

(2010) 05 P&H CK 0119
In the Punjab And Haryana At Chandigarh

Darshan Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Citation : (2010) 6 SLR 767

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Challenge in the present writ petition has been posed to the voluntary retirement to be effective from 01.11.2008 granted to the petitioner vide order dated 24.07.2008 (Annexure P-5) being arbitrary, illegal on the ground that the request for voluntary retirement was withdrawn by the petitioner through application dated 15.09.2008 (Annexure P-6) and 16.10.2008 (Annexure P-7) as the petitioner was retired from service in contravention of the law laid down by the Hon"ble Supreme Court. A further prayer was made that the petitioner was entitled to extra-ordinary pension for disability suffered while on duty as per the Central Civil Services (Extra-Ordinary Pension) Rules, 1939.

2. Briefly the facts of the case are that the petitioner was enrolled as combatised member of the Central Reserve Police Force (hereinafter referred to as the "CRPF") in the cadre of Driver on the rank of Constable. He was enlisted on 25.11.1987 and performed his duties as per the orders to the utmost satisfaction of his superior officers. The petitioner was performing counter insurgency duties in the year 1989 while there was spurt of militant/terrorist activities in Punjab and Chandigarh. While performing bona-fide Government duty, the petitioner met with a road accident on 20.09.1989 which resulted in injury to the Right Tibia/Fibula/Clavicle and Femur with intra medullary nail fitted in right femur after surgery. The petitioner recovered from the said injury and thereafter performed duties at Srinagar in the year 1990-91, from year 1991-97 at Group Centre Pinjore, 1997-2000 under 121 Battalion at Gurgaon, Delhi, Assam and

Jalandhar Group Centre. In August, 2007, the petitioner was posted to Group Centre Pinjore. Owing to his injuries, the petitioner was reverted from Motor Transport cadre to General duty cadre in the year 2007. The medical categorization of the petitioner took place on 04.01.2008 in the annual medical check-up and was placed in medical categorization SHAPE-III (Permanent) by Medical Officer of the respondent-Department (Annexure P-1). On 26.03.2008, the petitioner was directed to appear before the Rehabilitation Board. He was told that he cannot further be retained in service and was pressurized to give an undertaking to proceed on voluntary retirement and faced the invalidation board which will board the petitioner out of service by declaring him totally unfit. Accordingly, the petitioner, who was a Constable, gave an undertaking dated 26.03.2008 that he was willing to proceed on voluntary retirement. The petitioner submitted a representation dated 28.04.2008 (Annexure P-2) to the Inspector General CRPF-respondent No. 3 highlighting his difficulty, which he was likely to face on his voluntary retirement. This representation of the petitioner was not taken in its true spirit and respondent No. 3 passed the order dated 14.06.2007 (Annexure P-3), in which it was written that if the petitioner was refusing to go on voluntary retirement then his services be prematurely terminated by invaliding him out of service. The petitioner thereafter received instructions wherein he was intimated that he should give an option whether to proceed on voluntary retirement or face the invalidation Board. The petitioner gave a representation dated 15.07.2008 (Annexure P-4) addressed to respondent No. 4 requesting that he will go on voluntary retirement w.e.f. 01.11.2008. This request of the petitioner dated 15.07.2008 was accepted swiftly vide order dated 24.07.2008 (Annexure P-5). Thereafter, the petitioner gave applications dated 15.09.2008 and 16.10.2008 withdrawing his request for voluntary retirement. Before the said applications could be considered by the respondents, the petitioner meanwhile submitted another application dated 24.10.2008 to cancel his earlier request dated 16.10.2008 and expressed willingness to go on voluntary retirement w.e.f. 01.11.2008 as per his initial request dated 26.03.2008. Thus, the petitioner voluntarily retired w.e.f. 01.11.2008 as per order dated 24.07.2008 (Annexure P-5), which is under challenge in the present writ petition.

3. Counsel for the petitioner submits that he does not want to press the challenge to order dated 24.07.2008 (Annexure P-5), vide which the request of the petitioner for voluntary retirement w.e.f. 01.11.2008 was accepted but he submits that the petitioner would be entitled to compensation in lieu of disability as per Rule 9 (4) of the Central Civil Services (Extra Ordinary Pension) Rules, 1939 (hereinafter referred to as the "CCS (EOP) Rules, 1939"). This he contends in the light of the objection raised by the respondents to the claim of the petitioner for grant of extra ordinary pension as Rule 6 of the CCS (EOP) Rules, 1939 bars any Award in respect of an injury sustained for more than five years before the date of application. His contention, therefore, is that the petitioner be granted the said benefit.

4. To this contention, counsel for the respondents submits that the petitioner is not entitled to the benefit of lump sum compensation also in the light of Rule 6 which bars any Award under the CCS (EOP) Rules, 1939. Her further submission is that as the petitioner is not entitled to the disability pension, he cannot be granted the lump sum payment as well due to the bar in Rule 6.

5. I have heard the counsel for the parties and have gone through the records of the case.

6. The facts are not in dispute. The question, which now requires to be adjudicated upon and has been pressed by the counsel for the petitioner, is the claim of the petitioner for grant of lump sum compensation as per Rule 9 (4) of the CCS (EOP) Rules, 1939.

