
(2001) 01 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7398 of 2000

Hari Chand

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 01 P&H CK 0009

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

Bench : Single Bench

Advocate : Mr. T.S. Dhindsa, for the Appellant; Mr. Gurpreet Singh, for the Respondent

Judgement

R.L. Anand, J.—Ex-Sepoy Hari Chand has filed the present writ petition under Articles 226/227 of the Constitution of India and has made

a prayer that the order vide which his disability pension was discontinued w.e.f. August, 1999, passed by the respondents, be quashed and

directions be given to the respondents to release him the benefit of disability pension w.e.f. August, 1999.

2. The case set up by the petitioner is that he was born in the year 1941 and was enrolled in the Indian Army on 17.9.1965 in EME. He was

technically qualified and was assigned the trade of Turner/Welder. He was discharged from the Army on 27.8.1970 on account of medical

disability io the following effect :-

Sacrolisation of Transverse process of 50 Lumber Vertebra.

The petitioner was assigned medical category "C" and was granted disability pension vide award dated 22.6.1971. This benefit was granted upto

10.8.1980. On 21.8.1980 the petitioner was required to appear before a medical

board for reassessment and the board assessed the disability at over 20%. Accordingly, vide award dated 21.8.1990, the disability pension granted to him was extended upto 30.5.1990. It is further pleaded by the petitioner that he was never asked to appear before any medical board nor any communication in this regard was received by him and he was disbursed the disability pension from 27.8.1970 to July, 1999. After August, 1999 the disability pension has been discontinued and this action on the part of the respondents is illegal. The petitioner served legal notice dated 10.9.1999. In response to the notice he received reply dated 27.8.1999 vide which it was conveyed to him that initially his disability was assessed at 20% which has now been decreased to less than 20% and, therefore, he is not entitled to the benefit of disability pension, been granted to him w.e.f. 27.8.1970 to 10.8.1980.

3. Notice of the writ petition was given to the respondents, who filed the reply and denied the allegations. According to the respondents, CCDA

Allahabad had reduced the disability of the petitioner less than 20%, therefore, he is not entitled to the benefit of disability pension. The CCDA,

Allahabad is competent to reduce the disability pension. It is further the stand of the respondents that the disability of the petitioner was reduced to

less than 20% somewhere in the month of June, 1990. But unfortunately it could not be communicated to the petitioner and the petitioner had been

taking the benefit of disability pension right from June, 1990 to August, 1999.

4. I have heard Mr. T.S. Dhindsa, Advocate on behalf of the petitioner, Mr. Gurpreet Singh, Advocate on behalf of the Union of India and with

their assistance have gone through the records of the case.

5. Admittedly, the petitioner was given the benefit of disability pension at the first instance. Assuming for the sake of argument that the stand of the

respondents is taken as correct that the disability of the petition was reduced less than 20% somewhere in the month of June, 1990 and that the

petitioner had been taking the undue advantage of the disability pension from June 1990, onwards, still this writ petition is to be allowed. The

disability has been reduced by CCDA, Allahabad, which has tried to differ with the opinion of the medical board. Before reducing the disability of

the petitioner, principles of natural justice have not been adhered to. The CCDA has no locus-standi to differ with the findings of the medical

board.

In this view of the matter, I allow this writ petition and give the directions to the respondents to allow the petitioner to avail the benefit of disability

pension w.e.f. August, 1999 onwards and the arrears shall be released to the petitioner within three months from the receipt of the copy of the

order, failing which the petitioner shall be entitled to interest @ 12% p.a. The petitioner shall, however, appear before the Re-survey Medical

Board as and when called upon by the respondent-authorities. There shall be no order as to costs.

6. Petition allowed.