
(2014) 09 UK CK 0014

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 979 of 2006

Tej Singh Mehta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Citation : (2015) LabIC 1133

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Advocate : D.S. Mehta, for the Appellant; Suresh Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.?On the grounds urged and in the interest of justice, the restoration application (MCC 726 of 2014) is allowed. Order dated 13.08.2014 is hereby recalled. The writ petition is restored to its original number.

2. The petitioner was a Constable in Assam Rifles. While he was posted in Assam in 1984, he sustained gunshot injuries while apprehending terrorists, as a result his left leg was amputated. He was, however, given medical treatment and retained in service though he was given lighter assignments, in consideration with his medical conditions. On 31.07.1991 the petitioner took voluntary retirement from the Assam Rifles and was given his pension and all other service benefits including post retiral benefits.

3. Thereafter i.e. on his voluntary retirement the petitioner started making representations before higher authorities and it seems that he moved a representation even to the President of India and the matter was referred thereafter to the Directorate General, Assam Rifles for disability pension, and consequently the Directorate General, Assam Rifles passed an order on 16.08.1995, which reads as under:--

PIS ABILITY PENSION

1. Reference your petition dated 10-3-95 addressed to the President of India received from Ministry of Defence, New Delhi.
2. Your case has been thoroughly examined and found that you had proceeded on voluntary retirement at your own request and not due to invalidation from service. Hence, you are not eligible for disability pension.
4. Not satisfied with the said order, petitioner continued to make representations even thereafter and claimed disability pension. Ultimately an order was passed on 06.01.2001, by the Directorate General, Assam Rifles, Pension Section, through its Record Officer. The entire order is as under:-

GRANT OF DISABILITY PENSION

1. Your representation dated 27 Mar., 2001 has been received through MHA and examined in details and found that you have retired from service on voluntary pension at your own request with all benefits attached to the voluntary pension scheme i.e. 5 years weightage of service was added to your total qualifying service for the purpose of calculation of pension/gratuity.
2. Though you sustained a gun shot wound at your left leg but the Medical Board did not recommend your case for disability pension in absence of requisite percentage as per CCS (Extra-ordinary pension) Rules, 1972. However, to give pensionary benefits you were allowed to continue in service to complete twenty years of service on assigning you with light duties. And accordingly, on completion of 20 years of service, you applied for voluntary pension which was granted to you.
3. You are, therefore, advised to desist from approaching the VVIPs/DGAR. In the absence of recommendation of the Medical Board and pre-requisite percentage of disability at that stage of service, the disability pension can not be sanctioned to you.
4. As regards the ex-gratia grant, it is to inform you that the ex-gratia payment is being sanctioned to the next of kin of the deceased soldier, who died in action, hence you are not eligible for ex-gratia payment.
5. The petitioner thereafter filed a writ petition in the year 2006 which was earlier dismissed for lack of territorial jurisdiction as no cause of action arose in the territory of Uttarakhand. Aggrieved, the petitioner moved filed a SLP before me Hon"ble Apex Court and the matter has been remanded back to this Court. Consequently the matter is now being heard on merit.
6. According to the petitioner, he had sustained bullet injuries in his left leg and consequently, his left leg was amputated and therefore he was liable to be invalidated from the Assam Rifles and should have been given disability pension. This has been denied to him.
7. This contention of the petitioner is totally misconceived. The petitioner retired voluntarily from Assam Rifles on his own request and consequently was given

pension and all other benefits attached to the pension scheme. Apart from that, the total period of service which petitioner had put in Assam Rifles i.e. a period of 21 years, but to this were added five more years so that he may get a "higher pension". It is true that he did sustain gunshot injuries and thereafter his left leg was amputated in the year 1984 but he was not invalidated from the Assam Rifles, instead the petitioner was allowed to continue in service so that he could complete twenty years of mandatory service. This was done on human consideration, by assigning only lighter duties to him.

8. After completion of twenty years of service, petitioner himself applied for voluntary retirement which was granted to him. Once availing the benefit of voluntary retirement he has started agitating for the disability pension which is not proper. The petitioner has been given all the benefits by the Assam Rifles. There is nothing in the conduct of the Assam Rifles which may show that they have not given the petitioner a treatment which he did not deserve or that the petitioner had been treated unfairly. Petitioner was allowed to serve inspite of amputation of left leg. Petitioner was allowed to continue in service giving medical treatment and assigning light duties considering his medical condition. Thereafter, he is presently getting voluntary pension. In case the petitioner still requires any medical attendance or medical examination, the same shall be given to the petitioner under the rules by the Assam Rifles. However, disability pension as is being claimed cannot be given to the petitioner. In view thereof, the writ petition is dismissed. No order as to costs.