
(2006) 08 DEL CK 0049
In the Delhi High Court
Case No : WP (C) 4686 of 2004

Sh. Bhanwar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 08 DEL CK 0049

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : H.S. Raghav, for the Appellant; Ashwani Bhardwaj, for the Respondent

Judgement

Swatanter Kumar, J.—In this petition under Article 226 of the Constitution of India, the petitioner prays for quashing of the letter dated 13.11.97 vide which the petitioner was granted disability pension @ 20% in addition to his service pension, in contravention of Policy Letter No. 1(2)97/D (Pen-C) and order No. 90/97/B/D/0415/2003 dated 31.1.01 and 20.11.03 respectively as the authorities have denied the extent of percentage of disability in terms of the Fifth Pay Commission.

2. The necessary facts are that on 17.6.06 the petitioner joined Indian Navy as a Sailor and served there to the satisfaction of all concerned. On 8.12.94, the petitioner sustained injuries in a road accident while in service. As a result of disability suffered, the petitioner was discharged from service on 31.1.97 with 30% disability attributable to service. The petitioner was placed in low medical category S2, A2 permanent as assessed by the Release Medical Board held at INS, Angre with 30% disability. CDA (Pension) reduced the disability from 30% to 20% without obtaining any opinion from Medical Board. However, later on a Resurvey Medical Board was conducted on 10.11.01 at Base Hospital, Delhi Cantt. And the petitioner's disability was reassessed as "STATIC" 30%. The petitioner has been getting his disability pension at 30% but the respondents

have not granted to the petitioner, the enhanced degree of disability in furtherance to the recommendation of the Fifth Pay Commission and the policy decisions taken by the respondents as referred above. According to the petitioner, he is entitled to grant of increased disability pension as well as deemed increased degree of disability. According to the petitioner, he should get disability pension @ Rs. 1900/- p.m in terms of Fifth Pay Commission which the respondents are denying to give. As per the counter affidavit filed by the respondents, it is not disputed that petitioner was discharged from service with 30% disability and subsequently the Medical Advisor (Pension) assessed his disability at 20% for five years and on 10.11.01 it was again raised to 30% in terms of the Resurvey Medical Board. It is also not disputed that personnel are entitled to disability element for actual assessment if their disability is accepted between 20% to 100%. According to the respondents, the petitioner was discharged after attaining the prescribed age limit for retirement, Therefore, Para 8.2 of the letter was applicable and there was no infirmity in the order of the authorities. It is not disputed that the petitioner was subjected to Resurvey Medical Board and the Board had found the disability of the petitioner to be 30%.

3. In the rejoinder filed by the petitioner, the petitioner has reiterated his stand and claims that his disability should be counted @ 50% in terms of the Government of India's letters referred above and on that basis the pension has to be continued. It is clear from the above that the facts are hardly in dispute in the present case. The petitioner has retired from service after 1.1.96. The letters issued by the Government and the competent authority dated 31.1.01 and 20.11.03 are subsequent thereto and do provide certain additional benefits. Both these policy decisions/letters of the Government have been subject matter of those writ petitions which were allowed by this Court. In some cases, the respondents were directed to consider the claim of the petitioner. Even in a recent judgment of this Bench in the case of Ex. Hav Surat Singh v. UOI and Ors. being CWP No. 8364/2006 decided on 27.7.06, the Court held as under:

The petitioners have heavily relied upon and, in fact, in their submission, the cases are squarely covered, on fact and law, by a Division Bench judgment of this Court in the case of Col. B.S. Dhanda v. UOI and Anr. WP(C) No. 5603/2002, decided on 1.3.2004 as well as other Division Bench judgments of this Court in the case of Ex. Sub. Shamsheer Singh v. UOI and Ors. WP(C) 1990/2003, decided on 20.07.2004 and Ex. Hav. Dharambir Singh v. UOI and Ors. WP(C) 4067/2004, decided on 23.11.2004 wherein the similarly situated persons were granted the relief by the court and the respondents were directed to consider the claim of the petitioners therein, on the basis of the notification and w.e.f. 1.1.96.

