
(1999) 05 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16495 of 1997

Surmukh Singh, Ex. Havildar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-05-1999

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (1999) 123 PLR 50

Hon'ble Judges : Harjit Singh Bedi, J

Bench : Single Bench

Advocate : B.S. Sehgal, for the Appellant; Anil Malhotra, for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—As the matter in issue is fully covered by Ex. Sapper Mohinder Singh v. Union of India, Civil Appeal No. 164 of 1993, decided on 14.1.1993, Ex Capt. Harbhajan Singh v. Secretary Ministry of Defence, Government of India 1997(1) R.S.J. 340, Sq. Ldr. G.S. Cheema v. Union of India and Ors. 1991(1) R.S.J. 64 and Bahadur Singh v. Union of India 1999 (1) S.C.T. 342 (P&H), the writ petition is being disposed of today itself with the consent of the learned counsel for the parties.

2. The petitioner joined the Indian Army on 2.6.1979 and was duly promoted as Havildar. In the year 1994, the petitioner had suffered some eye disease and was down graded to medical category "CEE" for six months, which was again extended for another period of six months. The petitioner also underwent treatment in various Institutions but as there was no improvement in his condition, he was vide order of the Invaliding Medical Board, boarded out of military service on 28.2.1995 with his disability assessed at 40%. The petitioner's case along with the connected medical record, was forwarded to the CCDA(P) Allahabad for the sanction of disability pension. This claim was, however, rejected by the CCDA(P), Allahabad vide order dated 13.11.1995. Annexure P-3 to the petition, on the ground that the authority had found that the

disability was less than 20%, which disentitled the petition on the award of disability pension. The petitioner thereafter filed various appeals and representations but as no result was forthcoming, he filed Civil Writ Petition No. 4874 of 1997 praying that this Court issue a direction that the appeals filed by him be decided. This petition was disposed of with the observations that the respondents had not been given sufficient time to decide the appeal and that in case the appeal was not decided within the next six months, the petitioner would be at liberty to file a fresh petition. It is not disputed that the appeal has still not been decided. The petitioner has accordingly come to this Court by way of the present Writ Petition.

3. On notice of motion, the respondents have filed the reply and it has been admitted that the petitioner's disease had been found to be attributable to military service and the Invaliding Medical Board had assessed it at 40% but as the CCDA (P), Allahabad had found the disability to less than 20%, the petitioner's claim to a disability pension was not tenable in the light of Regulation 173 of the Pension Regulations for the Army 1961.

4. The learned counsel for the parties have been heard. In Ex. Sapper Mohinder Singh's case (supra), cited in the opening paragraph of this judgment, it has been held by the Supreme Court that it was not open to the CCDA (P), Allahabad to review the findings of the Invaliding Medical Board as the opinion of that Board, which had been recorded on a physical examination of the patient, must be accepted. This judgment has been followed by this Court in Bahadur Singh's Case (supra). Moreover, it will be seen that the order Annexure P-3 dated 13.11.1995 gives no reason whatsoever as to why the CCDA (P), Allahabad had differed with the opinion of the Board with regard to the extent of the petitioner's disability.

5. This petition is accordingly allowed, the order, Annexure P-3, is quashed and a direction is issued to the respondents to pay disability pension to the petitioner, keeping in view this disability at 40% as determined by the Invaliding Medical Board. The arrears of disability pension shall be paid to the petitioner within a period of four months from the date a certified copy of this order is supplied to the respondents.

No costs, Dasti order.