

(2003) 02 RAJ CK 0049

In the Rajasthan High Court

Case No : DB Civil Special Appeal (Writ) No. 1127 of 2002

Nathu Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Citation : (2003) 1 RLW 632 : (2003) 2 WLC 1

Hon'ble Judges : Anil Dev Singh, C.J.; M.R. Calla, J

Bench : Division Bench

Advocate : Shyam Singh, for the Appellant; Vijay Singh, for the Respondent

Judgement

Singh, C.J.—Since, the point involved in the matter is short one, we proceed to dispose of the same with the consent of the parties today itself.

2. The appellant was enrolled in the Army on 13.11.1967. At the time of his enrolment he was placed in medical category A. While in service he fell ill. As a consequence of his illness, he was boarded out of the Army on 19.10.1968 with medical category E. The Medical Board, which was convened before the appellant was boarded out of service, assessed his disability at 100%.

3. After being boarded out, the appellant filed a representation to the concerned authority for grant of disability pension. The representation however, was rejected.

4. The appellant being aggrieved by the rejection of his demand for disability pension, filed a writ petition before this Court.

5. The learned Single Judge, vide order dated 27.11.2002 allowed the writ petition and directed the respondents to grant the benefit of disability pension to the appellant w.e.f. 22.10.1998, the date of filing of the writ petition.

6. The appellant being aggrieved by the fact that the learned Single Judge, allowed the disability pension w.e.f. the date of filing of the writ petition and not from the date he was boarded out from service, filed the instant appeal.

7. We have heard the learned counsel for the parties.

8. We are of the view, that the appellant ought to have been granted disability pension from the date, he was boarded out from service i.e. from 20.10.1968.

9. Learned counsel for the respondents submitted that the appellant is not entitled to the grant of disability pension w.e.f. 20.10.1968 in as much as there was delay in filing the writ petition. At the most, he can be paid disability pension from the date of filing of the writ petition. Learned counsel will like us to restrict the payment of disability pension by application of limitation prescribed for filing a civil suit.

10. We have considered the submissions of the learned counsel for the respondents. We do not find any substance in them. The denial of disability pension to the appellant for years together was a continuous wrong. It was negation and breach of Article 21 of the Constitution of India. It was the duty of the respondents to have paid the disability pension to the appellant w.e.f. 20.10.1968. For the said view, we draw support from the decision of the Hon''ble Supreme Court in the case of S.K. Mastan Bee v. The General Manager, South Central Railway and Anr. (1), wherein it has been held as under:-

"The very denial of her right to family pension as held by the learned Single Judge as well as the division bench is an erroneous decision on the part of the railway and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the railways. Question then arises on facts and circumstances of this case, the appellate bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension? In this case as noticed by us herein above, the learned Single Judge had rejected the contention of delay put forth by the railways and taking note of the appellant's right to pension and the denial of the same by the railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The division bench also while agreeing with the learned single judge observed that the delay in approaching the railways by the appellant for the grant of family pension was not fatal in spite of the same it restricted the payment of family pension was not fatal in spite of the same it restricted the payment of family pension from a date on which the appellant issued a local notice to the railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a gangman in the railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate. The learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her

husband. Consequently, we are of the considered opinion that the division Bench fell in error in restricting that period to a date subsequent to 1.4.1992.

In the said view of the matter, we allow this appeal, set aside the impugned order of the division bench to the extent that it restricts the right of the appellant to receive family pension only from 1.4.1992 and restore that right of the appellant as conferred on her by the learned Single Judge, that is from the date 21.11.1969. The railways will take steps forthwith to compute the arrears of pension payable to the appellant w.e.f. 21.11.1969 and pay the entire arrears within three months from the date of the receipt of this order and continue to pay her future pension."

In view of the aforesaid discussions and having regard to the aforesaid judgment of the Hon"ble Supreme Court, we modify the order of the learned Single Judge dated 27.11.2002 and direct the respondents to pay the disability pension to the appellant with effect from 20.10.1968 with all other consequential benefits.