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**(2019) 12 DEL CK 0091**

**In the Delhi High Court**

**Case No : Civil Writ Petition No. 10769 Of 2017**

Mohit Ahlawat

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

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**Date of Decision : 09-12-2019**

**Acts Referred:**

Border Security Force Rules, 1969 — Rule 18

Central Civil Services (Extraordinary Pension) Rules, 1939 — Rule 3A

**Citation : (2019) 12 DEL CK 0091**

**Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J**

**Bench : Division Bench**

**Advocate : Ankur Chhibber, Suman Chauhan**

**Final Decision : Disposed Of**

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## **Judgement**

Dr. S. Muralidhar, J

1. The Petitioner, who has been medically boarded out of the Border Security Force ("BSF"), on account of being found permanently unfit, has approached this Court seeking two reliefs. The first is for a direction to the Respondents to grant him extraordinary pension or disability pension and the second is for grant of ex-gratia compensation.

2. The facts in brief are that the Petitioner joined the Armed Force Headquarters, Ministry of Defence as Lower Division Clerk ("LDC") on compassionate grounds on 16th October, 2009. While working as such, he applied for the post of Assistant Commandant in the Central Armed Police Force ("CAPF") through the Union Public Service Commission ("UPSC") in 2012. He appeared in the written examination in 2013 and subsequently, successfully cleared the Physical Efficiency Test and the Medical Examination. He was declared fit on 7th May, 2013.

3. The Petitioner's name was included in the list of the finally selected candidates declared by the UPSC and he was issued an offer of appointment dated 11th

December, 2014 for the post of Assistant Commandant (Direct Entry) [("AC(DE)"] in the BSF. As a result, the Petitioner tendered his technical resignation at the Armed Force and on 16th January, 2015, was relieved from the Armed Force Headquarters.

4. On 19th January, 2015 the Petitioner reported at the BSF Academy Tekanpur, Gwalior on 19th January, 2015 for his basic training as AC (DE).

5. On 23rd November, 2015, the Petitioner sustained a "bi-malleolar" fracture on his left ankle while training during the "assault course" and was therefore admitted at the BSF Hospital and discharged after twelve days. The Petitioner was sanctioned Earned Leave ("EL") from 23rd January, 2016 till 23rd February, 2016 for resting his injured ankle.

6. The Court has been shown the original medical record of his examination by Medical Board on 5th August, 2016. The opinion of the Medical Board reads as under:

"9. Opinion of the Board.

Based on clinical examination, radiological findings and opinion of treating specialists the board is of the opinion that Sh. Mohit Ahlawat AC/DE Trainee Officer Sr. No. 39 is permanently unfit for undergoing Basic AC (DE) Training." (emphasis in original)

7. It should also be noted that in terms of the Medical Board proceedings the status of his disability was indicated as (58.47%).

8. The Petitioner made a representation on 19th October, 2016 for claiming financial assistance under the Golden Jubilee Seema Prahari Kalyan Kawach ("GJSPKK") scheme made available to the persons boarded out on account of the disability. By a reply dated 1st November, 2016, the Respondent rejected the claim of the Petitioner on the ground that he was declared 58.47% "Temporary Disabled", whereas financial assistance could be granted only to Permanently Disabled Officers. The Petitioner made yet another representation on 2nd December, 2016 for financial benefits under the above scheme.

9. The findings of the Medical Board were communicated to the Petitioner on 2nd December, 2016. By his reply dated 5th December, 2016 he accepted those findings. By an order dated 27th December, 2016 the Respondent invalidated the Petitioner on the ground of physical unfitness while acknowledging that the injury sustained by the Petitioner was attributable to Government duty.

10. On 30th December 2016, the Petitioner requested the Respondents that his pension case should be processed. In the meanwhile, the Petitioner rejoined his post as LDC with the Ministry of Defence on 2nd January, 2017 since the Petitioner continued to be on his lien period in the Ministry of Defence.

11. On 15th July, 2017, the Respondent rejected the claim of the Petitioner stating that as per the Office Memorandum ("OM") dated 3rd February, 2000

disability pension was applicable only to those persons who have "permanent disability not less than 60%". By a further clarification letter dated 27th July, 2017, Para 3 of the rejection order was modified and it was stated that the word "60% disability" was erroneously written and the OM dated 3rd February, 2000 nowhere mentions temporary disability. It was accordingly stated that the Petitioner was not qualified to receive the disability pension. It is in these circumstances, that the Petitioner approached this Court seeking the aforementioned relief.

12. In response to the notice issued to the Respondent on 4th December, 2017, a counter affidavit has been filed reiterating the Respondent's position that the Petitioner's disability being a temporary one, he is not entitled to receive disability pension.

