

**(2000) 10 P&H CK 0129**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 14396 of 1999**

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|---------------------------|----|------------|
| Ex-Sepoy Balbir Singh     | Vs | APPELLANT  |
| Union of India and others |    | RESPONDENT |

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**Date of Decision :** 05-10-2000

**Acts Referred:**

Army Rules, 1954 — Rule 13(3), 173  
Constitution of India, 1950 — Article 226, 227  
Pension Regulations for Army, 1961 — Regulation 136, 146

**Citation :** (2000) 10 P&H CK 0129

**Hon'ble Judges :** R.L. Anand, J

**Bench :** Single Bench

**Advocate :** Mr. S.R. Kanwar, for the Appellant; Mr. Kamal Sehgal, for the Respondent

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## Judgement

R.L. Anand, J.—Ex-Sepoy Balbir Singh, has filed the present petition under Articles 226/227 of the Constitution of India praying for the issuance of a writ in the nature of certiorari, mandamus or any other suitable writ, order or direction against the respondents for the release of disability pension.

2. It has been further prayed by the petitioner that direction be given to the respondents to release him the emoluments with effect from 29.2.1996 along with interest.

3. The case set up by the petitioner is that he was enrolled into the Indian Army as a recruit on 23.11.1985. He was in a very good mental and physical health and was placed in category "AYE". He was discharged from military services on 29.2.1996 having been placed in category "BEE" permanent without offering alternate employment by the Officer Commanding and after having been given assurance that disability pension shall be released.

4. On 24.4.1997, the petitioner received an intimation from the Chief Controller of Defence Accounts (Pension) through respondent No. 4, that the claim of the petitioner for disability pension has been rejected. The petitioner filed statutory

appeal against the rejection of his claim on 1.10.1997. The petitioner was informed on 12.12.1997 that his appeal has been forwarded to the Government of India, Ministry of Defence, for decision. The petitioner sent a reminder on 6.8.1998 for the release of the disability pension on the plea that he was in a bad financial position. Yet another reminder was sent on 9.8.1999. Finally, the appeal of the petitioner was rejected on 25.8.1999. Hence the present writ petition.

5. Notice of the writ petition was given to the respondents who filed the reply and denied the allegations.

6. According to the respondents, the petitioner was discharged from service under Army Rule 13(3) Item III(v) being in low medical category "BEE" (Permanent) due to non-availability of sheltered appointment. Since his disability was found constitutional in nature and, not related to service, he was not eligible for the grant of disability pension in terms of para 173 of Pension Regulations for the Army, 1961 Part-1 and he was not granted disability pension. He served army for a period of 9 years and 327 days excluding 137 days non-qualifying due to overstay of leave/absence without leave and as such he was not entitled to service pension in terms of para 132 of Pension Regulations for the Army, 1961 Part-I as the criteria to earn service pension is 15 years qualifying service.

7. I have heard Shri S.R. Kanwar, learned counsel appearing on behalf of the petitioner and Shri Karnal Sehgal, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of the case.

8. It is the common case of the parties that when the petitioner was recruited into the military service, he was placed in category "AYE" and he was found fit in all respects.

9. The point for determination is : whether the petitioner is entitled to disability pension or not ?

10. We all know that disability pension constitutes two elements i.e. service element and disability element. The petitioner was discharged from the service and he was placed in category "B" and it is also the common case of the parties that petitioner was not afforded any alternate job.

11. Rule 173-A would be applicable in this case which covers those cases where individuals have been discharged on account of their being permanently in low medical category. Rule 173-A lays down as under :-

"Individuals who are placed in a lower medical category (other than E") permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who Raving retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalidated from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations."

12. As I have stated above, the petitioner was not provided any alternative job, therefore, he will be deemed to have been discharged from the military service under Rule 173-A because he was placed in lower medical category other than the category "E".

13. Para 183 of the Pension Rules lays down "the disability pension consists of two elements viz. service element and disability element which shall be assessed as under:

"(1) Service Element. - (a) Where the individual has rendered sufficient service to earn a service pension i.e. actual service is 15 years or more.

(b) Where the individual has not rendered sufficient service to qualify for a service pension."

14. Admittedly, in this case the petitioner has only served 9 years and 327 days. He has not completed 15 years of service. In such a situation, the petitioner will be entitled to the benefit of service element as per Regulation 136(a) or 146 but it shall in no case be less than 2/3rd of the minimum service pension admissible to the rank/pay group.

15. Thus, the combined reading of (Paras) 173-A and 183, would establish that petitioner is entitled to the service element irrespective of the fact that he has not completed 15 years of service.

16. On the contrary, learned counsel appearing on behalf of the respondents submitted that since the petitioner has not served for 15 years, therefore, he has not completed the qualifying service and in these circumstances, he is not entitled to the benefit of service element. This submission of the learned counsel for the respondents is not acceptable to this Court because the case of the petitioner is not covered by para 183(1)(a) but it falls in sub-para (1)(b) of 183 and the operative portion of sub-para (1)(b), I have already referred to above.

17. In this view of the matter, I hold that the petitioner is entitled to the benefit of service element with effect from 29.2.1996, the date of his discharge. The writ is partly allowed and directions are given to the respondents authority to release the service element to the petitioner only with effect from 29.2.1996 within a period of three months from the receipt of the copy of the order failing which the petitioner shall also be entitled to interest at the rate of 12%. There shall be no order as to costs.

18. Petition partly allowed.