
(2002) 02 RAJ CK 0092

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 610 to 612 of 2000

Nemi Chand and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 WLC 92 : (2003) 3 WLN 185

Hon'ble Judges : M.R. Calla, J;K.S. Rathore, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.R. Calla, J.—These three appeals are directed against the common judgment and order dated 3.8.1999 whereby three writ petitions being S.B. Civil Writ Petition Nos. 3792/95, 680/96, 6092/96 were decided. The learned Single Judge had allowed the claim of disability pension in first two cases i.e. Nemi Chand v. U.O.I. and Ors., S.B. Civil Writ Petition No. 3792/95 and Surendra Singh v. U.O.I and Ors., S.B. Civil Writ Petition No. 6080/96 and has narrated that while determining the disability pension of these two petitioners they be paid arrears of such pension for only 3 years prior to filing of the writ petition i.e. from the date of discharge till prior to 3 years of filing of writ petition the petitioners would not be entitled to any arrears of pension. The third matter i.e. S.B. Civil Writ Petition No. 6092/1996, Guman Singh v. UOI and Ors., has been dismissed by the learned Single Judge on the ground of delay.

2. Since the common questions of law are involved in these matters, we proceed to decide these three appeals by our common judgment and order, as under:

Nemi Chand v. Union of India and Ors., D.B. Civil Special Appeal (Writ) No. 612/2000

3. In the case the appellant Nemi Chand who is the original petitioner, who was enrolled in army on 2.3.1971 and he suffered damage to his left ear due to

bombardment during Indo-Pak War of 1971 and was discharged from the service with 30% disability due to Sensory Neural Deafness (Left ear) after serving for five years and 269 days, on 20.11.1976. His disability pension claim was rejected on 17.2.1977. The appeal preferred by him was rejected on 2.2.1978. He submitted a petition dated 27.1.1979. He had submitted representations dated 27.1.1979, 4.10.1992, 18.8.1994, 20.9.1994, 19.12.1994, 23.2.1995, as also notices dated 12.4.1995, 12.5.1995 and the replies were received vide letter dated 9.12.1988, 2.9.1994, 26.11.1994, 31.1.1995, 7.5.1995 and 3.7.1995. The legal notice was also served on 16.7.1995 but no reply was received and ultimately he preferred the writ petition on 30.8.1995. The reply to the petition and rejoinder thereto have been filed on 24.5.1996 and 13.7.1996 respectively. Though learned Single Judge has upheld the claim of the petitioner with regard to the disability pension, the relief has been restricted only upto the period of 3 years preceding the date of filing of the writ petition. In other words, the relief has been denied for the rest of the period i.e. from the date of discharge i.e. 20.11.1976 till the date on which three years period prior to the date of filing the petition, commences.

Surendra Singh v. Union of India and Ors., D.B.Civil Special Appeal (Writ) No. 610/2000.

4. This appeal has been filed by Surendra Singh through his wife Smt. Manni Devi because the appellant was of unsound state of mind and while he was in such state of mind, he also disappeared from the house on 4.2.2000 i.e. after the date of the judgment & order dated 3.8.1999 passed by the learned Single Judge and after filing of the appeal and after distribution of the PPO by the department in pursuance of the judgment and order of this Court passed by the learned Single Judge on 3.8.1999. In regard to his disappearance, an FIR was lodged on 16.2.2002 with Police Station, Chirawa, District Jhunjhunu and still his whereabouts are not known. It is also given out that Smt. Manni Devi wife of Surendra Singh is being paid the family pension w.e.f. 16.2.2000. Appellant Surendra Singh was enrolled in the army on 20.10.1983. He was enrolled in Defence Security Corps on 24.1.1984, he fell ill due to stress and strain of the service and was invalidated from service on 26.5.1987 due to "Schizophrenic Psychosis" with 70% disability after 7 years 2 months and 20 days services. His disability pension claim was rejected vide letter dated 11.2.1988. Appeal dated 25.3.1988 was also rejected vide letter dated 15.12.1988 and second appeal dated 11.12.1994 was also rejected vide letter dated 12.2.1996 without dealing with the issues raised in the appeal. He, therefore, filed appeal dated 11.8.1996 but no reply was received and relevant document were not supplied to him. The appellant then filed the writ petition through his wife on 9.12.1996 and show cause notice was issued, thereafter, reply was filed and rejoinder to that was filed by the petitioner.

