

(2005) 05 DEL CK 0097

In the Delhi High Court

Case No : Writ Petition (C) 15407 of 2004

Ex. Nb. Sub. Attar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-05-2005

Acts Referred:

Army Rules, 1954 — Rule 13

Citation : (2005) 120 DLT 431 : (2005) 82 DRJ 547 : (2006) 107 FLR 170

Hon'ble Judges : B.A. Khan, J;Anil Kumar, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

B.A. Khan, J.—Petitioner was a Naib Subedar in the Indian Army. At the time of retirement from service he was found to be having two disabilities-(i) Right PUJ Obstruction with poor functioning (right) Kidney; ii) Secondary hypertension.

2. It appears that his first disease was found not attributable to or aggravated by the military service. But for the second he was granted 50% disability pension for life by the Ministry of defense.

3. Petitioner has filed this petition claiming that his disability pension was to be enhanced to 50% in terms of notification dated 31.1.2001with effect from 1.1.1996.

4. Respondents have refuted his claim in their counter. It is claimed by them that disability percentage of 30% was to be treated as 50% from 1.1.1996 only in those cases where the personnel have been invalidated out of service before completion of service tenure. This petitioner had retired from service on completion of service under the Army Rule 13 after rendering 26 years of service on 31st March, 2002 and Therefore, his disability pension could not be rounded off to 50%. According to them pensioners who had retired or were discharged on attaining age of retirement or on completion of tenure on or after 1.1.1996 shall

be entitled to disability element as per para No.7.1, II(a) of notification dated 31.1.2001. It is asserted by them that he was paid disability pension accordingly in terms of this para as he had retired from service on completion of complete normal tenure.

5. We have examined the relevant provisions of notification dated 31.1.2001. Para 7.2 whereof reads:-

"Where an Armed Forces personnel is invalidated out under circumstances mentioned in para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:-

Percentage of disability Percentage to as assessed by invaliding be reckoned for Medical Board computing of disability element Less than 50 50

Paragraph 8.1 of this notification provides:-

"Where an Armed Forces personnel is retained in service despite disability arising/sustained under the circumstances mentioned under Category "B" & "C" in para 4.1 above and is subsequently retired/discharged on attaining age of retirement or on completion of tenure, he/she shall be entitled to disability element at the rates prescribed at para 7.1 II(a) above for 100% disablement."

6. Para 8.2 provides for disabilities less than 100% but not less than 20% and also say that no disability element shall be payable for disabilities less than 20%.

7. A bare reading of these provisions shows that petitioner's case does not fall in that category under which disability pension of less than 50% is to be treated as 50% because he has not been invalidated out of service but has retired from service on completion of his tenure though on his retirement he was found to be suffering from two diseases out of which he was awarded disability pension of 30% qua one disease.

8. As against this, his case falls under para 8.1 of the notification and his pension is required to be assessed as per para 7.1. II(a) which according to respondents has already been done and which is being paid. There is, Therefore, no scope for holding that his disability pension of 30% was to be treated as 50% in terms of notification dated 31.1.2001.

9. Petition has no merit and is dismissed.