
(2006) 11 DEL CK 0212

In the Delhi High Court

Case No : Writ Petition (C) No. 957 of 2006

E Ex. Gnr. Anandi Lal Sen

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Citation : (2006) 11 DEL CK 0212

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : Yogesh Sharma, for the Appellant; T. Parshad, Dy. JAG, for the Respondent

Final Decision : Partly Allowed

Judgement

Swatanter Kumar, J.—The petitioner who was enrolled as a Gunner in the Indian Army on 18.9.1981 was invalided from the military service with effect from 1.2.1994 being a case of "Chronic Duodenal Ulcer (Optd)". He was granted disability pension with his disability assessed at 30%. However, the same was assessed/re- assessed by the CCDA (P) Allahabad as 20% and the petitioner was given disability pension with effect from 1.2.1994 to 27.10.1995 vide POP No. D/ D01039 of 1995. The petitioner was again subjected to a Re-Survey Medical Board which was held in November 1995 and the disability of the petitioner was said to be static but the disability pension was stopped by the CCDA (P) Allahabad with effect from 28.10.1995 till 9.11.2005. Against this arbitrary action of the respondents, the petitioner preferred an appeal to the Ministry of defense on 8.11.1996 but no decision was communicated to the petitioner and he again made a representation on 13.2.2000. The Record Office vide their letter dated 13.3.2000 intimated the petitioner that his appeal had been rejected and also that his Re-Survey Medical Board would assemble in November '05. In January" 02, the Re-Survey Medical Board was conducted wherein the disability of the petitioner was assessed to be 20% for life. Vide PPO NO. D/RA/36/2004 dated 21.1.2004 granting disability pension for life with effect from 10.11.2005 was

also issued by the CCDA (P) Allahabad. On this premise, the petitioner claims for issuance of directions to the respondents for grant of disability pension to the petitioner with effect from 28.10.1995 to 9.11.2005 @ 30% from 1.2.1994 to 27.10.1995. Despite grant of various opportunities, the respondents did not file the counter affidavit nor did they produce any records in the Court. Thus, the averments made in the writ petition in so far as they are supported by the records of the respondents, as annexed by the petitioner have to be taken into consideration.

2. From the Medical Board proceedings which have been produced on record by the petitioner himself (Annexure P4), it is clear that the disability was assessed at 30% with effect from 1.2.1994 to 27.10.1995 and @ 15% to 19% with effect from 28.10.1995 to 9.11.2005. The same Board held that the disability of the petitioner with effect from that date with regard to "Chronic Duodenal Ulcer" is 20% (Permanent). These Medical Board proceedings were recorded on 5.3.2002. In other words, the claim of the petitioner for grant of disability pension @ 30% from 1.2.1994 to 27.10.1994 is sustainable while the petitioner would not be entitled to any disability pension from 28.10.1995 till 5.3.2002, where after he would be entitled to receive the disability pension @ 20%. This disease was recorded to be attributable to the military service and this fact was not even disputed during the course of hearing.

3. However, the claim of the petitioner from 1994-1995 can hardly be considered as of today, as the petitioner had approached the Court for grant of relief after a lapse of more than 11 years. It will be unfair to allow this claim at this juncture because the petitioner on his own took no effective steps to recover this amount well in time. The claim of the petitioner in so far as it relates to this claim suffers from the defect of delay and laches. There is no dispute to the fact that the petitioner was subjected to a Re-Survey Medical Board in March 2000 wherein his disability was assessed at 20% (Permanent). In other words, in terms of the findings of the Medical Board, the disability is permanent and 20%, and as such the same fully satisfies the ingredients of Regulation 173 of the Pension Regulations for the Army, 1961. To that extent, the claim of the petitioner has to be allowed as the injury/disease is admittedly "attributable" to the military service.

4. For the reasons afore-recorded, we partially allow this writ petition and direct the respondents to consider and grant to the petitioner disability pension @ 20% with effect from 22.3.2002 and continue to pay the same in accordance with the Rules.