
(2012) 12 GAU CK 0056
In the Gauhati High Court
Case No : WP (C) No. 2144 of 2009

Ex. Rfn Manku Pradhan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2013) 4 GLT 28

Hon'ble Judges : S.C. Das, J;Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : R. Borah, CGC and Mr. R. Mazumdar, Amicus Curiae, for the Respondent

Judgement

Iqbal Ahmed Ansari, J.—We have heard Mr. R. Mazumdar, learned amicus curiae, and Ms. R. Bora, learned Central Govt. Counsel, appearing on behalf of the respondents. None has appeared on behalf of the petitioner. The respondents received, in this writ petition, notice as far back as on 02.06.2009; but, till date, no affidavit has been filed by the respondents.

2. Left with no other alternative, we have heard learned counsel, who are present, for the purpose of disposal of this writ petition, on the basis of the materials available on record.

3. The materials on record indicate that the petitioner had earlier filed a writ petition, under Article 226 of the Constitution of India, in Delhi High Court, which had given rise to Civil Writ Petition No. 2113/2008, seeking appropriate directions to be issued to the respondents to grant to the petitioner disability pension in addition to the invalid pension, which is being received by the petitioner on his being discharged from service on medical ground.

4. The respondents contested the said writ petition by filing their affidavit, wherein, while mentioning the circumstances, whereunder the petitioner, according to the respondents, had to be discharged from his service, contended

that Delhi High Court did not have the territorial jurisdiction to decide the writ petition. The Delhi High Court, having agreed that it did not have the territorial jurisdiction to adjudicate the matter, dismissed the writ petition by its order, dated 08.08.2008.

5. The petitioner, then, filed a writ petition, under Article 32 of the Constitution of India, in the Supreme Court, claiming disability pension with arrears and reinstatement in service in a post of less laborious character. The writ petition, so filed, gave rise to Writ Petition (Civil) No. 1631/2009. The said writ petition was disposed of, on 27.04.2009, by the Supreme Court observing therein that the said petition, made under Article 32, was thoroughly misconceived and that the said writ petition shall be treated as a petition under Article 226 of the Constitution of India by this Court. The petition was accordingly received by this Court and is, now, (as indicated above), being disposed of.

6. There is no dispute that the petitioner was enrolled as Rifleman (GD) on 10.05.85, in Assam Rifles. The pleaded case of the respondents, in Civil Writ Petition No. 2113/2008, delineating the circumstances leading to the petitioner's discharge from service, was asunder:

2. That EX No. 2400836 Rifleman/General Duty Manku Pradhan (hereinafter the petitioner) was enrolled in the Assam Rifles on 10.05.1985. The petitioner first developed illness during July, 1991. Thereafter, he was referred to 154 General Hospital for treatment and the illness was diagnosed as Osteoarthritis Rt. Knee by Classified Specialist (Surgical). Accordingly, the petitioner was placed in low medical category CEE (Temporary) and was further down graded to low medical category BEE (Permanent) with effect from 17.07.93 by Classified Specialist (Surgical) 154 General Hospital. Subsequently, on the basis of opinion of specialist, a duly constituted medical board was held at 24 Assam Rifles and the petitioner was recommended to be released in low medical category BEE (Permanent). Accordingly, he was discharged from service on medical ground with effect from 11.05.98 after rendering 13 years 22 days of qualifying service in low medical category BEE (Permanent) with 60% disability due to diagnosis Osteoarthritis Rt. Knee. On being discharged, invalid pension @ Rs. 1275/- per month with effect from 01.06.1998 vide Pension Payment Order dated 14.10.98, Commutation of Pension for Rs. 33,673/-Gratuity Rs. 25,259/- IRLA Rs. 6,133/- and General Provident Fund Rs. 83,589/- has been granted to the petitioner as per his entitlement.

