
(2000) 11 P&H CK 0219
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16504 of 1999

Mohan Lal Ex-Havildar

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Pension Regulations — Rule 17

Citation : (2000) 11 P&H CK 0219

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

Bench : Single Bench

Advocate : Mr. Pritam Saini, for the Appellant; Mr. M.S. Guglani, for the Respondent

Judgement

R.L. Anand, J.—Shri Mohan Lal Ex-Havildar, pe-litioner, has filed the present writ petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari be issued and the order dated 14.4.1999, Annexure P-6, vide which his disability claim has been reduced, be quashed. The petitioner further prayed that the disability pension be given to him with effect from 1.10.1997.

2. The case set up by the petitioner is that he joined the service of the army on 20.8.1969 as a Sepoy and later on he was promoted as Havildar. After serving more than 23 years, the petitioner suffered Spondy-losis Thesis and he was discharged from the army with the assessment of disability to the extent of 40% and the petitioner was granted disability pension.

3. The petitioner was again examined by the medical board on 29.8.1997 and his disability was again as- sessed at 40%. On 22.5.1997 the case of the petitioner was sent to respondent No. 2 and on 13.5.1998 vide Annexure P-3, the disability of the petitioner was reduced to 20%. On 5.8.1998, the petitioner wrote to the respondents that his disability has been reduced in an illegal manner. He filed an appeal before the Government of India. Ultimately, the petitioner was informed

that his disability has been reduced to 20% in a proper manner.

4. Now the grouse of the petitioner is that he should be given the benefit of the disability pension by assessing his disability at 40% and this benefit should be granted to him with effect from 1.10.1997.

5. Notice of the writ petition was given to the respondents and the stand of the respondent authorities is very short and concise. The case of the respondents is that the disability of the petitioner has been reduced by the CCDA, on the advice of the Medical Advisor attached to the CCDA and since CCDA is a final authority in this matter, therefore, its action is not illegal.

6. I have heard S'nri Pritam Saini, learned counsel appearing on behalf of the petitioner and Shri Anil Malhotra, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of the case.

7. It is proved on the record that by two medical boards the disability of the petitioner was assessed at 40% and this aspect of the case has already been admitted by the respondent authorities. The learned counsel appearing on behalf of the respondents has drawn my attention to Rule 17(c) of the Pension Regulations and submits that as per this Rule, the Medical advisor attached with CCDA has the jurisdiction to evaluate the disability and his recommendation has been accepted by the CCDA and, therefore, the reduced disability of the petitioner is to prevail. He further submitted that there are 9 Medical Boards throughout the country. These Medical Boards are not statutory bodies. In order to have uniformity with regard to the opinion of the Medical Boards, now the Government has set up the Medical advisor whose opinion is binding upon the CCDA. He further submitted that the recommendations of the Medical Boards are advisory in nature and, therefore, if there is any discrepancy between the opinion of the Medical Board and the Medical Advisor, the opinion of the latter will prevail.

8. I have considered the submissions raised by the learned counsel for the parties and am of the opinion that the submission raised by the learned counsel for the respondents cannot be accepted irrespective of the fact that the medical boards are not statutory bodies but those Boards are constituted by the medical experts who are the employees of the Department of the Union of India. Consistent opinion of two Medical Boards in the present case clearly establishes that the disability of the petitioner was 40%. The Medical advisor while reducing the disability has never examined the petitioner. The learned counsel for the respondents has not been able to show that the Medical Advisor attached with the CCDA had ever examined the petitioner.

9. In these circumstances, any opinion formulated by the Medical Advisor while sitting in his office, cannot prevail over the opinion of the Medical Boards which actually have the occasion to examine the patient physically. It is admitted at the bar by the counsel appearing on behalf of the respondents that the Medical Advisor never examined the petitioner before giving his opinion to the CCDA. The

opinion of the Advisor cannot override the opinion of the Medical Board unless and until it is shown by cogent or reliable evidence that the opinion of the Medical Board is contradictory to the rules or otherwise.

10. In this view of the matter, the writ is hereby allowed by setting aside the order dated 14.4.1999 and it is hereby declared that the petitioner shall be entitled to the benefit of disability pension at the rate of 40% with effect from 1.10.1997. Any amount paid to the petitioner towards disability pension, with effect from 1.10.1997, shall be adjustable. The difference of disability pension shall be released to the petitioner within three months from today failing which the petitioner shall also be entitled to 12% interest. The petitioner shall appear before the Re-survey Medical Board as and when called upon by the respondents-authorities.

11. Petition allowed.