
(2004) 04 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 865 of 2000

Narain Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 300A

Citation : (2004) 2 ShimLC 1

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Advocate : Chandranarayana Singh, for the Appellant; N.K. Thakur, Sr. CGSC, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—Petitioner has filed this writ petition for grant of the following reliefs:

(i) That the impugned order as per Annexure P-6 dated 31st December, 1988 and impugned order as per Annexure P-19 dated 3.3.2000 may kindly be quashed and set aside and consequently hold the Petitioner's entitlement to the disability pension from the date it was discontinued i.e. 17.7.1988 for life.

(ii) Damages to the tune of Rs. one lac should also be awarded for the mental agony, physical suffering and money spent by the Petitioner for the said purpose may also be awarded.

(iii) The disability pension that was discontinued may be awarded with 18% interest right from the date of discontinuation of the same.

(iv) That the Regulation 173 with regard to assessment of disability pension at 20% or more may be struck down.

(v) That the records of the case may be called for.

(vi) Cost of the petition may be awarded in favour of the Petitioner.

(vii) Any other order, relief, directions which this Hon"ble Court deems just and proper may also be passed in favour of the Petitioner.

2. Facts as they emerge from the pleadings of the parties are, that Petitioner was enrolled as Sepoy in the Indian Army in the Dogra Regiment on 14.3.1968. After having completed the basic training at the Dogra Regimental Centre, he was posted in 14th Battalion, Dogra Regiment, on 6.6.1969. Thereafter he served at different places wherever he was deployed. On his being posted back to his parent unit i.e. 14th Dogra, he was downgraded to CEE (permanent) by the Medical Board, conducted at Military Hospital, Dehradun on 16.6.1975.

3. Reason for this was that he was suffering from "low backache". He was brought before the Released Medical Board again held at Military Hospital, Dehradun on 22.9.1975. After completing codal formalities as required under the law, Petitioner was discharged from Army Service in low medical category CEE (permanent) on 24.10.1975.

4. On the date of his discharge from Army, the Petitioner had rendered 7 years and 225 days colour service. He had not rendered the minimum qualifying service for being eligible to get service pension. And because he had not rendered the minimum qualifying service of 10 years required for invalid pension, therefore, he was not granted service element of disability pension.

5. Admittedly his disability was assessed at 20% for life which was attributable to military service, and the Petitioner was granted disability pension @ Rs. 63 per month with effect from 25.10.1975 to 21.9.1977, and Rs. 54 per month from 22.9.1977 for life + ad hoc increase @ Rs. 15 per month with effect from 25.10.1975 vide PPO No. D/1209/76. Case of the Respondents is that the Petitioner was brought before the Medical Resurvey Board from time to time and his disability was found at 20%. As such, payment pension order was issued in favour of the Petitioner vide PPO No. D/RA/14234/88. Amongst other things, it was clearly mentioned in this PPO that disability pension shall be discontinued thereafter in case the disability is assessed at less than 20% for life.

6. In the aforesaid background, fact remains that the disability pension of the Petitioner was discontinued according to him on and with effect from 31.12.1988 as his disability had not substantially increased. Though it continued to be at 20%.

7. On the basis of the stand of the Respondents in their reply to this writ petition, it is further clear that his disability was found at 20%, by the Medical Resurvey Board that was lastly got conducted by the Army Authorities at Army Hospital, Chandimandir on 7.10.1999. For ready reference this stand of the Respondents in para 6 of the reply being relevant and material for this case is extracted hereinbelow:

The Petitioner was brought before Resurvey Medical Board held at Command

Hospital, Western Command, Chandimandir on 7 October, 1999 and his disability was again re-assessed as 20% without any substantial increase in the disability assessed by the previous Resurvey Medical Boards. His disability pension claim was forwarded to CCDA(P) Allahabad vide Records The Dogra Regiment Letter No. Pen/D/2505/3965324/46 dated 10th November, 1999. CCDA (P), Allahabad vide their letter No. G3/RA/11/99/14456/IV dated 14th February, 2000 rejected his reassessment disability pension claim with the remarks that SI (Substantial Increase) claim is not tenable. The Petitioner was informed accordingly vide Records The Dogra Regiment Letter No. Pen/D/7505/3965384/50 dated 3rd March, 2000.

