
(2006) 09 J&K CK 0001
In the Jammu And Kashmir High Court

Ex. Hav. Govind Ram

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Citation : (2008) 2 JKJ 675

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nirmal Singh, J.—Petitioner was enrolled in the army on 22nd April'69 and successfully completed the military training. He was then

promoted to the rank of Havildar w.e.f. 1st Jan 83. Petitioner was invalidated out of service in low medical category EEE w.e.f. 2nd Nov'88. The

Invaliding Medical Board assessed the disability of the petitioner at 40%. Petitioner preferred his claim for disability pension but the respondents

allowed the disability at 20% instead of 40% in medical category EEE. The grievance of the petitioner is that he represented before the

respondents for considering his claim regarding grant of disability pension as per the assessment made by the Invaliding Medical Board but no

action was taken by respondents.

2. On notice, respondents have filed counter in which they have admitted that the petitioner was invalidated out-of service being a low-medical

category EEE w.e.f. 3rd Nov'88, under Army Rule 13(3) item III (iii) due invaliding disability "'Lumbar Canal Stenosis (OPTD)' and the Invaliding

Medical Board assessed the disability of the petitioner at 40% but according to para 17(a)(ii) of Entitlement Rules as amended by the Government

of India, Ministry of Defence Corrigendum No. 1(1)81/D(Pen-C) dated 21st June'96, the Medical Advisor (Pension) attached to the office of

Chief Controller of Defence Accounts (Pension), Allahabad, after due consideration assessed the disability at 20% and the petitioner was granted

disability pension accordingly in addition to the service pension.

3. I have heard learned Counsel for the parties and perused the record.

There is no dispute that the Invaliding Medical Board assessed the disability of the petitioner at 40% in low Medical Category 'EEE' Petitioner was

boarded out of service on 2nd Nov'88, In para 8 of the petition, the petitioner has pleaded as under:

8. That thereafter the petitioner was subjected to again resurvey medical board on 08.08.2001 which assessed 10% increase of the existing

disability since last medical board as such the disability in respect of the petitioner due to Lumber Canal Stenosis is 50% in cat. EEE since the last medical board.

4. Respondents have placed on record the Medical Board proceedings with regard to the assessment of the disability of the petitioner. Under the

column ""Percentage of disablement"", the assessment has been made as 40%, however, the Pension sanctioning authority i.e. Chief CDA(P),

Allahabad, has allowed the disability pension at 20%. At the hearing when it was pointed out to the learned Counsel for Union of India as to on

what basis, this assessment has been decreased from 40% to 20%, and whether the petitioner was re-examined/re-surveyed by the Medical

Board, he very fairly and candidly made a statement that no such re-survey has been conducted but this decrease in assessment of disability of the

petitioner has been done on the basis of the corrigendum referred to above.

5. I am of the opinion that the Medical Advisor attached to the office of Chief CDA(P), Allahabad, cannot sit over the opinion of the Invaliding

Medical Board nor it can take a contrary view without re-survey or re-examination of the concerned army personnel. Reliance in this regard can

be placed on a Division Bench judgment of this Court reported in 1999(2) SCT 39, Union of India v. Rattan Lal wherein it was observed that ""if

the competent authority is to disagree with the finding recorded by the medical board vis-a-vis the disability or the percentage thereof, the matter

should be referred to the Medical Board."" In the present case, as indicated

above, the disability of the petitioner was assessed at 40% by the Invaliding Medical Board but the Pension Sanctioning authority i.e. Chief CDA(P), Allahabad, without re-examination/re-survey of the petitioner, reduced the same to 20% in terms of corrigendum mentioned above, which could not have been done without re-examination of the petitioner by the Medical Board. Therefore, the petitioner is entitled to disability pension as assessed by the Medical Board i.e. 40% in low medical category EEE instead of 20%, from the date of discharge.

6. For the reasons mentioned above, the petition is accepted with a cost of Rs. 5000/-. Respondents are directed to release the disability pension in favour of the petitioner at 40% w.e.f. the date of discharge. The arrears of the disability pension, if any, shall be released in favour of the petitioner within a period of two months from the date a copy of this order is made available to respondents by the petitioner.

Disposed of accordingly.