
(2014) 04 MEG CK 0002
In the Meghalaya High Court
Case No : WP (C) No. 214/2013

Shri. Satya Narayan

APPELLANT

Vs

Union of India through the Secretary and The
Commandant, Head Quarter DGAR

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : (2014) LabIC 2739

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. S. Rana, learned counsel appearing for the petitioner and also Mr. R. Debnath, CGC appearing for the respondents No. 1 & 2.

2. By this writ petition, the petitioner is praying for a direction to the respondents to pay the disability pension to the petitioner. The petitioner was initially recruited in the Assam Rifles and allotted his service number being No. TC-69775 (AR No. G/5000649)/Rect/GD and sent for training. During the course of rigorous training, the petitioner got fractured on his left leg. The injury suffered by the petitioner had been diagnosed as "FRACTURE NECK OF FEMUR LT (OPTD)". Because of the fracture on his left leg the petitioner had been declared unfit and discharged on 30.04.2005. It is an undisputed case of both the parties that the injury suffered by the petitioner was attributable to service. But the respondents denied the disability pension to the petitioner on the grounds that the percentage of disability suffered by the petitioner was assessed only to 20% and as per para 9(1) & (3) of CCS (Extraordinary Pension) Rules for granting disability pension the percentage of disability should not be less than 60%.

3. The petitioner also filed a representation to the competent authority for granting disability pension but his representation had been rejected by the competent authority (impugned Order dated 10.10.2008) and informed the

petitioner that as per Para 9(3) of the CCS (Extraordinary Pension) Rules for granting of disability pension, the percentage of disability should not be less than 60%. A copy of the said letter dated 10.10.2008 is available at Annexure-5 to the writ petition.

4. The respondents had filed the affidavit-in-opposition. In para 4 of the affidavit-in-opposition, it is also stated that the petitioner is not eligible for grant of invalid pension under Rule 49(2)(b) because lack of mandatory 10(ten) years qualifying service for invalid pension under CCS Rules 1972. In para 15 of the affidavit-in-opposition, the respondents had admitted that the injury suffered by the petitioner was attributable to service. It appears from the affidavit-in-opposition filed by the respondents and also the impugned letter dated 10.10.2008 that the respondents had misread the provisions of the Central Civil Services (Extraordinary Pension) Rules and the Central Civil Services (Pension) Rules, 1972.

5. Rule 3-A. (1)(a) of the Central Civil Services (Extraordinary Pension) Rules clearly provides that disablement shall be accepted as due to Govt. service provided it is certified that it is due to wound, injury or disease which is attributable to service. Rule 3-A. (1)(a) of the CCS (Extraordinary Pension) Rules is reproduced herein under:

3-A. (1)(a) Disablement shall be accepted as due to Government service provided that it is certified that it is due to wound, injury or disease which-

(i) is attributable to Government service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby.

Therefore, the requirements provided u/s Rule 3-A(1)(a) of the Central Civil Services (Extraordinary Pension) Rules are fulfilled by the petitioner and also injury suffered by the petitioner is attributable to service.

6. Rule 9 of the Central Civil Services (Extraordinary Pension) Rules speaks only about the amount of disability pension. In other words, Rule 9 stipulates as to how the amount of the disability pension is to be calculated. Rule 9(3) of the Central Civil Services (Extraordinary Pension) Rules stipulates that in the case of disablement, if it is not less than 60%, his monthly disability pension shall be related to the family pension admissible to the widow. Therefore, it is clear that Rule 9(3) only speaks about the amount of disability pension for the employee, who suffered not less than 60% disablement.

7. The Govt. of India had taken the decision regarding the Disability Pension and rates as follows:

(1) Revised provisions effective from 1st January, 1986, regulating Disability Pension and Extraordinary Family Pension under the CCS (Extraordinary) Pension Rules. In pursuance of Government decisions on the recommendations of the

Fourth Central Pay Commission announced in the Department of Pension and Pensioners' Welfare, Resolution No. 2/13/87-PIC, dated the 18th March, 1987, it has been decided to introduce the following modifications in the rules regulating Disability Pension and Extraordinary Family Pension under the CCS (Extraordinary) Pension Rules (hereafter referred to as EOP Rules).

2. Definition of pay:

1. The term "Pay" in these orders means the basic pay in the revised scales promulgated under the CCS (Revised Pay) Rules, 1986.

2. In the case of Government servants who opt to continue to draw pay in pre-revised scales beyond 31-12-1985, the term "Pay" will include basic pay in the pre-revised scales of pay plus dearness allowance, additional dearness allowance, ad hoc dearness allowance up to average CPI 608 and the two instalments of Interim Relief appropriate to the basic pay.

3. Disability Pension:

1. Disability Pension for 100% disability shall be allowed at the following rates:-

2. For lower percentage of disability the monthly disability pension shall be proportionately lower as at present (see Note below this decision) provided that where permanent disability is not less than 60%, the total pension (i.e., pension or service gratuity admissible under the Ordinary Pension Rules plus disability pension under EOP Rules) shall not be less than 60% of basic pay subject to a minimum of Rs. 750 and maximum of Rs. 2,500.

NOTE-For lower percentages of disability, the monthly pension shall be "proportionately lower". (The minima and the maxima given above are applicable only for arriving at the monthly disability pension for cent per cent disability and are not applicable in respect of percentages of disability lower than 100%). For example if the disability is only 80%, the disability pension shall be 80/100 of the pension in Column 2 above.

8. Both the parties also admitted that the said Govt. of India's decision which had been quoted above is followed by the Assam Rifles. The said Govt. of India's decision is only for calculating the amount of disability pension in accordance with the percentage of disability. The said Govt. of India's decision never stated that the disability pension will be granted only to the employee who suffered not less than 60% disability.

9. Rule 49 of the Central Civil Services (Pension Rule 1972) mentioned only the amount of pension; it is not related to the entitlement of the disability pension under the Central Civil Services (Extraordinary Pension) Rules. The requirement of qualifying service of 10(ten) years mentioned in Rule 49(1) of the Civil Services (Pension Rule 1972) may not be required for granting disability pension under the Central Civil Services (Extraordinary Pension) Rules.

10. For the foregoing reasons, this court is of the considered view that the

petitioner who had discharged from service for the injury which is attributable to service would be entitled to get the disability pension under the Central Civil Services (Extraordinary Pension) Rules. However, the amount of disability pension is to be calculated under Rule 9 of the Central Civil Services (Extraordinary Pension) Rules and the said Govt. of India's decision which have been quoted above in extenso. Accordingly, the respondents are directed to pay the disability pension to the petitioner within a period of 4(four) months from the date of receipt of a certified copy of this judgment and order.

11. This writ petition is allowed.