

(2001) 05 P&H CK 0117
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4179 of 1999

Manjinder Singh (Ex-serviceman)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2001) 05 P&H CK 0117

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

Bench : Single Bench

Advocate : Mr. V.S. Sehpal, for the Appellant; Mr. N.S. Bhoparai, for the Respondent

Judgement

R.L. Anand, J.—Shri Manjinder Singh has filed the present writ petition under Articles 226/227 of the Constitution of India against the Union of India and others and it has been prayed by the petitioner that a writ in the nature of certiorari for quashing the impugned award dated 31.12.1996, given by respondent No. 3 (Annexure P-6), vide which he had reduced the percentage of the disability of the petitioner in an arbitrary and illegal manner, may be issued.

2. It has been further prayed by the petitioner that directions be issued to the respondents to release the benefit of disability pension to the petitioner as assessed by the Release Medical Board.

3. The case of the petitioner can be described in the following manner. According to the petitioner he was recruited into the army on 26.8.86 and at the time of his joining the army he was found medically fit by the recruiting office. Thereafter, the petitioner was despatched to No. 1 Signal Training Centre Jabalpur for training. On 10.8.1989, the petitioner was employed in high altitude area in Jammu and Kashmir and he suffered from Asthmatic Bronchitis due to exposure to hostile climate. He was evacuated to Command Hospital (W.C.) Chandimandir for treatment and was downgraded to medical category CEE temporary. The

employability restrictions imposed upon the petitioner by the Medical Authority were that he was not to be exposed to changing season winter season. It was also opined by the Medical Specialist that the petitioner had history of aggravation due to exposure to dust, rains and cold. The petitioner was transferred to Western Command Signal Regt. at Chandimandir and he served there from 11.1.1990 to 3.5.1994. On 17.9.94, it was recommended that the petitioner be placed in medical category BEE (permanent) because he had the symptoms of exposure to smoke, dust and cold weather. In the month of May, 1994, the petitioner was sent to 14 Signal Group at Jaipur in Rajasthan where he was exposed to adverse condition of dust at high velocity severely aggravating his disease. Again on 14.11.1995, the petitioner suffered solitary seizure due to high lung infection while on exchange duty and was admitted to Military Hospital Jaipur from where he was evacuated to Command Hospital Chandi Mandir and was further referred to Army Hospital Delhi Cantt for confirmatory opinion of Neurologist. Resultantly the Neurologist on 7.1.1996 opined that the CT Scan of the petitioner was normal and he required to be observed in low medical category for two years from Neuro side. Finally the Release Medical Board assessed the disability of the petitioner under the following heads :-

(a) For Asthmatic Bronchitis-BEE(P) at 30%

(b) For solitary seizure at 100%

4. The case of the petitioner for pension was sent to CCDA which reduced the disability of the petitioner and the CCDA assessed the disability as under :-

Asthmatic Bronchitis-BEE(P) 30%

Solitary Seizure: 60%

Hearing loss 20%

5. The grievance of the petitioner is that reduction by the CCDA under the category solitary seizure from 100% to 60% is illegal as the opinion of the CCDA (Pension) Allahabad is based on papers only and not after the physical examination of the petitioner.

6. Notice of the writ petition was given to the respondents who denied the allegations of the petitioner and the case set up by the respondents is that CCDA formulated the opinion in reducing the disability of the petitioner after taking the opinion of the medical advisory Board which has been constituted by the Government of India for the purpose of assistance to the CCDA itself, and, therefore, the petitioner is not entitled to the benefit of higher disability pension as claimed by him.

7. I have heard the learned counsel for the parties and with their assistance have gone through the record of the case.

8. It has been held by the Hon'ble Supreme Court vide order dated 14.1.1993, passed in Civil Appeal No. 164 of 1993 Ex. Sapper Mohinder Singh v. Union of

India, as under -

"In view of all the relevant circumstances of the case we are of the opinion that the Disability Pension assessed at the late of 40% by the Medical Board, which had examined the appellant, would be respected until a fresh Medical Board examines the appellant again and comes to a different conclusion."

CCDA (Pension) Allahabad or the medical authority never examined the petitioner and, therefore, any opinion formulated by them will not over-ride the opinion of the Release Medical Board which is also the body of the Government and it consists of Medical Specialists. No valid reason was given by the CCDA to differ with the opinion of the Release Medical Board.

9. In this view of the matter, I allow this writ petition and direct the respondents to release the disability pension to the petitioner by counting the percentage of dis-ability which was assessed by the Release Medical Board, within three months from the receipt of the copy of the order failing which the petitioner shall be entitled to interest at the rate of 12% per annum. The petitioner shall appear before the Re-survey Medical Board as and when called upon by the respondent-authority. No order as to costs. Dasti on usual payment.

10. Petition allowed.