
(1995) 11 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 391 of 1995

Munshi Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-11-1995

Acts Referred:

Pension Regulations, 1961 — Regulation 173
Pensionary Award Rules, 1982 — Rule 27

Citation : (1995) 4 ILR HP 2623

Hon'ble Judges : S.N. Phukan, C.J; Bhawani Singh, J

Bench : Division Bench

Advocate : A.K. Goel, for the Appellant; P.A. Sharma, Sr. Central Government Standing Counsel, for the Respondent

Judgement

1. The following judgment of the Court was delivered:

This writ petition has been filed by an Ex-serviceman praying, inter alia, for disability pension alongwith interest at the rate of 18% per annum with effect from 18.6.1971 to 8.12.1987, difference of pension with effect from 9.12.1987 to 8.12.1990 and full disability pension with effect from 29.10.1992. The writ Petitioner has also claimed interest for non-payment of pension at the rate of 18% per annum.

2. Briefly stated, the facts are as follows:

The Petitioner was appointed in Signals Corps in Boys Regiment on 18.2.1948 and posted at Mhow. Thereafter he was transferred from place to place and ultimately he was posted in the State of West Bengal. During his service at Pannagarh(West Bengal) he fell ill and was admitted to the Army Hospital on 27.2.1956. It has been alleged that the illness was due to stress and strain while in training. Thereafter, he was shifted to different Hospitals and ultimately he was found to be disabled and the disability was assessed at 100%. It was also found that disability was attributable to the services rendered by the Petitioner while in

service. The disability pension was granted with effect from 31.8.1956 vide Annexure P-1. The Respondents continuously granted the disability pension till 17.6.1971 and it was dis-continued with effect from 18.6.1971 on the ground that dis-ability of the Petitioner after assessment was found to be less than 20% (Vide Annexure P-2). The Petitioner filed representations and only on 9.12.1987 the Respondents held a medical Board and again disability was assessed at 40% and the disability pension was recommended with effect from 9.12.1987 to 8.12.1990 vide letter dated 18.7.1988 (Annexure P-3). The pension was paid from 9.12.1987 to 8.12.1990, but the Petitioner has alleged that it was not according to entitlement, that is, at the rate of Rs. 375/- per month plus disability pension and he was not paid Rs. 194/- per month as service element plus disability pension. Another medical Board was constituted on 8.12.1990 and the Board recommended 30% disability of the Petitioner for his entire life with effect from 9.12.1990 onwards vide Annexure P-4. The Petitioner has alleged that the Assistant Record Officer, Respondent No. 2, reduced the disability from 30% to 20%. It has also been stated that in August, 1992 the Respondents constituted another medical Board and the Board gave the opinion that there is no change in disability of the Petitioner. The report is available at Annexure P-5 to the writ petition. As the Respondents did not pay the disability pension after 28.10.1982, the Petitioner filed various representations without any result and ultimately he was informed by letter dated 8.12.1993 (Annexure P-6) that his claim for disability pension was rejected on the ground that the disability was less than 20%. An appeal was also filed, which was ultimately rejected after various reminders from the writ Petitioner, by letter dated 6.2.1995 vide Annexure P-11, on the ground of limitation. Hence the present petition.

3. Reply-affidavit has been filed by the Assistant Record Officer in Singals Records, Jabalpur, and not by any other Officer of the Unit/Regiment where the Petitioner was working. No affidavit has also been filed by any Medical Officer. It is not disputed that the Petitioner was hospitalised and it has been stated that on 28.3.1956 the Senior Medical Specialist gave the opinion as follows:

A proved case of "PULMONARY TUBERCULOSIS" unfit for further Army Service, category "EEE". Fit for Sanatorium treatment

It has been stated in the reply-affidavit that in view of the above report the Petitioner was discharged from service with effect from 31.8.1956. The report of the medical Board is available at Annexure R-11. The disability was assessed at 100% with effect from 31.8.1956 to 19.6.1958 and according to medical Board the illness was attributable to and aggravated by Military Service. The disability pension was granted at the rate of 38.05 per month. It has been stated that after every two years the disability was to be re-assessed and temporary disability pension consisting of disability and service element was granted. The reports of the medical Boards and the disability found in case of the writ Petitioner from time to time has been stated in paragraph 4 of the reply-affidavit. It has also been stated that for the period from 18.6.1971 to 8.12.1987 the

