
(2000) 10 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : CWP 15589 of 1997

Ex. Signalman Surinder Pal	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 31-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 10 P&H CK 0105

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

Bench : Single Bench

Advocate : Mr. A.K. Walia, for the Appellant; Mr. Kamal Sehgal, for the Respondent

Judgement

R.L. Anand, J.—Ex. Signalman Surinder Pal has filed the present writ petition under Articles 226/227 of the Constitution of India for quashing of the order, Annexure P-1, vide which the disability pension to the petitioner was discontinued. The petitioner has also sought quashment of the order dated 16.5.1997, Annexure P-3, issued by respondent No. 1, rejecting his appeal, on the ground that the disability of the petitioner was re-assessed on 3.7.1995 at less than 20%, i.e. 15 to 19% for 10 years, therefore, the petitioner is not entitled to be benefit of disability pension w.e.f. 14.11.1995.

2. The case set up by the petitioner is that he joined the Army as Signalman on 30.4.1966. He was discharged from Army on account of disability and was granted disability pension, as his disability was assessed at 20%. The petitioner had been drawing his pension vide PPO No. 38440 Amritsar. On 28.10.1995, respondent No. 2 informed the petitioner that his disability has been reassessed at less than 20%. Therefore, the benefit of disability pension has been discontinued to him. The case set up by the petitioner further is that prior to the communication dated 28.10.1995, he was directed to appear before the Re-survey Medical Board, which assessed the same disability which was earlier assessed at 20%. The grouse of the petitioner is that the action on the part of

the Chief Controller of Defence Accounts (Pension), who assessed the disability of the petitioner at less than 20% is arbitrary, unilateral, against the principles of natural justice it is not an expert body in the medical line and it has not constituted any further Re-survey Medical Board, which might have re-assessed the disability of the petitioner at less than 20%.

3. Notice of the writ petition was given to the respondents, who filed the written statement and denied the allegations.

4. As per the respondents, the recommendations of the Medical Board are only recommendatory in nature and the Chief Controller of Defence Accounts (Pension) is the final authority to declare about the disability of a military personnel. Further, it is submitted that the Chief Controller of Defence Accounts (Pension) while passing orders reducing the disability acts on the advice of the Medical Adviser (Pension).

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

6. It is the common case of the parties that earlier the disability of the petitioner was assessed at 20% and the disability pension was being released to him. Counsel for the petitioner invites my attention to Annexure P-4, the opinion of the Re-survey Medical Board, which assembled on 30.6.1995 and gave the findings after medical check up of the petitioner that the disability of the petitioner remains the same. In this view of the matter, there was no justification on the part of the Chief Controller of Defence Accounts (Pension) to reduce the disability of the petitioner at less than 20%, i.e. 15% to 19% for a period of 10 years.

7. Faced with this difficulty, counsel for the respondents relies upon a judgment reported in *Zora Singh (Syp.) v. Union of India* 1994(3) RSJ 464 : 1994(1) SCT 734 (P&H), a Division Bench judgment of this Court, in which it was held that if the disability pension of a soldier has been discontinued strictly in conformity with the procedure prescribed under the Army rules, then, no fault can be found in such an order.

8. On the contrary, counsel for the petitioner invites my attention to the order dated 14.1.1993 passed by the Hon'ble Supreme Court in C.A. 164 of 1993 (*Ex. Sapper Mohinder Singh v. Union of India*), in which the stand of the U.O.I. was similar as has been taken up in the present case, and the Hon'ble Supreme Court was of the opinion that the opinion formulated by the Chief Controller of Defence Accounts (Pension) cannot supersede the opinion formulated by the Re-survey Medical Board, which is an expert body. Even otherwise, the Chief Controller of Defence Accounts (Pension) while reducing the disability of the petitioner never constituted a fresh medical Board nor the petitioner was ever asked to appear before such a Board. In these circumstances, the decision of the Chief Controller of Defence Accounts (Pension) in reducing the disability of the petitioner has to be held to be arbitrary. This action on the part of the Chief

Controller of Defence Accounts (Pension) cannot be sustained in the eyes of law.

9. Resultantly, I allow this writ petition and directions are given to the respondents to release the disability pension of the petitioner w.e.f. 14.11.1995 within three months from the receipt of a copy of this order, failing which the petitioner shall be entitled to interest @ 12%. The petitioner shall appear before the Re-survey Medical Board as and when called. No costs.

10. Petition allowed.