

(2000) 07 P&H CK 0206
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12445 of 1997

Ex-NK Jasmer Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2000) 07 P&H CK 0206

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Mr. Bhim Sen Sehgal, for the Appellant; Mr. Ashutosh Mohunta, for the Respondent

Judgement

Swatanter Kumar, J.—On 30th March, 1982, Jasmer Singh-petitioner was discharged from the military service, after putting in more than nearly 22 years of service, on medical ground with 20% disability being medical category "CEE" permanent. The petitioner was enrolled as a member of the Indian Army as Jawan on 21st July, 1964. At the time of discharge, the petitioner was granted disability pension consisting of both elements i.e. service element and disability element. The petitioner has completed requisite years of service entitling him for grant of both these benefits. Re-survey medical board was held in the year 1983 and 1985 which maintained the disability of the petitioner at 20% and granted relief therein for a period of 10 years. The petitioner was invalidated out of military service being suffering from "Low Backache and Lumber Spondylosis".

2. The petitioner was subjected to re-survey medical board and was re- assessed to 20% disability, as per letter dated 17th July, 1995, Annexure P/1 to the petition. This document refers to the extent of disability and affirms the findings of the medical board in the following manner :-

"As per your last PRO the following invaliding disability has/have been accepted.

(a) Low backache Lumber spondylosis,

(b) _____

(c) Last percentage accepted by CCDA(P) 20%

(d) Percentage of disability now commended by hoard-20%

(e) Whether ID accepted was attributable or aggravated reference to initial (disability award No. D/2458/82)

3. However, the petitioner received the letter dated 11th September, 1995, vide which it was stated that the disability of the petitioner had been re- assessed at less than 20% (15 to 19%) for 10 years as on 18th May. 1995. Resultantly, the pension, was discontinued. The relevant para of letter dated 11th September. 1995, Annexure P/2, reads as under :-

"1. Refer to this office letter No. P/6305/60/RSMB /NEr/51 of 17Jul.95.

2. The award of temporary disability pension granted to you by the pension sanctioning authority has been discontinued from 28 Aug 95 as your disability has been re-assessed on 19 May 95 at less than 20% i.e. (15 to 19%) for 10 years."

4. The petitioner preferred an appeal against this order to the Secretary, Ministry of respondent-Union of India and also served a copy through his counsel dated 1.6.1996. The petitioner could not get any response much less relief and under these the circumstances, filed a writ petition before this Court being Civil Writ Petition No. 4773 of 1997, which was disposed of by a Division Bench of this Court on 9th April, 1997. It was only in furtherance to the order of the Division Bench that appellate authority passed the order dated 1st April, 1997 dismissing the appeal holding that "disability pension was sanctioned to you upto 27.8.1995. The Re-survey Medical Board held on 18.5.1995 assessed your disablement at less than 20% (15-19%)for 10 years. As a result your disability pension was discontinued with effect from 28.8.1995." This order has been assailed by the petitioner in the present writ petition.

5. Upon notice, respondents filed their written statement and it was contended that the recommendation of the Medical Board in regard to assessment of disability of service personnel are recommendatory in nature and are subject to review. Further afore-mentioned order has been referred to and reproduced in the reply. The stand taken by the respondents is not supported by (heir own record.

6. From the above narrated facts, it is clear that the petitioner was subjected to re-survey medical board and recommendations along with pension payment order was forwarded with 20% disability. No record has been produced before the Court to show that in the month of August, 1997, the petitioner was subjected to re-survey medical board, Annexure P/1 to the writ petition clearly indicates the stand of the concerned department that the disability was 20%. It is not even pleaded in the counler affidavit that the petitioner was granted any

opportunity or was directed to appear before the appellate medical authority. The CCDA(P) by itself has no jurisdiction to alter the findings recorded by the duly constituted medical board. The order dated 1st August, 1997 is contradictory in its terms. On the one place, it is stated that the re-survey medical board in May, 1995 had found the disability of the petitioner less than 20%, while in the same breath, it is stated that the appellate medical authority has found that the disease has improved, resulting into the reduction of disability pension. Once the disability pension is granted to a person who was entitled to receive the same, then he can be deprived of the said benefits only by coming to the conclusion that he does not satisfy the basic ingredients for such claim and that too following the prescribed procedure in that regard. Neither any explanation has been given for issuance of letter dated 17th July, 1995 nor the respondents denied the said documents. In other words, the petitioner was not given any opportunity to put forward his case before passing of the impugned order withdrawing the benefits of disability pension granted to him.

7. At this stage, it may be appropriate to make reference to the judgment of this Court in the case of M.S. Dhaliwal, Lt. Col. (Retd.) v. Union of India and another 2000(1) P.L.R. 633 : 2000(1) SCT 381 (P&H), wherein the Court held as under :-

"Normally the opinion of the Medical Board would bind the accounts administrative authorities unless such opinion is set aside or varied by the Medical Appellate Board under the relevant instructions and rules. It is also not disputed that the matter was never referred to the appellate medical authority on notice to the petitioner nor was the petitioner subjected to examination of the appellate medical board in accordance with the provisions of the relevant rules and the instructions issued in this regard. It was for the respondents to place on record the documents showing that the opinion of the Medical Board was altered or changed by the appellate board with notice to the petitioner or upon his examination."

8. At this stage, judgment of the Hon'ble Supreme Court in the case of Ex-Sapper Mohinder Singh v. Union of India, Civil Appeal No. 164 of 1993 (arising out of SLP (C) No. 4233 of 1992) decided on 14.1.1993 can also be appropriately referred to :

"We have examined the relevant materials and we do not feel satisfied with the plea taken in the counter affidavit. No details of the consultations has been disclosed by the respondent nor it is claimed that the appellant has been re-examined by any higher medical authority. We are not prepared to act on the vague allegation in the counter affidavit referred to above. In view of all the relevant circumstances of the case we are of the opinion that the Disability Pension assessed at the rate of 40% by the Medical Board, which had examined the appellant, would be respected until a fresh Medical Board examines the appellant again and comes to a different conclusion. Accordingly, we direct that for the period 1.8.1989 to 31.1.1993 the appellant shall be paid the Disability Pension at the rate of 40% and it will be open to the authority concerned to have

the appellant re-examined by a properly constituted Medical Board for assessment of the disability with effect from 1.2.1993." .

9. The impugned order suffers from another apparent illegality inasmuch as a person cannot be denied the benefits which was otherwise payable to him in accordance with rules retrospectively. The impugned order at best could take effect prospectively and the order dated 11th September, 1995 could not become operative with effect from 28th August, 1995. There is not only contradiction in the stand taken by the respondents but even the dates mentioned are not relatable to the documents mentioned therein. It was for the respondents to produce the original record to show that the petitioner was subjected to re-survey medical board in accordance with rules. I have no doubt in coming to the conclusion that the respondents have failed to discharge their onus.

10. For the reasons afore-stated, the impugned order dated 11th September, 1995, Annexure P/2 to the writ petition is quashed. The respondents are directed to consider and grant to the petitioner disability pension with effect from August, 1995. However, it will be open to the respondents to direct the petitioner to appear before the re-survey medical board for entitlement and assessment of disability and continuation of the disability pension prospectively.

In the facts and circumstances of the case, there shall be no order as to costs.

11. Petition allowed.