Medical Board found the disability less than 20% and it was accepted by the CCDA (Pension) and thereafter the Petitioner was not entitled to get the pension for the above period. Subsequently, the disability was re-assessed and found to be 30% from 9.12.1987 to 8.12.1990. Again from 9.12.1990 to 28.10.1992 the medical Board recommended 30% disability for the whole life but CCDA(Pension) reduced it to 20% for 2 years. Again the Medical Board found 20% disability for five years from 29.10.1992, but it was reduced by CCDA(Pension) to less than 20%(that is, 6-10%) and, therefore, according to the Respondents, the Petitioner is not entitled to get pension for 10 years, from 29.10.1992. As such, the disability pension was dis-continued with effect from 29.10.1992. According to the Respondents, as per Regulations 173 of Pension Regulations 1961 Part-I, the disability pension can be granted only if the disability is 20% or above. Copy of the Regulations is available at Annexure R-5. It has also been urged that as per Rule 27(c) of entitlement Rule for casualty Pensionary Award 1982(Annexure R-6), the medical Board has to give findings and recommendations on assessment in case of all disabilities. As the medical Boards are not statutory bodies and their recommendations can be reviewed/revised by the Joint Director Armed Forces Medical Services, who is an office under the Director General Armed Forces Medical Services, attached as Medical Advisor (Pension) in the office of the CCDA (pension), Allahabad. It has been asserted that disability pension has been paid as per Rule/Regulations. It has also been stated that the writ Petitioner is entitled to get service element at the rate of Rs. 375/-per month from 9.12.1987 to 28.10.1992 and this amount was duly paid vide Annexure R-10. it is admitted that though the Medical Board recommended 30% disability for the entire life but the CCDA (Pension), Allahabad, accepted it at 20% for two years on the advise of the medical Advisor attached to him. According to the Respondents as CCDA(Pension) assessed the disability of the Petitioner less than 20% with effect from 29.10.1992, he is not entitled to get disability pension.

4. Heard learned Counsel for the Petitioner and learned Senior Central Government Standing Counsel.

5. From Regulations 173 of Pension Regulations, 1961, we find that disability pension can be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and such disability is assessed at 20% or over. In the case in hand, on the basis of Annexure R-11, the Respondents have admitted that illness of the writ Petitioner was attributable to or aggravated by military service. Therefore, there can be no dispute that the writ Petitioner is entitled to get disability pension provided his disability is 20% or over.

6. As stated above, in paragraph 4 of the reply-affidavit the percentage of disablement recommended by the medical Board and accepted by CCDA (pension), Allahabad, has been indicated. We find that except for a period from 18.6.1971 to 8.12.1987, the disability was assessed by the medical Board at

20% and above which was accepted by the CCDA(Pension). Therefore, the writ Petitioner is not entitled to get any disability pension for the above period. We also find from the said chart that under item No. (q), the percentage of disability was recommended by the Medical Board at 30% for the whole life but it was not accepted by CCDA(Pension) and it was assessed at 20% for two years and accordingly the pension was granted. From item No. (r) of the said chart, we find that the medical Board recommended disability of 20% for five years but it was reduced to less than 20% (6-10%) by the CCDA(Pension), Allahabad, from 29.10.1992 for ten years. Now the question whether after giving recommendation by an expert body, like medical Boards, it can be reduced by CCDA(pension).

7. From Annexure R-6, decision of the Appellate Committee for First Appeals, and as per Clause 26(c)(i), we find that according to said sub-clause medical Boards shall give findings and recommendations on entitlement or assessment in case of all disabilities and as the medical Boards are not statutory bodies, their recommendations can be reviewed/revise by the medical authorities, namely, the Director General Armed Forces Medical Services, who is the final authority for giving views on medical assessments.

8. In paragraph 10, under the heading, brief facts of the case, of the reply-affidavit, it has been reiterated that medical Boards are not statutory bodies and their recommendations can be reviewed or revised by the Joint Director Armed Forces Medical Services, who is an Officer under the Director General Armed Forces Medical Services, attached as medical Advisor (Pension) in the office of CCDA(Pension), Allahabad. We have already stated that the final authority under the above relevant clause is the Director General Armed Forces Medical Services and we hold that this power cannot be delegated to the Joint Director Armed Forces Medical Services, who is attached as Medical Advisor(Pension). We further hold that though medical Board is not a statutory body but being an expert body on medical science the competent authority to review or revise the opinion of the Medical Board is the Director General Armed Forces Medical Services and not any subordinate Officer. The power of review/revision being vested with the Director General Armed Forces Medical Services cannot be delegated to any other authority.

9. From the reply-affidavit and the annexures, we do not find on what ground the percentage of disability of the Petitioner recommended by the medical Boards was reduced by CCDA(Pension). Even if, we accept that the Joint Director Armed Forces Medical Services attached as medical Advisor(Pension) in the office of the CCDA(Pension) is competent to review or revise the assessment of disablement, no affidavit is forth coming from the said medical officer stating that the recommendations of the medical Boards were not accepted by him nor any reason has been assigned, as stated above. Therefore, we hold that the percentage of dis-ablement recommended by the medical Board under item(q) of paragraph 4 of the reply-affidavit at 30% for the whole life, was arbitrarily

reduced to less than 20% and it cannot stand.

10. For the reasons stated above, the writ petition is allowed and we direct that the Petitioner shall be paid disability pension including service element as per percentage of disability recommended by the Medical Boards, as stated in Paragraph 4 of the reply-affidavit under the heading, brief facts of the case. The Petitioner shall, however, not be entitled to get any disability pension for the period from 18.6.1971 to 8.12.1987 as his disability was assessed at less than 20 by the medical Board. The Petitioner shall, however, be entitled to disability pension including service element for his whole life as the medical Board assessed the disability at 30% and subsequently 20%. if the disability pension including service element has not been paid to the writ Petitioner, as stated above, the same shall be paid within three months from today and his current disability pension including service element shall be paid regularly, in accordance with the Rules, for the whole life.

11. With the above directions, the writ petition is disposed of.

12. No costs.