

(2001) 05 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition 17177 of 1998

Ex-Capt. Harbhajan Singh	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 02-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 05 P&H CK 0110

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

Bench : Single Bench

Advocate : Mr. Bhim Sehgal, for the Appellant; Mr. Kamal Sehgal, for the Respondent

Judgement

R.L. Anand, J.—Ex-Captain Harbhajan Singh has filed the present petition under Articles 226 and 227 of the Constitution of India against the respondents for the issuance of a writ in the nature of Certiorari for quashing the documents Annexures P-7, P-10 and P-17 vide which CCDA(P) has unilaterally reduced the disability percentage of the petitioner to less than 20% against the opinion of the Medical Board, The petitioner has further made a prayer that he be allowed the benefit of disability pension with effect from 9.4.1997 along with interest at the rate of 18% per annum.

2. Some facts can be noticed in the following manner. The petitioner was granted Short Service Commission in the Army on 3.9.1977. The petitioner was released from Army Service on the ground of medical unfitness on 30.10.1982. He was found to be a case of "Sensory Neural Defence (Bilateral)". According to the petitioner, the disability assessed by the Medical Board was aggravated but it was unilaterally reduced by the CCDA(P) vide letter dated 5.12.1983. The petitioner was not satisfied with the conduct of the CCDA(P), therefore, he filed CWP 11929 of 1992 in the Hon'ble High Court which was allowed on-27.8.1997. The Government of India filed LPA before the Hon'ble Division Bench and it was also dismissed on 25.4.1997. Then Re-Survey Medical Board was constituted by the

respondents which held its meeting on 9.4.1997. The petitioner appeared before the Medical Board and the Board again assessed the disability of the petitioner at 20%. When the matter went to CCDA(P), again it reduced the disability percentage to less than 20%, as a result of which the petitioner was again deprived of the benefit of disability pension. It may be mentioned here that petitioner was granted the benefit of disability pension upto 8.4.1997, and that the petitioner has been denied the benefit of disability pension with effect from 9.4.1997. In short, the case set up by the petitioner is that CCDA(P) unilaterally had no jurisdiction to reduce the disability percentage of the petitioner and such action on the part of the CCDA is ultra vires and illegal.

3. Notice of the petition was given to the respondents who filed the reply and denied the allegations. According to the respondents, CCDA(P) had the jurisdiction to formulate its independent opinion and in the present case, it has reduced the disability pension of the petitioner on the advice of the medical authority which has been created by the Government of India in order to assist the CCDA, The opinion formulated by the CCDA is binding upon the petitioner and, therefore, he is not entitled to the benefit of disability pension.

4. I have heard the learned counsel for the parties and with their assistance I have gone through the record of the case.

5. Several times and repeatedly it has been observed by this Court that any opinion formulated by the CCDA(P) at the back of the petitioner is not binding upon him because earlier the Medical Board which is constituted by the Government of India has formulated the opinion about the disability of the petitioner. CCDA(P) while sitting on the chair had formulated a unilateral opinion which has no relevance in the eye of law. If any judgment is required to strengthen my opinion, reliance may be placed upon the judgment of the Hon"ble Supreme Court in SLP 4233 of 1992 titled as Mohinder Singh v. UOI decided on 14.1.1993, Uja-gar Singh v. UOI & others 1997(4)RSJ 587 a Division Bench judgment of this Court reported as Bhajan Lal v. UOI & others, 1999(5) SLR 134 and Roshan Lal v. UOI & others [1998] 3 SCT 546 (P&H) : 1999(5) SLR 42. No law to the contrary has been cited by the learned counsel for the respondents.

6. In these circumstances, I allow this writ petition by quashing the impugned orders Annexures P-7 and P-10 and P-17 and give directions to the respondents to release the benefit of disability pension to the petitioner with effect from 9.4.1997 within 3 months from the date of receipt of the copy of this order, failing which the respondents shall be liable to pay interest at the rate of 12%. No order as to costs.

7. Writ petition allowed.