

(2014) 10 KL CK 0179

In the High Court Of Kerala

Case No : Writ Appeal No. 1538 of 2009 in O.P. 34724/2000

Government of India

APPELLANT

Vs

M.K. Sivaraman

RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0179

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : S. Krishnamoorthy, CGC, Advocate for the Appellant; P. Ramakrishnan, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. Heard the learned counsel for the appellants as well as the learned counsel for the respondent/petitioner.
2. This writ appeal has been filed against the judgment in O.P. No. 34724 of 2000 dated 23.9.2008, by which, the learned Single Judge allowed the writ petition filed by the petitioner/respondent quashing Exts. P2 and P4 and directing the respondents therein to continue to pay to the petitioner disability pension as before as if he has never become disentitled for pension. Government of India is in appeal against the said judgment.
3. Brief facts necessary to be noted for deciding the appeal are:-

The petitioner was invalided out of military service in October, 1988. In the Medical Board's report dated 21.11.1997, the petitioner's disability was re-assessed and fixed at 20% and he was continued to pay the disability pension. By Ext. P2, the petitioner was informed that his medical disability was reassessed on 7.10.1997 at less than 20% (11-14%) for five years. Subsequently, by Ext. P4 letter dated 21.9.1999, the petitioner was informed that on a perusal of his service/medical documents, the Appellate Medical Authority has found that the

petitioner's disability has improved and has assessed his disablement at less than 20% (11-14%) for ten years and he was not entitled for disability pension. Challenging Exts. P2 and P4, writ petition was filed by the petitioner. The learned Single Judge has allowed the writ petition by giving his reasoning and observations in paragraph 4 of the judgment, which is extracted as below:-

"I am at a complete loss to understand how the Joint Director of Armed Forces Medical Services and the Medical Advisor (Pension) who have never seen the petitioner could decide the percentage of disability, when a team of medical doctors of the military had examined the petitioner and determined the percentage of disability as 20%. No records are also produced before me to prove as to how the Joint Director has come to the conclusion that disability assessed by the Medical Board is wrong. That being so, I am of opinion that the report of the Medical Board, which examined the petitioner, should be given more weight in the circumstances. Since, by Ext. P1, that Medical Board has assessed the petitioner's disability at 20%, Exts. P2 and P4 orders are clearly unsustainable. Accordingly, the same are quashed. The respondents are directed to continue to pay to the petitioner disability pension as before as if he has never become disentitled for pension. Arrears in this regard shall be paid within two months from the date of receipt of a copy of this judgment. If the arrears are not paid within the said two months, the same would carry interest at 9% p.a. from the date from which payment of pension was stopped, till date of payment. The original petition is disposed of as above."

4. Learned counsel for the appellants submits that the petitioner was never personally examined. Hence, his disability could not have been assessed at 11-14%. The documents/papers pertaining to the report of the Medical Board have been brought on record. Ext. P4, which was sought to be quashed in the writ petition has expressly mentioned that Appellate Medical Board has found disability at less than 20%. It is useful to quote paragraph 3 of the letter, which is to the following effect:-

"3. Disability pension was sanctioned to you upto 05 Jan 98. On perusal of your service/medical documents, the Appellate Medical Authority has found that your disability has improved and has assessed your disablement at less than 20% (11-14%) for ten years. Since your disablement has been assessed at less than 20% whereas 20% is the minimum percentage of disablement for entitlement to disability pension, you are not entitled for disability pension with effect from 06 Jan 98 to 06 Oct 2007."

The above decision was communicated to the petitioner by letter dated 3.11.1999. When the Appellate Medical Board has reassessed and found the disability at less than 20%, we do not find any valid reason on the record to interfere with the said decision. If the disability pension last received by the petitioner was up to 5.1.1998, which was on assessment of his disability at 20%, with which no exemption can be taken. The learned Single Judge has observed that no records were produced to prove as to how the Joint Director has come to

the conclusion that disability assessed by the Medical Board is wrong. The present Joint Director/Appellate Authority is also a medical officer and the assessment was made by the Appellate Medical Authority. There was no mala fide or any kind of other procedural irregularities have been alleged to impeach the decision of the Appellate Medical Authority. The decision of the Medical Board or Appellate Medical Authority's decision are taken by some experts and which have, not normally, been interfered unless there are very special reasons. We are of the view that, the learned Single Judge interfered with the orders, Exts. P2 and P4 without there being sufficient reason. The appeal deserves to be allowed and the judgment of the learned Single Judge is set aside.

The Writ Appeal, hence, is allowed.