
(2008) 05 DEL CK 0046
In the Delhi High Court
Case No : WP (C) 18034 of 2006

Ex. Hav. Omprakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Citation : (2008) 150 DLT 606 : (2009) 3 SLJ 430

Hon'ble Judges : Sanjay Kishan Kaul, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : V.S. Tomar, for the Appellant; Arun K. Sharma, for Amiet Andley, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The petitioner was enrolled in the Army on 25.01.1972 and sought voluntary retirement on compassionate grounds due to domestic problems in December, 1991. The petitioner was also assessed at 20 per cent disability attributable to military service. However, in view of the own request of the petitioner, the petitioner was released from service with 20 per cent disability. The PCDA(P), however, rejected the claim of the petitioner for disability pension on the ground that the disability of the petitioner was only 14-19 per cent and thus below the benchmark of 20 per cent. The petitioner was asked to appear before the Re-Survey Medical Board on 16.08.1996 when his disability was again assessed by the Medical Board at 30 per cent but the PCDA(P) again reduced the same to 14-19 per cent.

2. The petitioner aggrieved by the same filed an appeal before an Appellate Committee which was also rejected on 20.09.1999. The petitioner appeared before the Re-Survey Medical Board and thereafter on 23.03.2001 and his disability was again assessed at 30 per cent. The PCDA(P) once again on 13.10.2001 rejected the case of the petitioner by reducing his disability to 14- 19 per cent. The appeal of the petitioner this time succeeded before the Appellate Committee which directed the PCDA(P) to grant disability pension to the

petitioner for 20 per cent disability in terms of the order dated 13.08.2003. The PCDA(P) consequently granted the disability pension to the petitioner with effect from 01.05.1992 at the rate of Rs. 310/- per month, but the pension disbursing authority on 03.01.2005 refused to implement the PPO and advised the petitioner to get the same amended.

3. The PCDA(P), however, issued a corrigendum dated 15.03.2005 cancelling the PPO dated 13.02.2004 in toto on the ground that the petitioner had sought voluntary discharge and thus would not be entitled to disability pension. The petitioner represented against the same, but to no avail and the representations made by the petitioner were rejected on 18.08.2006 necessitating the filing of the present petition.

4. It is not dispute that there are two aspects which arise for consideration in the present case. The first is in respect to the decision taken by the PCDA(P) on the various occasions referred to aforesaid whereby the PCDA(P) sought to decrease the percentage of the disability of the petitioner as assessed by the Medical Board. This issue is no more rest integra in view of the judgment of the Supreme Court in Civil Appeal No. 164/1993 titled Ex.Sapper Mohinder Singh v.Union of India decided on 14.01.2003. This aspect has been examined in depth by a Division Bench of this Court in the matter of Ex-Signalman Shri Bhagwan Vs. Union of India (UOI), where conclusions have been set out in para 199, which is re-produced as under:

199. We have considered the various submissions ably made by a large number of learned Counsels on an issue involving a deep study of all kinds of administrative instructions and orders. We have also gone through the judgments cited above. The legal principles that can be derived from the decisions of the Courts and the interpretation of various rules, regulations and orders are as follows:

Generally:

- (1) Disability pension is granted to an individual who is boarded out from service:
 - (a) On account of a disability.
 - (b) The disability is attributable to or aggravated by military service.
 - (c) The disability is assessed at 20% or above.

The determination of attributability or aggravation is as per the 1961 Entitlement Rules or the 1982 Entitlement Rules as the case may be. [Regulation 173].

...

(9) The opinion of a Medical Board that examines an individual will have primacy over the opinion of any other medical authority (including the opinion of a ``next higher medical authority`` or even the Medical Adviser (P) attached to the office of the CDA or the CCDA) unless that other medical authority has also examined

the individual. [Mohinder Singh]. Alternatively, the Medical Board may reconsider its opinion after a fresh examination of the individual. [Raghubir Singh]. The exception to this will be in case where the ``next higher medical authority`` or the Medical Adviser (P) takes a view which favors the individual.

208. Having heard submissions on the facts of many such cases, we are of the view that as a thumb rule it may be appropriate if the law of limitation as it applies to civil suits is applied in such situations. Therefore, claims for grant of disability pension may be entertained despite a great delay, but the delayed claim should not be granted for a period exceeding three years prior to the date of filing the writ petition unless the individual has been diligently pursuing the matter with the Respondents or has made a representation which has not been disposed of by the Respondents. This will, of course, depend on the facts of each case and no binding rule can be laid down in this regard.

5. The second aspect which arises is the question of rejection of the disability pension on the ground that the petitioner had sought discharge himself. This issue again is also no more rest integra in view of the judgment of a Division Bench of this Court in Mahavir Singh Narwal v. Union of India and Anr. 2005 (1) AISLJ 133. It has been held that what is relevant is not how the person was discharged but whether he acquired disability attributable to or aggravated by his military service.

It was observed as under:

6. On careful perusal of the aforesaid rule it is manifestly clear that invalidated from service is necessary condition for grant of disability pension. What has to be sent for entitlement for disability pension is whether an individual at the time of his release was in a low medical category than that in which he was recruited if it was so then such person will be treated as invalidated from service. It is the admitted case of the parties that at the time of recruitment the petitioner did not have any disability.

6. A SLP filed before the Supreme Court against the judgment in Ex.Sapper Mohinder Singh's case (supra) has been dismissed in liming on 04.01.2008. Since the Re-Survey Medical Board assessed the disability of the petitioner at 30 per cent, the said view would prevail over any observations made by PCDA(P) and thus the assessment of the disability pension would be made accordingly.

7. A number of connected matters which were awaiting the fate of the Supreme Court Judgment have now been allowed by this Court including the case in WP(C) 10942/2004 decided on 31.03.2008 titled Ex. Lance Naik Balwan Singh v. Union of India and Ors.

8. The result of the aforesaid is that the denial of the pension to the petitioner on both the aforesaid accounts cannot be sustained and the petitioner would be entitled to the disability pension.

9. A writ of mandamus is issued directing the respondents to release the

disability pension of the petitioner in the aforesaid terms and the arrears be remitted to the petitioner within a maximum period of three months from today.

10. The petition is accordingly allowed leaving the parties to bear their own costs.