7. From the facts, which the respondents have, thus, set out, in their affidavit aforementioned, what becomes clear is that the petitioner was, on 10.05.1985, enrolled in Assam Rifles and he was found to have, first, developed illness during July, 1991, and when he was referred to 154 General Hospital for treatment, the illness came to be diagnosed as Osteoarthritis Right Knee by Classified Specialist (Surgical). The petitioner was accordingly placed in Low Medical Category CEE (Temporary) and further downgraded to Low Medical Category BEE (Permanent), with effect from 07.07.93, by Classified Specialist (Surgical) of 154 General

Hospital. Subsequently, on the basis of the opinion of specialist, a duly constituted medical board was held at 24 Assam Rifles and the petitioner was recommended to be released in low medical category BEE (Permanent). The petitioner was accordingly discharged from service on medical ground, with effect from 11.05.98, after he had rendered 13 years 22 days of qualifying service, his discharge being in low medical category BEE (Permanent) with 60% disability due to diagnosis Osteoarthritis Right Knee. On being discharged, invalid pension @ Rs. 1275/- per month, with effect from 01.06.1998, vide Pension Payment Order, dated 14.10.98, Commutation of Pension for Rs. 33,673/-, Gratuity Rs. 25,259/-, IRLA Rs. 6,133/- and General Provident Fund Rs. 83,589/- were granted to, and received by, the petitioner as per his entitlement.

8. From the facts, pleaded by the respondents themselves, what clearly emerges is that the petitioner was discharged on invalid pension after he had already rendered service for a period of 13 years and 22 days. While other monetary benefits, which a person, on being discharged, on invalid pension, is entitled to, were made available to the petitioner by the respondents, what the petitioner had not been paid was, admittedly, the disability pension.

9. Aggrieved by the fact that the respondents had not granted disability pension to the petitioner, the petitioner's wife submitted, on 28.09.99, a representation to the respondent No. 4, namely, Director General, Assam Rifles. The matter was, then, pursued by the petitioner himself by making several representations, in this regard, to the concerned authority. As his representations did not yield the result, which the petitioner had desired, the petitioner, as already mentioned above, filed a writ petition, in Delhi High Court, claiming directions to be issued to the respondents to grant him disability pension and, on dismissal of his writ petition, the petitioner filed a petition, under Article 32 of the Constitution of India, to the Supreme Court and it is this petition, which the petitioner had so made to the Supreme Court, which has come to be treated, under the directions of the Supreme Court, as a writ petition made under Article 226 of the Constitution of India.

10. The moot question, which arises for determination, in the present writ petition, is: whether, in the facts and attending circumstances of the present case and the law relevant thereto, the petitioner was entitled to, and ought to have been paid, disability pension.

11. The petitioner's disability, as discernible from the respondents' affidavit, filed in the Delhi High Court, had, admittedly, occurred during the month of July, 1991, when the petitioner had completed six years of service and it was because of this disability that the petitioner was finally discharged from service.

12. The Central Civil Services (Extraordinary Pension) Rules, 1939, (in short, "the 1939 Rules") provides for award of disability pension over and above other pensions, which may be receivable by a pensioner.

13. As defined by Sub-Rule (4) of Rule 3 of the 1939 Rules, disease means a

disease as is mentioned in Schedule-1A.

14. When we turn to Schedule 1-A, we note that Schedule 1-A reads:

1. List and classification of diseases which can be contracted by service:

A. Diseases affected by climatic conditions

(i) ****

(ii) ****

(iii) ****

(iv) ****

(v) ****

(vi) ****

(vii) ****

(viii) ****

(ix) ****

(x) ****

(xi) ****

(xii) Arthritis

15. From a bare reading of Schedule 1A, it becomes clear that Schedule 1A includes arthritis as one of the diseases, which can be contacted by person in service meaning thereby that arthritis is one of the diseases, which the 1939 Rules deal with and provide for disability pension. Rule 3A(a) describes as to what disablement shall be accepted as having arisen due to Government service. Rule 3-A(1)(a) states as under:

(1)(a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease, which - (i) is attributable to Government service, or (ii) existed before or arose during Government service and has been and remains aggravated thereby.

16. Thus, disablement, dealt with by the 1939 Rules, might have existed before a Government servant enters into service or may arise during the period of his service. In either case, in order to enable such a person to claim disability pension, his disability must have been, or ought to have, remained or aggravated, because of the Government service.

17. In the present case, when the petitioner joined, on 10.05.85, as a Rifleman (GD), he had obviously been found medically fit. When the petitioner suffered from disability due to arthritis, which is one of the listed diseases in Schedule 1A, as mentioned above, he had already put in six years of service and after he had

so put in six years of service, he was diagnosed to have been suffering from osteoarthritis of right knee, whereupon he was, initially, placed in Low Medical Category CEE (Temporary), but, at a later stage, i.e., with effect from 17.07.93, he was brought down to the grade of Low Medical Category BEE (Permanent). There is, therefore, no room for doubt that it was during the period of his service that the petitioner suffered from arthritis and his (the petitioner's) disability, arising out of arthritis, got aggravated during his service period.

