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**(2000) 11 P&H CK 0237**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 14444 of 1999**

Sqn. Leader G.S. Cheema

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 09-11-2000

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2000) 11 P&H CK 0237

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

**Bench :** Single Bench

**Advocate :** Party in person, for the Appellant; Mr. M.S. Guglani, for the Respondent

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## Judgement

R.L. Anand, J.—Retired Squadron Leader G,S. Cheema has filed the present writ petition against the respondents under Articles 226/227 of the Constitution of India and he has prayed that a writ of certiorari be issued quashing the order Annexure P-6 and further the directions be given to the respondents to release him the benefit of disability pension with effect from 15.3.1996 along with interest and the case set up by the petitioner is that he retired from the Indian Air Force in the rank of Squadron Leader with effect from 31.3.1983. The petitioner was hale and hearty at the time of his entry into service but he suffered from Memrano Proliferative Glonierulo Nephritis (M.P. G.N.) and as such the petitioner was examined by the Release Medical Board prior to his retirement. The Board recommended that the petitioner be retired from service in lower medical category A4G5 permanent and the disability of the petitioner was assessed at 60% and it was declared by the Board that it had aggravated on account of the conditions of service during the deployment of the petitioner at various places.

2. The petitioner was granted service pension on ac- count of disability having been detected by the Release Medical Board. The Release Medical Board had recommended the disability of the petitioner for a period of 2 years and

thereafter, the petitioner was again brought before the Re-Survey Medical Board, which recommended the disability of the petitioner at 60% for a further period of three years. The petitioner again appeared before the Re-Survey Medical Board and the Resurvey Medical Board again recommended 60% disability- Respondent No. 2 did not accept the percentage of disability recommended by the Re-Survey Medical Board and it was reduced to 30%. The petitioner was not satisfied with the reduction in the percentage of the disability and he challenged this action by filing a civil writ petition which was allowed. The petitioner again appeared before the Re-Survey Medical Board on 14.1.1991 for the assessment of his disability. Again he was medically examined on 12.3.1996. His disability was reduced to 50% from 60%. Finally the disability of the petitioner was reduced to 20% from 50% vide Annexure P-6, order passed by the CCDA dated 20.12.1996. The grouse of the petitioner is that the reduction of his disability by the CCDA is unilateral, arbitrary, without jurisdiction and against the principles of natural justice and, therefore, he should be granted the benefit of disability pension at the rate of 50% as it was assessed earlier by the Re-Survey Medical Board.

3. Notice of the writ petition was given to the respondents. The short defence of the respondents is that CCDA is a competent officer who is aided by the Medical Adviser and on whose recommendation the disability of the petitioner has been reduced, therefore, the action as contained in Annexure P-6 is a valid one. Also it is the defence of the respondents that the recommendation and opinion of the Medical Board/Re-Survey Medical Board is only advisory in nature and is not binding on the statutory bodies like Medical Adviser attached with the CCDA who has been appointed by the Director General (Medical). It is also the stand of the respondents that there are 9 Medical Boards throughout India and in order to have the uniformity of opinion with regard to the Medical Board, the Government of India has created the post of Medical Adviser and has attached it with CCDA so that there should not be any conflict of opinion with regard to the Re-Survey Medical Board and the Government has created the post of Medical adviser so that his opinion may be given unilateral effect with regard to the assessing of the disability.

4. I have heard the petitioner in person and Shri M.S. Guglani, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of this case.

5. It is the admitted case of the parties that earlier the disability of the petitioner was assessed at 60% or 50% as the case may be by the various Medical Boards/Re-Survey Medical Boards. When his disability was reduced to 20% from 50% by the CCDA, the petitioner was not medically checked up by him or by the Medical Adviser. When these two officers had never seen the petitioner and did not get the opportunity to examine the petitioner with regard to his physical fitness or otherwise, in such a circumstance, any opinion formulated by these two officers will be considered arbitrary and one-sided and it will be a direct violation of the principles of natural justice.

In this view of the matter, I allow this writ petition and it is declared that the petitioner will be entitled to the benefit of disability pension at 50% and order Annexure P-6 is hereby quashed. The petitioner shall be given the arrears of disability pension within three months from today failing which he will also be entitled to interest at the rate of 12%, The petitioner shall appear before the Re-Survey Medical Board as and when called by the respondent authorities. There shall be no order as to costs.

6. Petition allowed.