

(2014) 07 SHI CK 0074
In the High Court Of Himachal Pradesh
Case No : LPA No. 134 of 2007

Union of India

APPELLANT

Vs

Brij Lal Gupta

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Citation : (2014) 07 SHI CK 0074

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Sandeep Sharma, learned Assistant Solicitor General of India, Advocate for the Appellant; M.L. Sharma, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.—This Letters Patent Appeal is directed against the judgment and order dated 1st June, 2007, passed in CWP No. 1175 of 2001, titled as Brij Lal Gupta versus Union of India and another, by the learned Single Judge, whereby clauses (i) and (ii) of Annexure P-4 in the writ petition came to be quashed and set aside, commanding the appellants-writ respondents to treat the respondent-writ petitioner at par with the individuals invalidated out of service on or after 1st January, 1973; the respondent-writ petitioner was held entitled to all the benefits of the disability pension as has been granted to those who have been discharged from service after 1.1.1973 and the writ respondents were also directed to work out the monetary benefits, hereinafter referred to as "the impugned judgment".

2. The writ respondent had filed the writ petition seeking the following reliefs amongst others:

- i) To hold the classification categorizing the personnel invalidated out of service for the entitlement of service element of invalid pension into those: i) who retired before 1-3-68; ii) those who retired on or after 1-3-68 and before 31-12-72 and;
- iii) those who retired after 1-1-73 and providing minimum qualifying service of

10 years, 5 years and nil for these categories, respectively, as unconstitutional and treat the petitioner at par with those who retired after 1-1-73 or 1-3-68 for the entitlement of service pension.

ii) To issue a writ of mandamus directing the respondents to restore the disability pension or allow service pension to the petitioner w.e.f. 29-5-74 and arrears thereof with interest @ 15% per annum.

3. Learned Counsel for the appellants-writ respondents argued that the disability pension was granted to the writ petitioner which he is enjoying for the last more than about 15 years. The same was granted to him w.e.f. 17th July, 1958, when his disability was assessed at 30%. Ultimately, this disability pension was discontinued with effect from 29th May, 1974, as the disability of the writ petitioner was assessed less than 20% by the experts.

4. The respondent-writ petitioner has not questioned the discontinuation of his disability pension by way of appeal as provided under the Army Act as well as the Rules and the Regulations; was contented with the order made by the writ respondents-appellants and after a lapse of 25 years, has filed CWP No. 1175 of 2001, which was granted. Further, in terms of Regulations 173 & 305 of Pension Regulations for the Army 1961 (Part-I), hereinafter referred to as "Pension Regulations, the respondent-writ petitioner is not entitled to disability pension. It is apt to reproduce Regulations 173 and 305 of the Pension Regulations herein:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

305 The rules of disability pension are:-

(a) Officers other than civil Government servants holding lien on civil appointments and military pensioners. The disability pension consists of two elements viz. service element and disability element which shall be assessed as under:-

Service Element

The amount of service element shall be equal to the retiring pension as determined under Regulation 29. There shall be no weightage. There shall be no condition of minimum qualifying service having been actually rendered for earning his element, if otherwise due.

Disability Element

The disability element of disability pension will be Rs. 750/- p.m. at 100 %

disability. For disabilities less than 100% but not less than 20% the above rates shall be proportionately reduced.

Provided that where permanent disability is not less than 60% the disability pension (i.e. total of service element and disability element) shall not be less than the special family pension admissible vide Regulation 95(a)(b) i.e. it shall not be less than 60% or reckonable emoluments subject to minimum or Rs. 750/- p.m.

(b) Civil Government servants holding lien on civil appointments. On reversion to the civil appointment shall be granted disability element as determined above in addition to civil pay and allowances. The disability element shall remain admissible even if an individual becomes eligible for pension under the relevant civil rules.

(c) Military pensioners-Military pensioners shall be granted disability element in addition to the retiring pension already earned.

5. At this stage, learned Counsel for the respondent-writ petitioner frankly conceded that the writ petitioner had sought relief to restore the disability pension or allow service pension to him w.e.f. 29.5.1974 in the writ petition and prayed that the respondent-writ petitioner would be satisfied if he is granted service element pension, keeping in view the provisions contained in Regulation 182 of the Pension Regulations. His statement is taken on record.

6. Learned Counsel for the appellants-writ respondents stated at the Bar he has no objection if the respondent-writ petitioner is granted service element pension. His statement is also taken on record.

7. With the consent of the learned Counsel for the parties, the impugned judgment is set aside and the appellants-writ respondents are directed to consider the case of the respondent-writ petitioner for grant of service element pension, in terms of the Regulations, occupying the field. Accordingly, the appeal is disposed of.