

(2006) 09 P&H CK 0238
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18125 of 1995

Jagdev Singh Brar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

Citation : (2006) 09 P&H CK 0238

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Bhim Sen Sehgal and Rajesh Sehgal, for the Appellant; Kamal Sehgal, Sr. Panel Counsel and S.K. Sharma, Central Government Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—The petitioner was enrolled in the Army on 2.12.1943. He served in the Middle East from 2.6.1945 to 16.1.1946. He was invalided out of military service on 7.3.1947 on medical grounds i.e. due to the disease of "DERMATITIS ECSEMATIOD LT LEG". The disease of the petitioner was held to be attributable to or aggravated by military service and at the time of invalidation the disability was more than 20% as assessed by the Medical Board. The petitioner was granted disability pension consisting of service element and disability element for 20% disability from 7.3.1947 to 6.3.1949. Thereafter the disability pension of the petitioner was not extended as the disability percentage of the petitioner was assessed at less than 20%. The respondents also stopped the service element of disability pension of the petitioner w.e.f. 7.3.1949. The petitioner represented the respondents for grant of service element of disability pension on the ground that his original pension carried the same. Despite a protracted correspondence the respondents have not released the service element of pension to the petitioner.

2. In the written statement the respondents have taken the stand that since the disability pension of the petitioner was discontinued w.e.f. 7.3.1949 as his

disability was assessed at less than 20% and his appeal has also been disallowed on 2.8.1950, therefore, after a lapse of 45 years the petitioner cannot claim the relief made in the instant petition and the petitioner is not entitled for grant of service element of pension. It has also been asserted that the petitioner has not served the Army for minimum 10 years of service. However, it has not been denied that the disability of the petitioner was not attributable or aggravated by military service. Learned Counsel for the petitioner has confined his claim only to the service element of disability pension and has given up the claim for disability element.

3. The question which arises for consideration in this petition is whether the petitioner is entitled to the grant of service element of disability pension after discontinuation of disability element. Another question which would require determination is whether the claim made by the petitioner is barred by time. Both the issues have been considered in detail in two similar writ petitions namely Dalip Singh v. Union of India and Ors. CWP No. 2611 of 2003 and Kehar Singh v. Union of India and Ors. CWP No. 18332 of 2003 which have been decided today vide separate detailed orders. Both the issues have been decided in favour of the petitioner in those cases. The matter being similar on facts and law, the same reasoning is adopted in the present case as well. Accordingly, the writ petition deserved to be allowed. In view of the above, the petitioner is held entitled to the service element of pension for life as per the rates fixed by the Central Government from time to time from the date it was discontinued. The respondents shall calculate the due arrears of the petitioner till date and disburse the same to him within three months from the date of receipt of a certified copy of this judgement. In case the arrears are not disbursed within the said period of three months, the entire arrears will carry interest at the rate of 12% from the date of expiry of three months till the date of payment. The respondents are also directed to regularly pay service element of disability pension to the petitioner every month without any break for whole of his life. The writ petition is allowed in the above terms with no orders as to costs.