

(2006) 08 DEL CK 0158

In the Delhi High Court

Case No : Writ Petition (C) No. 3213 of 2002

Ex. Hav. Rajpal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 08 DEL CK 0158

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

Bench : Division Bench

Advocate : S.M. Hooda, for the Appellant; Rekha Palli, for the Respondent

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—In this petition under Article 226 of the Constitution of India, which was filed by Ex. Hav. Rajpal, the prayer was for quashing of letter dated 14th March, 2002/1st April, 2002 and further for a direction to the respondents that they should grant to the petitioner disability pension with 50% disability with effect from 26th July, 2001.

2. Unfortunately, during the pendency of this petition, the petitioner died on 10th May, 2003.

3. The petitioner was enrolled in the regular Army as combatant soldier on 23rd August, 1981. He was medically fit. He went through his training and subsequent period of service without any sickness, disability or mental problems. The petitioner was found to be indulged in heavy drinking, which then interfered with the performance of his duties and finally the petitioner was brought before the medical board, which has assessed his disability at 40% with low medical category. Thereafter, the Board also recommended the petitioner to be invalided out of service. The Commanding Officer did not provide any alternate/shelter job to the petitioner. Resultantly, the petitioner was boarded out of service and was sanctioned 50% disability pension with effect from 25th July, 2001. After some

time, the petitioner is stated to have acquired knowledge that his request for grant of disability pension was rejected by the authorities by letter dated 14th March, 2002. However, copy of the said letter was not sent to the petitioner. This has resulted in filing of the present writ petition.

4. The petitioner has placed on record a letter dated 19th April, 2002 whereby the petitioner was informed that PCDA(P) Allahabad had decided that the disease of the petitioner viz ALCHOHAL DEPENDENCE SYNDROME (II) GENERALISED TONIK CLINIC SEIZURES (a) was not attributable to or aggravated by military service and the same was constitutional in nature. However, letter of the PCDA(P) was not given to the petitioner.

5. During the course of hearing, it is stated that after the death of the petitioner, no cause of action survives in the present petition. However, on merits, the facts have not been disputed. There is also no dispute to the fact that Medical Board had recommended 50% disability and also accepted it to be attributable to or aggravated by service. The petitioner was discharged on 25th July, 2001 i.e. after nearly 20 years of service.

6. It was further stated on behalf of the respondents that POP in favor of the petitioner has been issued on 14th September, 2005, granting the benefit to the petitioner, and even the amounts would have been disbursed or would be disbursed in a short time in favor of the petitioner.

7. learned Counsel appearing for the petitioner contended that respondents are also obliged to give special family pension to the wife of the petitioner and respondents should be directed to do so. In this regard, we are of the considered view that wife of the petitioner is not entitled to claim this relief in this petition as she is neither a party to the present petition nor has made any request in this regard in the present petition. She has already submitted requisite papers to the authorities in support of her claim.

8. In view of the stand taken by the respondents, nothing further survives in this petition. Since POP has already been issued and the account of the deceased petitioner would be credited with the amount payable in accordance with rules, no further directions can be issued in this petition. However, the wife of the deceased petitioner shall be at liberty to take such action or steps as may be permissible to her in accordance with law.

9. The writ petition is accordingly disposed of, while leaving the parties to bear their own costs.