8. Despite this admitted position by the Respondent that the Petitioner was suffering from 20% disability, Respondent No. 3 has unilaterally and without any cause muchless justifiable cause in law and without any reason, has rejected the claim of the Petitioner. This is what is mentioned in Annexure R-6 filed by the Respondents. What has been said while rejecting the claim of the Petitioner is extracted hereinbelow:

Reassessment claim alongwith other Medical papers received vide your letter cited under reference are returned herewith unactioned as S.I. claim is not tenable.

This communication is addressed by the office of the Principal CDA (P) Allahabad, to Officer Incharge Records, Dogra Regiment, Faizabad (UP).

While supporting the action of his clients, learned Counsel for the Respondents, stated that since there is no substantial increase to the disability of the Petitioner, Annexure R-6 has rightly been issued and no exception can be taken to it, therefore, he has prayed for dismissal of this writ petition. This plea has been raised simply to be rejected for the reasons set out hereinbelow. r Fortunately for the Petitioner, Respondents have not disputed his (Petitioner's) disability being at 20% in view of what has been extracted hereinabove from their reply. It is also not their case that it is not attributable to the Army Service. It is further not the case of any of the Respondents that disability of the Petitioner is less than 20%.

9. In these circumstances, it is very strange that Respondent No. 3 has taken upon himself the job of a medical expert while rejecting the claim of pension of the Petitioner admissible under Regulation 48 of the Regulations supra of 1961.

10. It is by now well settled by a number of decisions of this Court that when disability is found at 20% or above, a person like Petitioner is entitled to disability pension as admissible under the Regulations. In these circumstances, I am satisfied that the action of the Respondents in denying the disability pension to the Petitioner that he was getting till it was stopped, that too, illegally and without any authority of law, cannot be upheld. Reason being that pension is not a bounty and/or a concession. It is granted to a person under the rules on the basis of the service rendered by him having put best part of his life in the

service. And is earned by a person like Petitioner. It is in the nature of property and thus he cannot be deprived of the same without due process of law. This is one side of this case.

11. Other fact is that for wholly irrelevant, extraneous, as well as capricious and whimsical reasons, Respondent No. 3 has refused pension to the Petitioner. Such an action also cannot be sustained either in law or on the touchstone of Articles 14 and 300A of the Constitution of India. For taking this view, reliance is being placed on decisions of this Court in Prem Singh (Ex-Sepoy) v. Union of India and Ors. (1999) 1 Shim. L.C. 70; Bhajan Lal v. Union of India and Ors. 1999 (3) Shim. L.C. 253 and Ram Singh Jaggi v. Union of India and Ors. 1995 (2) Sim. L.C. 152.

12. From whatever angle the case of the Petitioner may be viewed, so far his claim for the grant of disability pension is concerned, action of the Respondents cannot be sustained. And it is ordered accordingly.

13. No other point is urged.

14. In view of the aforesaid discussion, while allowing this writ petition, it is ordered that Petitioner will be entitled to disability pension admissible under the Regulation on and with effect from 1.1.1989, the date from which it was discontinued. Respondent No. 3 is directed now to implement this judgment and issue the necessary Pension Payment Order by or before 30.9.2004. Longer date is given so that needful can be done by the concerned Respondent. In case any other or further information/document is required from the Petitioner, the same shall be got by Respondent No. 3 by deputing a special messenger at his cost from the native place of the Petitioner and also get all formalities/papers completed/signed from him. This direction alongwith the date fixed for issuing the pension payment order is pre-emptory and all concerned will ensure that they do the needful. No costs.

15. Respondent No. 3 shall file affidavit reporting compliance with this judgment and for this limited purpose only, this case be listed on 8.10.2004 before the Court.

16. Urgent copy of this judgment will be made available to the learned Counsel for the parties by 13.4.2004.