

(2012) 07 DEL CK 0349

In the Delhi High Court

Case No : Writ Petition (C) No. 7905 of 2011

Suresh Kumar Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0349

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Monica Kapoor, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner in the instant case seeks grant of disability pension under CCS (Pension) Rules. The brief facts giving rise to instant petition are in narrow compass and are undisputed.

2. The petitioner was appointed as a Constable on 29th May, 1990. While in service, he was diagnosed as suffering with avascular necrosis of head of left femur in the year 1998. On this condition, while the petitioner was posted at Lunglei, Mizoram, a medical board was held on 5th October, 2001 which declared him unfit for hard duties but fit for carrying out sedentary work. However, by an order dated 9th October, 2001, the respondents compulsorily retired the petitioner from service. The respondents also did not favourably consider the petitioner's representation dated 10th October, 2001 wherein the petitioner requested for assigning him light duties instead of retiring him from service.

3. It appears that the petitioner had to approach the court on three prior occasions for seeking his entitlements. The first petition being W.P. (C)No.552/2002 was filed seeking assignment of lighter duties. This writ petition was disposed of by the order passed on 15th October, 2004 directing payment of salary.

4. The petitioner's request by the letter dated 29th November, 2004 for disability pension was rejected by the respondents on 16th November, 2006. It is noteworthy that despite the invalidation of the petitioner on medical grounds, the respondents had issued him a discharge certificate assessing his percentage of disability as nil. The petitioner was again required to approach this court by way of a second petition being W.P.(C)No.8924/2008. This writ petition was again allowed by the court by an order dated 17th December, 2008 whereby the court held that the discharge certificate issued by the respondents did not appear to be correct in view of the reasons for his invalidation and the respondents were required to reconsider the issue of percentage of disability of the petitioner for issuance of appropriate certificate.

5. Pursuant to these orders, the medical board of the petitioner was conducted on 18th April, 2009 which found his disability to be at 40%. However, he was not given the copy of the board proceedings necessitating a third writ petition being W.P.(C)No.3275/2010. This writ petition was disposed of by an order dated 5th April, 2011 directing the respondents to furnish a copy of the findings of the medical board. The respondents thereafter had provided the proceedings of the medical board with their memorandum dated 28th April, 2011.

6. As per the recommendations of the Medical Board of the petitioner, the disability of the petitioner was contracted in his service. It has further been opined that the disability was attributable to the condition of service. The Medical Board has also held that the disability was directly attributable to the service and assessed the percentage of disability as 40%.

7. The respondents have rejected the petitioner's claim for grant of disability pension on the specious ground that his disability is not attributable to service. This is the stand taken in the counter affidavit before us which is completely untenable in the face of the proceedings of the medical board which has held that the disability of the petitioner is directly attributable to his service.

8. Learned counsel for the respondents submits that the disability of the petitioner would be covered under Category "A" of the Government of India's Decisions in the CCS (Extraordinary Pension) Rules which stipulates as follows:-

Category "A" Death or disability due to natural causes not attributable to Government service. Examples would be chronic ailments like heart and renal diseases prolonged illness, accidents while not on duty etc.

9. Learned counsel for the petitioner draws our attention to Category "B" of the said Rules which directs as follows:-

Category "B" Death or disability due to causes Which are accepted as attributable to or aggravated by Government service. Diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

10. As observed hereinabove, the opinion of the medical board binds the respondents and it is not open to the persons considering grant of the pension to hold to the contrary.

11. In the instant case, the medical board has specifically found the disability of the petitioner attributable to the government service. The assertion by the respondents to the effect that the case of the petitioner falls under Category "A" under the CCS (Extraordinary Pension) Rules is, therefore, completely misconceived.

12. Given the opinion and recommendations of the medical board of the petitioner, we hold that the case of the petitioner would fall under Category "B" and he is entitled to grant of disability pension in accordance with the CCS (Extraordinary Pension) Rules.

13. The petitioner has stated in the writ petition that the original discharge certificate which was issued to him was not stamped. When the same was returned for stamping, again the respondents returned a photocopy of the stamped discharged certificate. The petitioner has till date not received the original discharge certificate. The petitioner also lays a claim to the entitlement of the staff benevolent fund with all the benefits of disability thereon as well as for the payment of the amount under Central Government Insurance Scheme (CGIS). It has been urged that the petitioner has been paid only the employee's contribution component of the said insurance.

14. The respondents have claimed that they have sent the discharge certificate to the petitioner by a special messenger. Learned counsel for the petitioner points out that only a photocopy of the discharge certificate was received. The petitioner had duly endorsed on the receipt itself that only a photocopy had been received. The prayer made by the petitioner for the original discharge certificate, therefore, appears to be justified. In view of the above, we direct as follows:-

(i) The respondents shall compute the extraordinary pension to which the petitioner would be entitled in accordance with the CCS (Extraordinary Pension) Rules within a period of 12 weeks from today.

(ii) The assessment of the amount to which the petitioner is entitled would be communicated to him immediately upon assessment thereof.

(iii) The respondents shall effect the payment of the amounts to which the petitioner is found entitled within a further period of four weeks of passing of the order.

(iv) The respondents shall also compute the entitlement of the petitioner under the Central Government Insurance Scheme (CGIS) and the staff benevolent fund with the benefits of disability thereon to which the petitioner was entitled within a period of 12 weeks from today and shall be paid to the petitioner within further period of four weeks of such computation.

(v) The respondents shall ensure that the original discharge certificate duly stamped is delivered to the petitioner within a period of 12 weeks from today.

(vi) This is the fourth writ petition which has been necessitated. The petitioner shall be entitled to costs of the writ petition which are assessed at Rs. 20,000/- and shall be paid to the petitioner within a period of 12 weeks from today.

The writ petition is allowed in the above terms.

Dasti.