

(2001) 02 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8973 of 2000

Ex-Sepoy Bhup Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Pension Regulations for Army, 1961 — Rule 7

Citation : (2001) 02 P&H CK 0045

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

Bench : Single Bench

Advocate : Mr. Ajit Singh, for the Appellant; Mr. S.K. Sharma, for the Respondent

Judgement

R.L. Anand, J.—Ex-Sepoy Bhup Singh has filed the present Civil Writ Petition under Articles 226/227 of the Constitution of India against respondent 1 and 2 and he has prayed for the issuance of a writ in the nature of Certiorari against the respondents for quashing the order dated 9.5.2000 passed by the Secretary, Ministry of Defence, Government of India, New Delhi (Annexure P-22) and he has further made a prayer that a writ in the nature of Mandamus be issued against the respondents directing them to release the benefit of disability pension to him.

2. The case set up by the petitioner is that he was enrolled as Sepoy in the Army on 6.11.1995. He was awarded a "Sangram Medal" for his meritorious service. He was discharged from service on account of the disability and he was placed in category "CEE". The petitioner had been making representations to the respondents for the grant of disability pension. So much so, he issued reminders. On 27.7.1997, respondent No. 2 intimated the petitioner that his case for the grant of disability pension is under consideration but later on his case was declined, as a result of which the petitioner had to file C WP 16485 of 1997 which was disposed of with the directions to the respondents to reconstitute the Re-Survey Medical Board and to determine afresh regarding the disability pension.

In pursuance of the directions of the Court, the Re- Survey Medical Board examined the petitioner and found that the petitioner was suffering from "Compound Hyper-metropic Astigmatism Left Eye Effect of 370 with 30% disability" for a period of 5 years. The matter was again examined by the respondent-authorities and it was declared that since the disease suffered by the petitioner is a constitutional one and not connected with the service, therefore, he is not entitled to disability pension. The petitioner received this order Annexure P-22 on 29.5.2000. He made a representation on 31.5.2000. When the petitioner did not hear anything from the side of the respondents, he has come in the present writ petition.

3. Notice of the petition was given to the respondents. Written statement has been filed in which the main averments of the petition have been denied. In short, the stand of the respondents is that in pursuance of the directions of the High Court, Re-Survey Medical Board was constituted. Though it assessed the disability of the petitioner at 30% for a period of 5 years, yet the disease is not attributable to the military service, rather it is constitutional as observed by CCDA(P), and, therefore, the petitioner is not entitled to the benefit of disability pension. It is also the case of the respondents that the appeal of the petitioner was dismissed in the year 1975 and the present writ petition is also liable to be dismissed on the ground of delay and laches.

4. I have heard the learned counsel for the parties and with their assistance I have gone through the record of the case.

5. On going through the record of the case, I am of the opinion that it is a case of sheer victimisation on the part of the CCDA(P) and this type of approach is not expected from it. It further appears that the CCDA(P) has scant respect for the judicial orders. It is proved on record that earlier the petitioner had to file C WP 16485 of 1997 in the High Court. This writ petition was hotly contested by the respondents and the plea taken up at that time by the respondents was that the disease suffered by the petitioner was a constitutional one and, therefore, he is not entitled to any benefit. The Hon"ble Lordship while disposing of that petition vide judgment dated 15-3- 1999 clearly gave a finding that presumption must have been drawn in favour of the petitioner that the disease suffered by him is attributable to the military service. The judgment dated 15.3.1999 has not been challenged by the respondents nor it has been set aside by any competent Court of jurisdiction. It would be fair on my part if I re-produce the judgment of Hon"ble Mr. Justice H.S. Bedi:-

"It is the conceded position that no note was recorded with regard to the petitioner's disease when he had joined military service and the discharge slip, Annexure P-2 also does not indicate the exception visualised in Rule 7(b). A presumption must, therefore, be raised that the onset of the disease could be attributed to military service."

6. In view of this finding, the case of the respondent-authorities becomes

defenceless. When the order dated 15-3-1999 is read in between the lines, the only direction given by his Lordship was that the case of the petitioner be re-examined by the Re-Survey Medical Board in the light of the observations made in that judgment. Re-Survey Medical Board was constituted and again the disability of the petitioner was determined at 30%. In this view of the matter, it was obligatory on the part of the respondent-authorities to release the benefit of disability pension to the petitioner. To find faults in a judicial order passed by the Court of Competent Jurisdiction was not within the domain of CCDA(P).

7. Since the disability is assessed at 30% and it has been held by the High Court that the disease suffered by the petitioner is attributable to the military service, therefore, the petitioner is entitled to the benefit of disability pension for a period of 38 months which shall be counted prior to the date of institution of the first petition of 1997. If the benefit of disability pension is not released to him within 3 months, the petitioner shall be entitled to interest at the rate of 12% per annum. There shall be no order as to costs.

This petition is disposed of accordingly.

8. Petition allowed.