7. The relevant Rules for adjudication of the claim of the petitioner would be Rules 3-A, 6, 9 (1), (2) and (4) of the CCS (EOP) Rules, 1939, which read as follows:

Rule 3-A. (1)(a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which,

(i) is attributable to Government service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by,

(i) a wound, injury or disease which was attributable to Government service, or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

(2) There shall be casual connection between,

(a) disablement and Government service; and

(b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix which shall be treated as part and parcel of these rules.

Rule 6. No award shall be made in respect of,

(i) an injury sustained more than five years before the date of application, or

(ii) death which occurred more than seven years,

(a) after the injury due to violence or accident was sustained or

(b) after the Government servant was medically reported as unfit for duty on account of the disease of which he died.

Rule 9. (1) When disablement of a Government servant is conceded as due to Government service in terms of Rule 3-A, he shall be awarded disability pension in terms of Sub-rule (2) or (3) or lump sum compensation in terms of Sub-rule (4) of this Rule in accordance with the percentage of disability (suffered by him) as certified by the Medical Authority concerned.

(2) If the Government servant is boarded out of Government service on account of his disablement, the quantum of disability pension for cent per cent disability shall be as specified in Schedule II hereto annexed. The quantum of disability pension for lower percentage of disability shall be, "proportionately lower". (the minima and the maxima, given in Schedule II, are applicable only for arriving at the monthly disability pension for cent per cent disability and are not applicable in respect of percentage of disability lower than cent per cent).

(3) xxx xxx xxx xxx

(4) If the Government servant is retained in service in spite of such disablement, he shall be paid a compensation in lump sum (in lieu of the disability pension) on the basis of disability pension admissible to him in accordance with the provisions of Sub-rule (2) of this Rule, by arriving at the capitalized value of such disability pension with reference to the Commutation Table, in force from time to time.

8. It is not in dispute that the petitioner was disabled due to an injury, which was attributable to the Government service. The respondents have admitted this fact in para-5 of the written statement. The requirement of Rule 3-A of the CCS (EOP) Rules, 1939, therefore, stands fulfilled. Rule 9 (1) provides that when disablement of a Government servant is conceded as due to Government service in terms of Rule 3-A, he shall be awarded disability pension in terms of Sub-rule (2) or (3) or lump-sum compensation in terms of Sub-rule (4) of this Rule. The quantum would depend upon the percentage of disability suffered by the employee as certified by the Medical Authority concerned. Sub-Rules (2) and (3) deal with cases when a Government servant is boarded out of Government service on account of his disablement. Sub-Rule (4) of this Rule deals with cases where a Government servant is retained in service in spite of his disablement.

9. The case of the petitioner would fall under Sub-Rule (4) of Rule 9 of CCS (EOP) Rules, 1939 as in spite of his disablement, he was retained in service. This Sub-rule mandates the payment of lumpsum compensation in lieu of disability pension on the basis of disability pension admissible to him in accordance with the provisions of Sub-rule (2), by arriving at the capitalized value of such disability pension with reference to the Commutation Table, in force from time to time. The words used in this Sub-rule (4) are: "...he shall be paid a compensation in lump sum (in lieu of the disability pension)...." According to this Sub-rule, when a decision is taken by the Government to retain the Government servant in service in spite of his such disablement, the Government servant becomes entitled to claim lump sum compensation and the department is required to make the payment to the employee immediately thereafter.

10. It is not disputed by the respondents that the petitioner has not been paid the lump sum compensation, as mandated under Sub-rule (4) of Rule 9 of the CCS (EOP) Rules, 1939. The bar, as provided under Rule 6 of the CCS (EOP) Rules, 1939, would not apply to Sub-rule (4) of Rule 9 of the said Rules as the right of the servant crystallizes the date, a decision is taken by the Department to retain him in service in spite of his disability which is covered by Rule 3-A of the CCS (EOP) Rules, 1939. Rule 6 of the CCS (EOP) Rules, 1939, will, in such circumstances, not apply.

11. The contention of the counsel for the respondents that as the petitioner is not entitled to disability pension under Sub-rule (2) of Rule 9 of the CCS (EOP) Rules, 1939, he would also not be entitled to the benefit under Sub-rule (4) of Rule 9 of the said Rules. This contention of the counsel for the respondents cannot be accepted as the scope and applicability of Sub-rules (2) and (4) is different. Sub-rule (2) applies to cases where on disablement, a Government servant is boarded out of a Government service whereas Sub-rule (4) applies to cases where in spite of disablement, a Government servant is retained in service. Rule 9 (4) itself clarifies the position where it has been mentioned that if a Government servant is retained in service in spite of disablement, he shall be paid compensation in lump sum in lieu of disability pension. Since the ambit of an operation of two Sub-rules is different, the contention of the counsel for the respondents cannot be accepted.

12. In view of the above, the present writ petition is allowed. The petitioner is held entitled to lump sum compensation under Rule 9 (4) of the Central Civil Services (Extra Ordinary Pension) Rules, 1939 from the date a decision was taken by the Department to retain the petitioner in service in spite of disablement.

13. A direction is issued to the respondents to assess the amount of compensation as provided under the said rule and release the same within a period of three months from the date of receipt of a certified copy of this order. The petitioner is also entitled to the interest @ 8% from the date of accrual till the date of payment of the amount of compensation.