
(1999) 03 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17427 of 1997

D.S. Mudi, Ex-Capt.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 122 PLR 381

Hon'ble Judges : Harjit Singh Bedi, J

Bench : Single Bench

Advocate : Bhim Sen Sehgal, for the Appellant; M.S. Guglani, for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—The petitioner was commissioned in the Indian Army as a Short Service Commissioned Officer on 15.6.1969. He was, however, boarded out of service with 40% disability on account of suffering from Amoebic Hepatitis on 12.9.1979. The petitioner's claim to disability pension was initially rejected by the Government of India vide letter dated 19.3.1980 on the ground that the petitioner's disability could not be attributed to nor was aggravated by military service. On a representation made by the petitioner, his case was however, re-considered and he was granted pension for two years i.e. upto 1.9.1981 with 30% disability and the amount was actually paid to him. The petitioner's disability pension was thereafter extended from time to time and he continued to draw the same upto 29.7.1996. He was brought before a Re-Survey Medical Board on 3.2.1997 and the Classified Medical Specialist, who examined him, found no change in the extent of his disability and recommended that he be given a disability pension at the rate of 30% for life. The petitioner, however, received a copy of letter Annexure P-5 dated 21.3.1997 addressed by the CGDA(R). to Head Quarter 2 Crops that the petitioner's disability had now been re-assessed at between 11% to 14% from 30.7.1996 to 7.2.2007 and as a consequences of this reduction, the petitioner was held dis-entitled to claim

disability pension as his disability has been reduced to less than 20%. The petitioner filed a representation, Annexure P-6 dated 10.4.1997 and pointed out that it was not open to the CCDA(P) or the Medical Officer attached to that office to reduce the extent of disability, which had been assessed by a competent Medical Board. The petitioner, however, received a reply, Annexure P-10 dated 16.6.1997 that the Re-Survey Medical Board was only an Advisory Body and as the CCDA(P) was the final authority over the matter, the order had been rightly made. The petitioner has accordingly challenged the orders, Annexures P-5, P-8 and P-13, by which his claim to disability pension was rejected on the ground that his disability was less than 20%.

2. On notice of motion, a reply has been filed by the respondents and the broad facts averred by the petitioner have not been denied but it has been pleaded that the CCDA(P) was the final authority to determine the petitioner's right to claim a disability pension.

3. After hearing learned counsel for the parties, I am of the opinion that the matter in hand is fully covered by the judgment of the Supreme Court in *Ex. Sappaer Mohinder Singh v. Union of India*, Civil Appeal No. 164 of 1993 decided on 14.1.1997 and subsequently followed by a Division Bench of this Court in *Ujagar Singh v. Union of India* and Ors. 1997(4) R.S.J. 586. In paragraph 3 of the later judgment, after noting the contentions and the case law, it was observed as under:

" From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. 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."

4. In the light of what has been recorded above, this writ petition is allowed, the orders, Annexures P-5, P-8 and P-13 are quashed and a direction is issued to the respondents to grant disability pension to the petitioner assessing his disability at 30% as held by the Re-Survey Medical Board on 8.2.1997(P-4) within four months from the date a certified copy of the order is supplied to the respondents.

No costs. Dasti Order.