13. This Court has heard submissions of counsel for the parties.

14. The first issue to be examined is whether the Respondents are right in characterising the disability of the Petitioner as a temporary one? The Court has already referred to the copy of the opinion of the Medical Board which examined the Petitioner. Part III of the report of the Medical Board proceedings dated 5th August, 2016 states inter alia as under:

"1. His percentage of disability is 58.47% (Temporary)

2. His injury will not give functional stability to his left ankle after completion of treatment so as to make him fit enough to be a Good member of the Force.

3. His incapacity does not appear to us to have been caused by irregular or intemperate habits."

15. It is on this basis that the Petitioner was ultimately boarded out.

Otherwise, the Medical Board was clear that the Petitioner was "permanently unfit" even to undergo training for the post of AC (DE). In view of the categorical opinion of the Medical Board that the Petitioner is "permanently unfit", it is not understood how his disability at 58.47% is characterised as temporary. It is only because the disability was viewed as rendering him permanently unfit that he was boarded out from the BSF in terms of Rule 18 of the BSF Rules, 1969, which reads as under:

"18. Retirement on grounds of physical unfitness -

(1) Where an officer not below the rank of a Deputy Inspector General considers that an officer of the Force is unfit to perform his duties because of his physical conditions, the officer shall be brought before a medical board.

(2) The medical board shall consist of such officers and shall be constituted in such manner as may, from time to time, be laid down by the Director General.

(3) Where the medical board considers the officer to be unfit for service, the Central Government shall communicate to the said officer the findings of the

medical board and thereupon, with in a period of fifteen days of such communication, the officer may make a representation against it to the Central Government.

(4) The Central Government may, on receiving the representation from the officer, refer the case to be reviewed by a fresh medical board constituted for the purpose and order the retirement of the said officer if the decision of the fresh medical board is adverse to him."

16. There is force in the submission of Mr. Ankur Chhibber, learned counsel for the Petitioner, that had the Respondents found the Petitioner only to be temporarily unfit, he could not have been boarded out from the BSF. In the circumstances, characterising the Petitioner"s disability as temporary is contrary to the medical record.

17. Mr. Chhibber has also drawn attention to the OM dated 3rd February, 2000 issued by the Department of Pension and Pensioners" Welfare, Ministry of Personnel and Public Grievances, Government of India, which deals with special benefits in the case of death and disability in service. Inter alia, as a result of the recommendations of the Fifth Central Pay Commission, the OM sets out the stand of the Government revising the percentage of disability for the purpose of computation of the disability "element" in Para V 5 (i), which reads as under:

"5. The Fifth Central Pay Commission also suggested certain procedural changes. These have also been considered by the Government. The President is now pleased to decided as under:

(i) The extent of disability or functional incapacity shall be determined in the following manner for purposes of computing the disability element forming part of benefits:

. . . . %Percentage of disability assessed by Medical Board

Percentage to be reckoned for computation of disability element

Less than 50

50

Between 50 and 75

75

Between 76 and 100

100

18. Therefore, in the present case the disability percentage of the Petitioner would automatically get revised to 75% as it is between 50%-75%. In other words, for the purpose of disability pension, the Petitioner"s disability percentage should be considered as 75% and not 58.47%. Consequently, the grounds on

which the Petitioner's request for disability pension has been rejected cannot be sustained.

19. There appears to be no justifiable reason even in terms of the Central Civil Services (Extraordinary Pensions) Rules as amended on 20th January, 1978 for not granting disability pension. Rule 3-A reads as under:

"3-A. Eligibility

(1)(a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which -

(i) is attributable to Government service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by -

(i) a wound, injury or disease which was attributable to Government service, or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

(2) There shall be a causal connection between -

(a) disablement and Government service; and

(b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix, which shall be treated as part and parcel of these Rules.

20. It will be noticed that there is no distinction made between temporary and permanent disability in terms of Rule 3-A of the Civil Services (Extraordinary Pensions) Rules.

21. As regards the grant of ex-gratia compensation, the reasons for the Respondents not granting this benefit is the same, viz. that the Petitioner's disability is temporary and the percentage is less than 60%. Accordingly, the above ground for rejection of the plea for ex-gratia compensation cannot be also sustained.

22. For the aforementioned reasons, the Court is of the view that the Respondents were in error in both the original communication dated 15th July, 2017 and the subsequent clarification dated 27th July 2017, stating that the Petitioner cannot be granted disability pension and ex-gratia compensation.

23. As a result of the above discussion, directions are issued to the Respondents to pass the necessary orders granting the Petitioner extraordinary pension as well as ex-gratia compensation, as is admissible under the rules, within a period of eight weeks from today. The arrears of pension be paid to the Petitioner before

a period of 12 weeks from today, failing which the Respondents would be liable to pay simple interest at 6% per annum for the period of delay.

24. The petition is disposed of in the above terms.