

(2006) 08 DEL CK 0151

In the Delhi High Court

Case No : Writ Petition (C) No. 4265 of 1997

Ex. Spr. Daryao Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Citation : (2006) 08 DEL CK 0151

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : S.M. Hooda, for the Appellant; Rekha Palli, for the Respondent

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—The petitioner was enrolled in regular Army as a combatant soldier on 6.12.41. He was subjected to regular medical check up at the time of his entry into service and thereafter at regular intervals in accordance with the discipline of the force. According to the petitioner, he performed his duties sincerely and to the satisfaction of all concerned. He was posted to Assam area in the year 1941. In 1943, the petitioner fell unconscious after a run in the military service. He was brought to Military Hospital, Jalandhar Cantt. where he regained his conscious on the third day. Later on, the petitioner was invalided out of military service because the Commanding Officer could not provide an alternative or shelter appointment to the petitioner. The Medical Board recorded the disability of the officer to be 20%. The petitioner did not receive any amount after his discharge from Army and vide letter dated 4.5.45, the petitioner was informed that his claim papers have been sent to the authorities and the moment decision is taken, the payments would be made to the petitioner. Vide Annexure P-2 to the writ petition, the petitioner was informed by the Record Officer that in reply to the letter of the petitioner dated 31.1.94 the Resurvey Medical Board has reassessed the disability of the petitioner less than 20% on 30.9.47 and thus the petitioner was not entitled to any disability pension thereof. It was also stated that the appeal filed by the petitioner had also been rejected vide order dated

27.7.50. The request made by the petitioner again for payment of the said amount was declined by the respondents. The petitioner has also placed on record Chart on Categorization of Cases on Disability Pension where it has been recorded that petitioner was granted disability pension @ 20% but the same was stopped w.e.f 30.9.47 as disability was found to be less than 20%.

2. There is no dispute before us to the fact that in 1945 the petitioner was granted and in fact paid the disability pension with 20% disability. The petitioner admittedly was subjected to Resurvey Medical Board which found the disability to be less than 20%. In face of these admitted facts, the petitioner obviously is not entitled to get the disability pension after 30.9.47. It was argued that after 30.9.47, the petitioner would be entitled to service element of the disability pension as disability pension would not be admissible to the petitioner thereafter. Firstly, there is no such prayer in this writ petition and secondly it is for the respondents to consider whether in terms of the law now enunciated by the Courts, the petitioner would be entitled to receive service element w.e.f 30.9.47. In order to avoid multiplicity of litigation, we would dispose of this writ petition with a direction to the respondents that in the event the petitioner approaches the respondents within one month from today for grant of service element, the respondents would consider the same in accordance with rules and law enunciated by different judgments of this Court and disburse the benefits not in excess of three years from the date such application is moved to them. The writ petition is disposed of with the above observations, while leaving the parties to bear their own cost.