

(2012) 07 SHI CK 0188

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 181 of 2007 Alongwith Letters Patent Appeal No. 198 of 2007

Union of India and Others

APPELLANT

Vs

Prem Chand

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : (2013) 136 FLR 919 : (2012) 3 ShimLC 1484

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Sandeep Sharma, A.S.G.I, for the Appellant; K.D. Sood with Mr. Sanjeev Sood, Advocate in LPA No. 181 of 2007 and Mr. Anand Sharma, Advocate in LPA No. 198 of 2007, for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, J.—These two appeals are being disposed of by one judgment since the main issue involved in both the cases is the same.

LPA No. 181 of 2007

As far as LPA No. 181 of 2007 is concerned, the same arises out of the judgment delivered by a learned Single Judge of this Court in CWP No. 690 of 2005, titled Prem Chand v. Union of India and others. In this case the writ petitioner had joined as a Sepoy in the Indian Army on 26.2.1964. On 3.8.1966 he was declared unfit on medical grounds and on 3.10.1966 he was discharged on account of his illness. On 12.6.1967 the petitioner was granted disability pension which was changed from time to time. On 11.1.1988, the claim of the petitioner for grant of disability pension was rejected on the ground that when he was brought before the Re-Survey Medical Board, it was found that his disability was less than 20%. Since the opinion of the Re-survey Medical Board was that his disability is less than 20% and in fact between 6% to 10%, the petitioner was not entitled to pension. His representation against such rejection was also

rejected. According to the petitioner he never received such rejection. However, w.e.f. 13.12.2004 the disability, pension of the petitioner was suspended. The petitioner thereafter challenged the suspension of his disability pension before this Court.

LPA No. 198 of 2007

2. The facts of this case are that the writ petitioner was enrolled in the Army on 28th October, 1950 and was invalided out of service on low medial category w.e.f. 23rd September, 1955. His initial disability was assessed at 100% and held attributable to the military service. The petitioner was granted disability pension till February 1963 when he was again brought to Re-survey Medical Board along with medical documents and the disability of the petitioner was assessed at less than 20% and was in fact 11% to 14%. Since the disability had fallen to less than 20% the disability pension was discontinued.

3. In both the cases, the issue involved is whether an individual, who was initially granted disability pension but whose disability was later assessed at less than 20%, is entitled to disability pension from that day onwards or not.

4. The learned Single Judge relying upon communication dated 23rd December, 1992 and the judgment of the Punjab and Haryana High Court in Gurnam Singh v. Union of India, 1995 (4) SCT 278, held that the writ petitioners were entitled to disability pension even if the disability pension was assessed at less than 20% as per Re-survey Medical Board. This judgment is under challenge before this Court.

5. We have heard Mr. Sandeep Sharma, learned Assistant Solicitor General of India for the appellants and Mr. K.D. Sood, learned Senior Advocate and Mr. Anand Sharma, Advocate for the writ petitioners. It is contended on behalf of Union of India that disability pension comprises of two elements, one the service element and two the disability element. It is urged that the learned Single Judge has gravely erred in holding that the petitioners who stood discharged/invalided out of service much prior to 1.1.1973 could be granted benefit of the letter dated 23rd December, 1992. It is contended that even if the letter dated 23rd December, 1992 is applicable then also what is payable is only the service element and not the disability element of the pension.

6. As far as the first contention is concerned, we are in total agreement with the learned Single Judge as well as the Punjab and Haryana High Court that if we keep in mind the object of the letter i.e. to give benefit to those persons who had been invalided out of service but whose disability had fallen below 20% no separate class could be carved out of persons who were discharged after 1.1.1973. All persons who were invalided out of service constitute one class. There is no rational or intelligible criteria as to why those who were discharged after 1.1.1973 should be given higher benefits than those who had been discharged from service prior to that date. We are of the considered view that fixing the date of 1.1.1973 has no nexus whatsoever with the object of granting

some benefits to persons who were invalided out of service because of the disability which they suffered and which disability was attributable to military service.

7. Having held so, it appears to us that the attention of the Punjab and Haryana High Court or the learned Single Judge was not specifically drawn to the wording of letter dated 23rd December, 1992, which read as follows:-

There appears to exist some misapprehension that service element will be continued for life even the accepted degree of disablement fall short of 20%. The factual rule position is given below;

The disability pension constitutes two elements (i) service element and (ii) disability element. The disability element, is payable for a limited period as notified in the pension payment order(s) notified from time to time unless it is notified for life. However, the service element of disability pension is payable for life only in respect of such individuals who were retired/discharged from service or invalided out of service as under:

(i) Individuals invalided out of service before 01.03.1968 with 10 years or more service.

(ii) Individuals invalided out of service on or after 1.3.1968 but before 31.12.1972 with more than 5 years or more service.

(iii) Individuals invalided out of service on or after 1.1.1973 with any period of length of service.

In view of the above provisions, the pension disbursing authorities in the case of individuals at item (i) and (ii) above shall make payment of service element of disability pension for life only where it is specifically notified by the Controller of Defence Accounts (Pensions) in its Pension Payment Order and in the absence of such specific authorization for life, the service element shall be payable only for the period for which disability element is authorized.

8. As pointed out by Mr. Sandeep Sharma, this letter itself makes it clear that the disability pension constitutes of two elements. One element is the service element and the second element is the disability element. The letter makes it clear that the disability element is payable for a limited period as notified in the pension payment orders unless notified for life. However, the service element of disability pension is payable for life in respect of such individuals who were retired/discharged from service. This has been further categorized into three sub categories: (1) those who had retired prior to 1.3.1968 and had put in more than 10 years of service; (2) those who had retired or invalided out of service after 1.3.1968 but before 31.12.1972 with more than 5 years of service; and (3) the individuals invalided out of service on or after 1.1.1973 with any period of length of service. In case of these three categories, it was ordered that the service element of disability pension shall be paid for life in the cases" of individuals invalided out of service. Since we have held that the classification made is

unreasonable, therefore, all servicemen invalidated out of service whether before 1.1.1973 or thereafter would be entitled to the service element of the disability pension for life. This letter makes it absolutely clear that it is only the service element which is payable in terms of this letter and not the disability element. To this extent the learned Single Judge was not correct and therefore, erred in directing that the entire disability pension should be paid even to those invalidated out of service prior to 1.1.1973 regardless of the length of service.

9. We therefore, partly allow both the appeals to a limited extent that the original writ petitioners shall only be entitled to the service element of the disability pension for life and not to the disability element. We also make it clear that this service element shall only be paid w.e.f. 23rd December, 1992 in terms of the letter.

10. In LPA No. 181 of 2007 another issue is involved. As noted above, the disability pension was actually discontinued in the year 1998 but for some unknown reasons the disability pension was actually paid to the writ petitioner and was not stopped till the year 2004. After going through the record we find that the writ petitioner is not at fault. The fault, if any, lies in the office of the Controller of Defence (Pension). The writ petitioner who has utilized this amount cannot be made to suffer and pay back the same. Therefore, no recovery shall be made from him of the amount of disability pension wrongly paid to him. In view of the above discussion, we partly allow these two appeals in the aforesaid terms. No order as to costs.