

(2000) 10 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : CWP 1437 of 1999

Ram Kishore Malik

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 10 P&H CK 0026

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. Y.S. Bajwa, for the Appellant; Mr. Anil Malhotra, for the Respondent

Judgement

R.L. Anand, J.—Ram Kishore Malik, petitioner, has filed the present writ petition under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus seeking a direction against the respondents to grant him disability pension and other benefits along with arrears besides interest and the ease set up by the petitioner is that he was enrolled in the Indian Army on 5.9.1963 as Naik. He was found medically fit and he was placed in Medical Category "A". During active service in the Army, in the year 1966, the petitioner suffered from "Acoustic Trauma Gunfire" and the level of hearing of the petitioner in his left ear was highly reduced. On 15.5.1973, the petitioner was medically boarded out of service after 10 years and 7 days of service. The petitioner was incapacitated and discharged from service on medical basis. The petitioner was granted disability pension by the respondents on 12.9.1973 and his disability was assessed at 30% for a period of four years starting from 12.9.1973 to 11.6.1977. On 12.6.1977, the disability of the petitioner was reassessed and it was declared for life. In the month of March, 1987, again, another Re-survey Medical Board was constituted, which again recommended that the disability of the petitioner is 30% for life. Thus, the disability of the petitioner was accepted by three medical boards but arbitrarily in the month of August, 1987, it was reduced to 19% by the Chief Controller of Defence Accounts

(Pension), Allahabad and as such, the petitioner was deprived of the benefit of disability pension. The petitioner submitted reminders but to no effect. Finally, the respondents relented to the requestor the petitioner and allowed him to appear before the Re-survey Medical Board and the petitioner appeared before the Board in the month of June, 1998, at Command Hospital, Chandimandir, and the Board recommended the disability of the petitioner at 50% for life and that too retrospectively w.e.f. 30.3.1987. In spite of the opinion of the Medical Board, the Chief Controller of Defence Accounts (Pension), Allahabad, again, reduced the disability of the petitioner from 50% to 40% w.e.f 9.6.1998 to 8.6.2000. The petitioner made a representation on 20.6.1999 but to no effect. Hence, the present writ petition.

2. Notice of the writ petition was given to the respondents who tried to justify the opinion of the Chief Controller of Defence Accounts (Pension), who reduced the disability of the petitioner earlier at 19% and subsequently to 40% for a period of two years.

3. I have heard the counsel for the parties and with their assistance have gone through the record of this case.

4. The proved facts on the file are that three Medical Boards determined the disability of the petitioner at more than 20%, i.e. 30%. In these circumstances, a very strong basis was required for the Chief Controller of Defence Accounts (Pension), Allahabad to reduce the disability of the petitioner from 30% to 19% as it was done in the year 1987. Repeatedly, it has been held by various Courts including this Court that the Chief Controller of Defence Accounts (Pension), Allahabad is not an expert body. It has not examined the petitioner before coming to the said conclusion. How, in these circumstances, the disability of the petitioner could be reduced? Even the Re-survey Medical Board, which was lastly constituted in June, 1998, has again determined the disability of the petitioner at 50%. But, without any cogent reason, this disability has been reduced by Chief Controller of Defence Accounts (Pension), Allahabad to 40% for a period of two years. All these actions on the part of Chief Controller of Defence Accounts (Pension), Allahabad are held to be illegal, arbitrary and without any basis.

5. Resultantly, I allow this writ petition as I have come to the conclusion that the disability of the petitioner was more than 20% at all relevant times and directions are given to the respondents to release the disability pension of the petitioner w.e.f. 1.4.1987 while assessing the same at 50%, within three months from the receipt of a copy of this order, failing which the petitioner shall be entitled to interest @ 12%. The petitioner shall appear before the Re-survey Medical Board as and when called. No costs.

6. Petition allowed.