

(1998) 11 DEL CK 0026
In the Delhi High Court
Case No : C.W. No. 4603 of 1997

Jagdish (Ex. Cfn)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-11-1998

Acts Referred:

Citation : (1999) 48 DRJ 818

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. S.M. Hooda, for the Appellant; Mr. Y.D. Nagar, for the Respondent

Judgement

K. Ramamoorthy, J.—The writ petitioner was getting disability pension from 27.10.1974. Later on it was stopped. He has filed the writ petition claiming the following reliefs:

To issue a writ in the nature of certiorari for quashing the rejection letter (copy never sent to the petitioner).

To issue a writ in the nature of mandamus directing the respondents to pay the 20% disability w.e.f. 28.10.1974 and also pay the arrears Along with the interest thereon.

2. The fact that he was being paid disability till October 1974 is not denied by the respondents. The stand taken by the respondents in the counter is that the disability pension to the petitioner was re-assessed at less than 20% final on 04.04.1978 because effects of aggravation of his disability deemed to have passed off. According to the Respondents the CCDA (P) Allahabad after due consideration of disability pension claim in consultation with MA(P) attached to them re-assessed his disability less than 20% final and discontinued his disability pension. The learned counsel for the petitioner, Mr. S.M. Hooda had relied upon the Judgment of the Supreme Court in CA No.164 of 1993 (Ex. Sapper Mohinder Singh Vs. Union of India) dated 14.01.1993 and submitted that once the competent medical Board had given the opinion about the disability that cannot

be changed by the CCDA (P) Allahabad without any material. The Supreme Court held:

We have examined the relevant materials and we do not feel satisfied with the plea taken in the counter affidavit. No details of the consultation has been disclosed by the respondent nor it is claimed that the appellant has been re-examined by any higher medical authority. We are not prepared to act on the vague allegations in the counter affidavit referred to above. In view of all the relevant circumstances of the case we are of the opinion that the Disability Pension assessed at the rate of 40% by the Medical Board, which had examined the appellant, should be respected until a fresh Medical Board examines the appellant again and comes to a different conclusion. Accordingly, we direct that for the period 1.8.1989 to 31.1.1993 the appellant shall be paid the Disability Pension at the rate of 40% and it will be open to the authority concerned to have the appellant re-examined by a properly constituted Medical Board for re-assessment of the disability with effect from 01.02.1993.

3. The Division Bench of this Court had to consider the point in CW No.2811 of 1993 by Judgment dated 06.02.1995. The Division Bench held:

C.W. No.2811/93

Rule D.B.

The petitioner has filed this writ petition in May 1993 for quashing the orders dated 10.10.1990 and 10.07.1992 passed by the respondents and for directing them to pay 205 disability pension with effect from the due date. A Division Bench of this Court recorded on 28.5.1993 that the petitioner got temporary disability pension by order dated 13.1.1989 on the basis that he was assessed having 20% disability but by letter dated 30.10.1990 it was withdrawn on the ground that the disability of the petitioner was re-assessed and was found to be 11 to 14%. On that ground show cause notice was ordered.

A reply has been filed by the respondents. In the reply to the grounds it is mentioned under the heading "(C)" that the petitioner was brought before Re-Survey Medical Board on 27th June, 1990 for the assessment of the disability and was assessed at 20% at Base Hospital, Delhi Cantonment as per AFMSF-17 (Re-Survey Medical Board Proceedings) and that the petitioner was also informed accordingly. Thereafter, the re-assessment of disability pension claim was sent to the CDA (P), Allahabad, but the CDA (P), Allahabad ignored the opinion of the Re-Survey Medical Board that once again assessed the petitioner's disability at 11% to 14% and disallowed the pension.

After hearing Counsel on both sides we are of the view that once the Re-Survey Medical Board had given its opinion on 27.6.1990 and assessed the disability of the petitioner at 20%, it was not open to the CDA (P), Allahabad to ignore the same without any further re-assessment by the Re-Survey Medical Board.

In the circumstances, we direct the Controller of defense Accounts (Pension),

Allahabad respondent no.2 herein, to proceed on the basis that the disability of the petitioner was at 20% and pass appropriate orders for payment of the amount with effect from 26.8.1998 on which date the disability pension was stopped. We direct that the arrears shall be disbursed to the petitioner within three months from today.

Writ petition is allowed accordingly. Dasti.

Sd/-

M.J. Rao

Chief Justice

Sd/-

D.K. Jain, Judge

Feb. 6, 1995.

4. Respondents had assumed everything to come to the conclusion that the CCDA(P) Allahabad was competent to decide the issue without any reference to the Medical Board. The action of the respondents is absolutely arbitrary and Therefore, it cannot be sustained in law. The petitioner shall be entitled to the payment of disability pension as being paid prior to 28.10.1974 and he shall be continue to be paid until the competent Medical Board decides that the petitioner would not be entitled to disability pension.

5. Accordingly, the writ petition stands allowed. The respondents are directed to pay the disability pension from 28.10.1974 up to the date and shall continue to pay to the petitioner. The petitioner shall be entitled to interest on the arrears @ 10% per annum from 28.10.1997 till the date of payment. The respondents shall pay the arrears on or before 31.12.1998.

There shall be no order as to costs.