
(2011) 08 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2106 of 2009, CMP No. 2802 of 2009

Sham Lal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Citation : (2011) 3 JKJ 317

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, J.—Petitioner a retired Lieutenant Colonel in Army bearing No. IC 23506 was seriously injured in 1971 Indo-Pak

war, inasmuch as, in an effort to attack the enemy post he sustained three arty shells splinter at his left hip joint. One of the splinter being

abnormally large is embedded deep in his hip joint. The petitioner retired in March, 1994 whereafter his Medical Board was held in Jaipur

(Rajasthan). Medical Board after assessing and evaluating the petitioner awarded 30% disability for a period of two years viz. from 01.04.1994 to

06.03.1996. Communication dated 30.01.1996 was sent by the Government of India to the Chief of the Army Staff, New Delhi, in which it was

stated that President of India was pleased to give 30% disability to the petitioner. After the expiry of 1st Medical Board. Re-survey Medical

Board (RSMB) was held at Medical Hospital (MH) Jammu on 05.06.1996 and degree of disability was assessed as 30% for the period of five

years i.e. from 07.03.1996 to 04.06.2001. On the basis of earlier Medical Board and sanction issued by the competent authority, Medical

Advisor Pension (MAP) allowed disability @ 30% for a period of five years. The

disability was reduced to 20% in terms of communication dated 23.07.1996.

2. Petitioner feeling aggrieved of the said decision of the respondents approached the competent authority by filing representations. When

petitioner's grievances were not redressed, he ultimately appealed the Government of India on 10.02.2010. Petitioner was assessed and evaluated

by re-Medical Board on 24.08.2007 and the Board assessed 30% disability on the same date and was latter approved by the Chief of the Army

Staff vide letter No. 12681/T-6/AC/MP-5(b) dated 19.08.2008 and petitioner ever-since has been receiving 30% disability as war injury pension.

Petitioner's claim for grant of 30% disability from 07.03.1997 to 23.08.2007 was not considered even on the face of 30% disability assessed by

re-Medical Board. Petitioner when his aforementioned grievance was not redressed was constrained to file this petition.

On notice issued, respondents have filed reply affidavit.

3. Heard learned counsel for the parties. Considered the matter.

4. Learned counsel for the petitioner invited the attention of the Court to the documents placed on the record to show that reduction of disability

from 30% to 20% in the facts and circumstances of this case from 07.03.1996 to 23.08.2007 is illegal and respondents would require to be put

under command to pay disability pension for the said period at 30% along with interest.

5. Learned counsel for the respondents submitted that the writ petition is not maintainable, inasmuch as, Medical Board has not been impleaded as

a party respondent in the writ petition. Learned counsel on merits submitted that the matter being under consideration of the competent authority,

competent authority be allowed sometime to take decision.

6. Objection about the maintainability of writ petition merits rejection on the ground that medical Board is constituent limb of respondents and is

not separate and individual authority. Medical Board which has assessed the disability is under the overall control of the respondents. The non-

impleadment of the Medical Board, in the facts and circumstances of this case, would not become fatal for the survival of the writ-petition. The

submission of the learned counsel for the respondents that matter being under the consideration of the competent authority and requires to be given

time to take decision, also merits to be rejected in the peculiar facts and circumstances of this case.

7. Petitioner has suffered war injury in the year 1971 in Indo -Pak war. Petitioner, being one of the sons of the soil, appears to have guarded the

borders of the Country with vibrating zeal and pulsating enthusiasm. Petitioner as a true son of the soil has risen to the occasion to repel onslaught

of the enemy and has sustained injuries. Medical Board assessed his disability @ 30% and he was in fact paid @ 30% in first two years. But

without any justifiable reason the disability pension was reduced from 30% to 20% which act is unjust as in the third re-medical Board disability

was again assessed as 30% for life. Decision of the Second medical Board to reduce disability from 30% to 20%, in this factual background, was

not only illegal and arbitrary but as already stated was unjust as well. Nothing is stated as to how and in which circumstances and for what reasons

disability was reduced from 30% to 20%.

8. Be that as it may, initial assessment of 30% disability is confirmed by third-Medical Board which has approved same disability at the same rate

for life. Petitioner has been arbitrarily denied the benefit from 07.03.1997 to 23.08.2007. Reducing of disability from 30% to 20%, in view of this

fact situation should not deter Court to do justice and wait till such time decision is taken by the authority. The petitioner has been unreasonably

deprived of the 10% pensionary benefit from 07.03.1997 to 23.08.2007, so in order to compensate him, it will be appropriate to award interest

on the balance unpaid amount.

9. For the above stated reasons this petition is disposed of in the following manner:

10. It is declared that petitioner was entitled to receive 30% disability pension throughout his life. Respondents are directed to pay balance amount

of disability pension from 07.03.1997 to 23.08.2007 within a period of twelve weeks from the date copy of this order is served. Respondents are

further directed to pay interest @ 10% on the aforementioned amount within the same period.