7. The respondents could hardly raise any plea or reason to contend that the present writ petitions were not squarely covered by the above judgments. In fact, it was not disputed from the side of the respondents that these judgments have attained finality. We may also refer to the relief which has been granted in the case of Col. B.S. Dhanda (supra) which has been followed subsequently in

other cases as well. The same reads as under:

In view of the notification issued on 31st January, 2001, those pensioners who have retired on or after 1.1.1996 and have been assessed to less than 50%, i.e. anywhere between 20% to 50% are entitled for percentage to be reckoned for computing their disability element to 50%. We also find force in the arguments of the respondent that where percentage of disability has been assessed at less than 20% no disability element of pension is payable. A specific provision in the notification issued on 31st January, 2001 has also been made. Para 8.2 of the notification which is relevant is as under:

For disability less than 100% but not less than 20% the above rates shall be proportionately released. No disability element shall be payable for disabilities less than 20%. Provisions contained in para 7.2 above shall not be applicable for computing disability element....

Net result of the discussion is that those pensioners who have retired prior to 1.1.1996 will be entitled to a higher rate of disability pension as envisaged and provided in notification dated 31st January, 2001. But their percentage of disability will not be enhanced to 50% as prayed for in this writ petition. However, they will be entitled to be paid on the basis of the disability assessed by the medical board. In case of those petitioners who have retired on or after 1st January, 1996, they shall be entitled for the revised rate of disability pension as well as for grant of disability pension on the basis of the notification dated 31st January, 2001 by increasing the percentage of disability in cases where it is less than 50%, their percentage would be reckoned for computing of the disability element to 50%, between 50% to 75% their percentage to be reckoned for computing disability pension to 75%, between 76% to 100% their percentage to be reckoned for computing pension element to 100%.

With these observations, this batch of writ petitions bearing WP(C) Nos. 5603/2002, 7361/2002, 7010/2002, 7351/2002, 1995/2003, 3440/2003, 109/2004, 745/2004, 1847/2004 and 1848/2004 stands disposed of in terms of orders passed in this writ petition.

8. During the course of hearing, the learned Counsel appearing for the petitioners have brought to the notice of the court the further notifications issued by the Government of India, Ministry of defense on 7th June, 1999 and a circular issued by the Pr. CDA(P) Allahabad dated 06.08.2001 to argue that the provision relating to various elements of pension in furtherance to the notification of the Government have been given full effect to w.e.f. 1.1.1996 and guidelines in that behalf have been issued.

9. Having heard the learned Counsel appearing for the parties, we are of the considered view that the present cases are squarely covered, on fact and law, by the afore-mentioned cases and particularly by W.P.(C) No. 5603/2002. There is no reason for us to take a view different than the one expressed by the different Benches of this Court. In the present petitions also, the petitioners have not

been granted the benefit despite various judgments of this Court. When a principle is settled by the court and attains finality, it is expected of the respondents to give benefit of that judgment to all concerned rather than compelling the persons to file writ petitions in the High Court for claiming identical relief on similar facts.

4. In light of the consistent view taken by different Benches of this Court, the prayer made by the petitioner deserves to be allowed at least to a limited extent. In Para 2.1 of the letter dated 31.1.01, it has been stated that provisions of this letter shall apply to Armed Forces personnel who were in service on 1.1.96 or joined service thereafter unless specified in this letter. The petitioner had, however, retired/discharged from service on 31.1.97. In view of the clear language of the letter as well as the law laid down by this Court, the present petition has merit.

5. In view of the above discussion, this writ petition is allowed limited to the extent that the letter dated 13.11.97 is partially set aside with a direction to the respondents to consider the case of the petitioner for grant of higher disability percentage in terms of the above two letters of the Government and in view of the judgments of this Court and, if permissible, pay to the petitioner pension accordingly. The writ petition is disposed of, while leaving the parties to bear their own costs.