
(2014) 07 P&H CK 0865
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7428 of 2014

Harinder Pal Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Citation : (2014) 176 PLR 735

Hon'ble Judges : Hemant Gupta, J;Ajay Tewari, J

Bench : Division Bench

Advocate : Rajeev Anand, Advocate for the Appellant; Kamla Malik, Advocate for the Respondent

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to an order passed by the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir (for short "the Tribunal") on 27.01.2014, whereby an Original Application filed by the petitioner for quashing the orders dated 15.11.2006 and 24.12.2002 rejecting the claim of the petitioner for grant of disability pension remained unsuccessful. The petitioner was commissioned on 21.12.1968 in the Indian Army having been granted Permanent Regular Commission. During service, the petitioner suffered two injuries i.e. firstly, in the year 1981-82, when he was posted in 5009 Company Army Service Corps (Composite) deputed at Joshimath in the UP Hills, and secondly, on 18.11.1997, when he was returning back from his office after duty to his home. In the first injury, the petitioner received - "Fracture Lateral Condyle Temia (LT)". Such injury was received by the petitioner in a road accident, when he was returning to his Unit after availing holidays. For such injury, he was treated in the Military Hospital at Chandigarh and was placed in the low medical category Shape 1 (Permanent). The second injury was received by the petitioner in another accident on 18.11.1997, when he was returning home from his routine official duty resulting into "Fracture Neck Femur (Left)". The petitioner superannuated on 31.11.2002.

2. Earlier, the claim of the petitioner for disability suffered in an accident in the

year 1982 was declined for the reason that the disability is neither attributable to nor aggravated by military service vide communication dated 24.12.2002 (Annexure P-11). The petitioner sought disability pension for the injuries suffered, but his claim was rejected vide orders impugned in the Original Application, as both the injuries were not considered to be attributable to or aggravated by military service. However, the Tribunal refused to interfere in the matter for the reason that the claim of the petitioner is barred by limitation.

3. A perusal of the order dated 15.11.2006 (Annexure P-15) shows that first injury was sustained by the petitioner on 10.01.1982, when he was on furlough leave, whereas the second injury was sustained on 18.11.1997, when he was going to market. Though the disability is assessed at 20% for life, but since the injuries are not attributable to or aggravated by military service, the petitioner was found not entitled to disability pension.

4. The issue, as to whether the Armed Forces personnel, when on leave suffers any injury is entitled to disability pension, has been answered by a Division Bench of this Court in CWP No. 17792 of 2013 (O&M) titled "Barkat Masih v. Union of India and others", (2014-4)176 P.L.R. 453 decided on 23.05.2014, wherein it has been held that the injury suffered by an Armed Forces personnel, when on leave is also deemed to be attributable to or aggravated by military service. It was observed as under:

"20. In view of the judgment of Hon'ble Supreme Court in Madan Singh Shekhawat Vs. Union of India and Others, , Balbir Singh and Another Vs. State of Punjab, and that of Full Bench judgment of this court in Union of India and Others Vs. Khushbash Singh, , we find that the injuries suffered by the petitioner when on casual leave entitles the petitioner for a disability pension as the injury would be deemed to have been attributed to military service. Consequently, the writ petition is allowed."

5. In another judgment, CWP No. 7277 of 2013 titled "Ex. Naik Umed Singh v. Union of India and others", (2014-4)176 P.L.R. 137 decided on 14.05.2014, while considering the argument in respect of bar of limitation, it has been held that since the pension is a recurring cause of action, bar of limitation would not be available, however, the arrears of pension would be restricted to a period of three years prior to the initiation of lis. It has been held to the following effect:

"However, since a person has approached after delay, the claim of arrears would be restricted to a period of three years prior to initiation of lis, as any claim for money could be lodged only within three years from the date right to recovery arises in terms of Article 137 of the Limitation Act, 1963. Therefore, we find that the claim of disability pension cannot be declined for the reason that it was not raised within three years of discharge from the Army, but the payment of arrears would be restricted to a period of three years before the initiation of lis."

In view of the above, the present petition is allowed and the impugned order dated 27.01.2014 is set aside. The respondents are directed to compute the

disability pension payable to the petitioner for the disability suffered, when he was on leave and grant the necessary benefits within a period of three months from the date of receipt of the copy of the order. However, the petitioner shall be entitled to arrears of pension for a period of three years prior to the initiation of proceedings before the Armed Forces Tribunal.