18. In the backdrop of the above facts, particularly, when the petitioner had already put in 13 years of service by the time he was discharged on the ground of disability, the question, which naturally arises, is: whether the petitioner ought to have been paid disability pension?

19. The learned amicus curiae has, with regard to the above, drawn our attention to Rule 9 of the 1939 Rules, which reads as under

9.(1) When disablement of a Government service is conceded as due to Government service in terms of Rule 3A, he shall be awarded disability pension in terms of sub-rule(2) or (3) or lump sum compensation in terms of sub-rule (4) of this Rule in accordance with the percentage of disability (suffered by him) as certified by the Medical Authority concerned.

(2) If the Government servant is boarded out of Government service on account of his disablement, the quantum of disability pension for cent percent disability shall be specified in Schedule II hereto annexed. The quantum of disability pension for lower percentage of disability shall be "proportionately lower". The minima and the maxima given in Schedule II are applicable only for arriving at the monthly disability pension for cent percent disability and are not applicable in respect of percentage of disability lower than cent percent.

(3) If the Government service is boarded out of Government service on account of such disablement, and further if, the percentage of his permanent disability as certified by the Medical Authority is not less than 60 %, his monthly disability pension shall be related to the family pension admissible to the widow (in case he had died instead of being disabled) in the manner laid down in O.M. No. 23 (15)-E. V (A)-Pt. IV, dated the 20th January, 1978, as indicated below-

(a) If the employee held a permanent pensionable post and is invalided/boarded out from service, as a result of disability attributable to service, after rendering ten years service, he shall be given, apart from the normal invalid pension under the CCS (Pension) Rules, 1972, the amount of disability pension as is admissible under the CCS (EOP) Rules, subject to the condition that the sum total of the invalid pension plus the disability pension shall not be less than the widow's (family) pension under the CCS (EOP) Rules; and

(b) if the employee eligible for disability pension under the CCS (EOP) Rules is invalided/boarded out from service before putting in ten years service, he does not get any invalid pension but gets only service gratuity under the CCS

(Pension) Rules, 1972. Apart from such gratuity, he shall be given such amount of disability pension as is admissible under the EOP Rules subject to the condition that the sum-total of the pension equivalent of such gratuity under the CCS (Pension) Rules, 1972, plus the disability pension as is admissible under the CCS (EOP) Rules, shall not be less than the widow's (family) pension under the CCS (EOP) Rules.

20. Rule 9(1) makes it clear that when disablement of a Government servant is found to have occurred and/or aggravated during Government service as contemplated by Rule 3A, he shall be awarded disability pension in terms of Sub-Rule (2) or (3).

21. The learned amicus curiae has rightly contended that it is Sub-rule (3) of Rule 9, which governs the case of the petitioner, when his disability was found to be not less than 60% and a person, suffering from permanent disability of not less than 60%, shall be paid disability pension of not less than 60% of his basic pay subject to a minimum of Rs. 2,500/-.

22. Situated thus, it is clear that the petitioner was entitled to be paid, as disability pension, 60% of his basic pay subject to a minimum of Rs. 2,500/-.

23. Because of the fact that the petitioner has not been paid pension, which he was, in law, entitled to, we are of the considered view that in the facts and attending circumstances of the present case, the petitioner shall be paid disability pension in terms of the 1939 Rules and in the light of the Government of India's decision circulated in this regard.

24. We, therefore, direct that the respondents, particularly, respondent No. 4, namely, Director General, Assam Rifles, shall ensure that the petitioner is paid disability pension in terms of the 1939 Rules with arrears as he may be entitled to. The whole exercise, so directed, shall be completed within a period of three months from the date of receipt of a copy of this order by the respondent No. 4, namely, Director General, Assam Rifles.

25. This Court places on record its appreciation for the valuable assistance provided to the Court by the learned amicus curiae and directs that he be paid a sum of Rs. 5,000/-from Gauhati High Court Legal Services Authority.

26. Let a copy of this order be furnished to the learned Central Govt. Counsel.

27. With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.