palli, learned counsel for the respondent has contended that these notifications do not change the eligibility criterion of grant of disability pension. She has placed reliance on Regulation 173 which is to the following effect :-

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle causality and is assessed at 20 per cent or over.

8. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

9. She has further contended that as per the notification dated 31st January, 2001, disability element was not payable for disability less than 20% and has specifically relied on para 8.2 of the notification dated 31st January, 2001. She has further contended that what was granted in favor of the pensioners who had retired on or before 1st January, 1996 was in terms of para 6 of the notification dated 16.5.2001. The same is to the following effect :-

"6. For pensioners in receipt of disability pension as on 1.1.96, with effect from 01 Jan 96, the rates of disability element for 100% disability in non-battle casualty cases shall be the rates as indicated in para 7.1 (II) (a) of this Ministry's letter No.1(2)/97/D (Pen-C) dated 31 Jan 2001. Where the disability of a pensioner is less than 100% but not less than 20%, the rates of disability element will be proportionately reduced."

10. In view of the aforesaid provision of para 6, she has contended that where the disability of the pensioner is less than 100% but not less than 20%, the rate of disability element will be proportionately reduced.

11. We have given our careful consideration to the arguments advanced by learned counsel for both the parties. There are two elements of the disability pension. One is the rate at which the disability element has to be given for various ranks which are provided in the notification dated 31st January, 2001 :-

"(II) (a) Disability Element : The rates of Disability element for 100% disability for various ranks shall be as follows:-

Rank Amount p.m. i) Commissioned Officers and Honorary Commissioned Officers of the three Services, MNS, TA and DSC Rs.2600/-

ii) Junior Commissioned Officers and equivalent ranks of the three services, TA and DSC. Rs.1900/-

iii) Other ranks of the three services, TA and DSC Rs.1550/-"

12. Therefore, there is no dispute as far as the rate of disability element is concerned, persons who have retired prior to 1.1.1996 or who have retired after 1.1.1996 will be entitled to the said rates. This is in view of the specific provision made in para 6 of the notification dated 16.5.2001. From a plain reading of paragraph 6 of the notification dated 16.5.2001, it is clear that benefit of revision of rates of disability element for 100% disability in non-battle causality cases would be the revised rates as per the notification dated 31st January, 2001,

paragraph 7.1 (II) (a). Now, we have to examine whether same benefit can be applied to the percentage of disability which has been provided in para 7.2. From the plain reading of the said para read with para 6, it must be said that said benefit has not been extended in the case of pensioners who have retired on or before 1st January, 1996. In para 6 of the notification dated 16th May, 2001, it has been specifically mentioned :

"6. For pensioners in receipt of disability pension as on 1.1.96, with effect from 01 Jan 96, the rates of disability element for 100% disability in non-battle casualty cases shall be the rates as indicated in para 7.1 (II) (a) of this Ministry's letter No.1(2)/97/D (Pen-C) dated 31 Jan 2001. Where the disability of a pensioner is less than 100% but not less than 20%, the rates of disability element will be proportionately reduced."

13. From the aforesaid provisions in para 6, it would be clear that as far as the rate of disability element is concerned that will be governed as per the rates indicated in para 7.1 of the notification dated 31st January, 2001. Para 7.1 (II) (a) deals with rate of disability element. Whereas para 7.2 deals with the percentage of disability. Pursuant to the provision made in para 6 of the notification, the percentage of disability has been excluded and, Therefore, pensioners who have retired before 1.1.1996 cannot claim, as a matter of right, for enhancement of percentage of disability.

14. Therefore, we do not find force in the arguments of the petitioner that in the case of petitioners who have retired prior to 1.1.1996 would be entitled for assessment of percentage of disability in terms of paragraph 7.2 of notification dated 31st January, 2001.

15. Therefore, in our considered opinion it cannot be said that in case of the revision of higher rates for disability pension for pensioners who have retired prior to 1.1.1996, the percentage of disability will also stand revised in terms of the notification issued on 31st January, 2001. The increase of percentage and rate has been done by issuance of specific notifications. The petitioner has not challenged non-grant of higher percentage of disability pension to pensioners who have retired on or before 1st January, 1996 on the ground of discrimination as those who were retiring after 1st January, 1996 have been granted a higher percentage of disability pension, although they have been assessed less than 50% of disability, Therefore, no writ can be issued on that count in favor of the petitioners.

16. In view of the notification issued on 31st January, 2001, those pensioners who have retired on or after 1.1.1996 and have been assessed to less than 50%, i.e. anywhere between 20% to 50% are entitled for percentage to be reckoned for computing their disability element to 50%.

17. We also find force in the arguments of the respondent that where percentage of disability has been assessed at less than 20% no disability element of pension is payable. A specific provision in the notification issued on 31st January, 2001

has also been made. Para 8.2 of the notification which is relevant is as under :-

"For disability less than 100% but not less than 20% the above rates shall be proportionately released. No disability element shall be payable for disabilities less than 20%. Provisions contained in para 7.2 above shall not be applicable for computing disability element....."

18. Net result of the discussion is that those pensioners who have retired prior to 1.1.1996 will be entitled to a higher rate of disability pension as envisaged and provided in notification dated 31st January, 2001. But their percentage of disability will not be enhanced to 50% as prayed for in this writ petition. However, they will be entitled to be paid on the basis of the disability assessed by the medical board. In case of those petitioners who have retired on or after 1st January, 1996, they shall be entitled for the revised rate of disability pension as well as for grant of disability pension on the basis of the notification dated 31st January, 2001 by increasing the percentage of disability in cases where it is less than 50%, their percentage would be reckoned for computing of the disability element to 50%, between 50% and 75% their percentage to be reckoned for computing disability pension to 75%, between 76% and 100% their percentage to be reckoned for computing pension element to 100%.

19. With these observations, this batch of writ petitions bearing WP (C) Nos.5603/2002, 7361/2002, 7010/2002, 7351/2002, 1995/2003, 3440/2003, 109/2004, 745/2004, 1847/2004 and 1848/2004 stands disposed of in terms of orders passed in this writ petition.