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**(2008) 07 DEL CK 0261**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 8884 of 2006**

Ex. Sub. Maj. Satvir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 09-07-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation : (2009) 1 ILR Delhi 388**

**Hon'ble Judges : Sanjay Kishan Kaul, J;Mool Chand Garg, J**

**Bench : Division Bench**

**Advocate : S.M. Hooda, for the Appellant; Akash Pratap, Puneet Khurana and I.S. Singh, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Sanjay Kishan Kaul, J.—The petitioner was enrolled in the regular Army as a combatant soldier on 27.5.1975. He was diagnosed with "Hypertension" in 1990. The disease was attributable due to military service. The petitioner was placed in low medical category in the year 1992 and was subsequently even promoted to the rank of Subedar Major on 17.4.2001. The petitioner was sent for re-categorization in Feb, 2003 and was categorized in temporary category "BEE" and thereafter on 27.6.2004 was categorized in low medical category "BEE(P)".

2. The medical category did not come in the way of promotion of the petitioner to the rank of Hony. Lt. on 15.8.2004 and ultimately the petitioner retired from service on 30.4.2005 after completion of his tenure. At that stage, the petitioner was also held to be suffering from 30 per cent disability and was accordingly granted disability pension.

3. The petition claimed that in view of the broad banding of percentage of disability arising from the recommendation of the Fifth Pay Commission which is applicable to the persons who retired after 1.1.1996, disability of 30 per cent should be treated as 50 per cent as there was one band made for disability from

0 to 50 per cent.

4. On the other hand, the respondents contend that the petitioner is not entitled to such broad banding of the percentage of disability on account of the fact that the said benefit is available only for persons who are invalidated out of service before their due date of super-annuation.

5. Learned Counsel for the petitioner contends that the entitlement rule itself provides that invaliding from service is necessary condition for grant of disability pension. Since, the petitioner has been granted disability pension, it implies that the petitioner has been invalidated out of service even though he may have completed his full tenure. Learned Counsel in this behalf has also referred to various Judgments passed by this Court.

6. The Judgment which is stated to directly apply to the case of the petitioner is WP(C) No. 5603/2002 Col. B.S. Dhanda v. UOI and Ors. decided on 1.3.2004. It is however pointed out that the operation of the said Judgment has been stayed by the Supreme Court.

7. Learned Counsel for the petitioner also refers to the case of WP(C) No. 8889/2006 Lt. Col. (Retd) Ram Narain v. UOI and Ors. decided on 31.8.2006, but the reading of the said Judgment does not suggest that the persons in the said case had been super-annuated from the service since the phrasology used is invalidation from service.

8. The most material Judgment is of the Supreme Court given in the case of P.K. Kapur Vs. Union of India (UOI) and Others, . The Supreme Court dealt with the very aspect sought to be urged before us and observed as under:

7. We do not find any merit in the above arguments. As stated above, appellant stood superannuated from the Indian Army on 30.11.89. He was entitled to war disability pension. He has been paid arrears on that basis on and from 30.11.89. Under Government of India letter No. PC 1(2)/97/D(Pen-C) dated 16.5.2001 the rate of war injury element for hundred per cent disability in battle casualty cases has been prescribed. It is in accordance with the rates mentioned in para 11.2 of the letter of Government of India No. 1(2)/97/D(Pen-C) dated 31.1.2001. Under O.M. dated 3.2.2000 the benefit of enhancement of percentage of disability and not the rates, is given to officers who were in service on or after 1.1.96. This enhancement is from 30 % to 50 %. Appellant claims this enhancement from 30 % to 50% in his case also. However, O.M. Dated 3.2.2000 states that the said enhancement shall be applicable only to those officers who stood invalidated out of service. This provision is not applicable to the appellant who retired on superannuation prior to 1.1.1996. Appellant was not invalidated out of service. He completed his normal tenure of service. The benefit of enhancement is given to those officers who stood invalidated out of service because their tenure of service got cut due to invalidment on account of disability or war injury. Therefore, the appellant does not fall in the category of invalidment. The Government is always entitled to classify officers who stood retired vis-?-vis the

officers whose tenure of service got reduced due to invalidment. These are two distinct and separate categories. Hence, there is no violation of Article 14 of the Constitution.

8. It is lastly urged by the appellant that he has not been paid war injury pension at the current rate. In this connection, he submitted that under the rules for casualty pensioners invalidation from service is a necessary condition for the grant of disability pension. If a person is released from service in a lower medical category then what he was he at the time of recruitment, he would be treated as invalidated from service. Appellant contended that he was released in a lower medical category from service on 30.11.89 then what he ws at the time of recruitment and, Therefore, he should be treated as invalidated from service with effect from the date of release for the purpose of grant of disability pension.

9. We do not find any merit in the third submission. Appellant retired on 30.11.89 on superannuation. He was never invalidated. He now claims to be invalidated out of service. Having stood retired from service after completing full tenure of service, appellant cannot now claim that he was invalidated out of service. The concept of invalidment applies to cases in which the tenure of service is cut short due to invalidment on account of war injury or disability. The concept of invalidment does not apply to cases where an officer completes his tenure of service and retires on attaining the age of superannuation. Therefore there is no merit in the third contention raised by the appellant.

9. Learned Counsel for the petitioner seeks to contend that the reference has been made in the aforesaid Judgment to the office memorandum dated, 3.2.2000, while in the case of armed services office memorandum dated, 16.5.2001 is applicable. It is thus submitted that the relevant circular was not brought to the notice of the Supreme Court.

10. A reading of the office memorandum dated 3.2.2000 shows that it is a general circular arising from the recommendations of Fifth Central Pay Commission while the office memorandum dated 16.5.2001 is specifically applicable to the armed forces. Be that as it may, the ratio of the Judgment in P.K. Kapur case (supra) is abundantly clear, specifically in respect of the distinction between persons who had been invalidated out of service before the expiry of their tenure of service as compared to the persons who completed their tenure but still are entitled to disability pension on account of certain percentage of disability.

11. We are, thus bound by observation of P.K. Kapur's case (supra). The writ petition is thus without merits.

12. Dismissed.