5. In both these cases the arrears of pension for the period prior to 3 years from the date of filing of writ petition have been denied. The relief part of the

impugned order has been assailed by Mr. Shyam Singh, learned counsel for the appellant, on the ground that there was no fault on the part of these petitioners. The arrears of pension have been denied as if there is delay on the part of the petitioners in pursuing their claim, whereas the fact is that they had filed representations, appeals, petitions and have throughout been pursuing the case. Even otherwise, under the Rules it is the Record Officer who had to initiate the papers for the purpose of grant of pension and therefore, if at all there was any delay it was on the part of the Record Officer. This cannot be attributed to the petitioners so as to deny them arrears of pension. Once their claim for the disability pension has been upheld, the relief with regard to the grant of arrears of pension cannot be curtailed on the ground that there is delay on their part which has been fully explained. Even otherwise, in large number of cases this view has been taken by the Court that the matters of pension cannot be rejected on the ground of delay.

6. We, therefore, modify the order dated 3.8.1999 passed by the learned Single Judge and direct that the claim of the two petitioners with regard to the grant of disability pension be treated to have been accepted right from the date of their discharge and the arrears may also be paid to them upto date, within a period of 3 months from the date the certified copy of this order is served on the respondents. These two appeals are allowed, as indicated above.

7. In the case of Surendra Singh, the amount be paid to Smt. Manni Devi wife of Shri Surendra Singh because his whereabouts are not known and he had disappeared in unsound state of mind.

Guman Singh v. Union of India and Ors., D.B. Civil Special Appeal No. 611/2000

8. In this case the appellant Guman Singh has expired during the pendency of this appeal. The judgment before the learned Single Judge was reserved on 3.5.1999 and was delivered on 3.8.1999. Therefore, it is clear that it is during this period i.e. on 16.7.1999 that the appellant Guman Singh had expired. In such circumstances this appeal has been filed by Guman Singh's wife Smt. Son Kanwar, aged 70 years with an application dated 2.9.1999 along with application under Article 226 read with Order 22 Rule 3, CPC for taking legal heir of deceased Guman Singh on record. The writ petition has been rejected on the ground of delay of 41 years. A Single Bench of this Court has taken the contrary view in case of Lal Singh v. Union of India and Ors., reported in 1999 (1) RLR 114 and thereafter, this Court in case of Sultan Singh v. U.O.I. and Ors., D.B. Civil Special Appeal No. 1251/96 decided on 25.1.2002 and in case of Balu Singh v. U.O.I. and Ors., D.B. Civil Special Appeal (Writ) No. 242/1996, that in the matter of pension delay cannot be fatal. In the present matter the Record Officer had been entrusted with the job to initiate the process with regard to the payment of pension. For the reasons as aforesaid, the order passed by the learned Single Judge rejecting the petitioner's claim is hereby set aside. The appeal is allowed with the direction that the claim of the present appellant Guman Singh with regard to grant of disability pension may be decided in

accordance with rules and the due amount and arrears may be paid to his wife Smt. Son Kanwar, aged 70 years with family pension within a period of 3 months from the date the certified copy of this order is served upon the respondents. Application dated 2.9.1999 is hereby allowed.

9. In the result all these 3 appeals are allowed accordingly. The amount of gratuity which was paid to the appellants with interest as was prevailing from time to time shall be adjusted out of the amount of the arrears, which has been denied to be paid to the petitioners and rest of the amount shall be paid to them within the period of three months from the date the certified copy of this order is made available to the respondents.