
(2007) 05 GAU CK 0041

In the Gauhati High Court

Case No : Writ Appeal No. 424 of 2004 (in WP(C) No. 149(K) of 2003)

Union of India

APPELLANT

Vs

Prakash Chand

RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 21

Citation : (2007) 4 GLR 66

Hon'ble Judges : Ranjan Gogoi, J and A.Hazarika, J

Bench : Division Bench

Advocate : D.C.Chakraborty, D.Goswami, P.K.Baruah, S.S.Goswami, Advocates appearing for Parties

Judgement

Ranjan Gogoi. J

1. This writ appeal by the Union of India is against the judgment and order dated 10.5.2004 passed by the learned Single Judge directing grant of compensation to the writ petitioner (respondent herein) to the extent of Rs. 3,00,000.00 (Rupees three lakh) for injuries sustained by the petitioner in an accident arising in the course of duties/employment.

2. The facts, in brief, may briefly be noticed at the outset:

The petitioner was working as a Naik in the Central Reserve Police Force (hereinafter referred to as the CRPF) and was, at the relevant time, posted at Kohima. On 13.11.1992, while the petitioner was fixing a signal pole in the course of his duties, he came into contact with a live electric wire. The petitioner suffered burn injuries on his neck, both the hands and in the legs. The petitioner was hospitalized in the Naga Hospital at Kohima where he remained as an indoor patient for 2(two) weeks. Thereafter, the petitioner was shifted to the Base Hospital at Guwahati and finally to the Gauhati Medical College and Hospital wherein he was admitted on 7.12.1992. As, in the meantime, gangrene had set in, both the arms of the petitioner had to be amputated. Thereafter, the case of

the petitioner was referred to the Medical Board whose opinion was that the petitioner was permanently incapacitated from performing his duties. Consequently, he was invalidated from service with effect from 14.9.1993. At that time the petitioner was around 40 years in age. He was invalidated out of service by grant of pension amounting to Rs. 775.00 (Rupees seven hundred seventyfive) per month which included invalid pension of Rs. 400.00 (Rupees four hundred) under the provisions of the Central Civil Service (Pension) Rules ("the CCS (Pension) Rules") and Disability Pension of Rs. 375.00 (Rupees three hundred seventyfive) per month calculated under the provisions of the Central Civil Service (Extraordinary) Pension Rules [hereinafter referred to as the CCS (Extraordinary Pension) Rules].

3. Aggrieved and contending that the petitioner is entitled to a further lump sum compensation, the petitioner approached the High Court of Himachal Pradesh by filing a Civil Writ Petition. The aforesaid Civil Writ Petition was withdrawn on 10.4.2003 with liberty to approach this court. Thereafter, the writ petition out of which this appeal has arisen was filed before this court.

4. In the writ petition filed, the petitioner had contended that the injuries sustained by him leading to amputations of both the arms were caused in the course of performance of duties. Grant of a meagre amount of disability pension in a situation where the petitioner was permanently incapacitated with a large family to support was not at all justified. He, therefore, claimed to be entitled to compensation on a lump sum basis. In the writ petition filed, the different heads under which compensation was claimed with the precise damages suffered were, however, not pleaded by the petitioner.

5. The claims made in the writ petition were resisted by the respondents in the writ petition (appellants herein) by contending that all retirement benefits due, like gratuity, leave encashment, G.I.S., etc., were paid to the petitioner. According to the respondents, the pension of the petitioner including disability pension totalling Rs. 775.00 (Rupees seventy hundred seventyfive) per month was enhanced to Rs. 2,360.00 (Rupees two thousand three hundred sixty) following the recommendations of the Fifth Pay Commission. According to the respondents (appellants herein), the petitioner could have availed of the disability pension on a monthly basis or in a lump sum and further that as the statutory rules in force for grant of normal pension as well as disability pension do not provide for payment of any compensation, the petitioner is not entitled to the compensation sought for.

6. The learned Single Judge, on due consideration of the respective cases advanced by the contesting parties, took the view that the injuries sustained by the petitioner had rendered the petitioner virtually crippled and, therefore, the Union of India had an obligation to come forward with an appropriate compensatory package. Accordingly, it was held that the petitioner is entitled to compensation in addition to what was paid to him by the respondents on account of disability pension. The learned Single Judge, therefore, held it to be

appropriate to award compensation of Rs. 3,00,000.00 (Rupees three lakh) to the petitioner. Aggrieved, this writ appeal has been filed.

7. Sri DC Chakraborty, learned C.G.C. appearing for the appellants has vehemently contended before us that, the entitlement of the respondentwrit petitioner in the present case is governed by the statutory provisions enacted in the form of the CCS (Pension) Rules and CCS (Extraordinary Pension) Rules. Under the aforesaid Rules read together, apart from normal invalid pension, the petitioner is entitled to disability pension at the rate stipulated. The same has been granted to him and such pension has also been revised with effect from 1.1.1996 to Rs. 2,360.00 (Rupees two thousand three hundred sixty). According to the learned counsel, the disability pension assumes the character of a compensatory element which the petitioner has received. The disability pension granted to the writ petitionerrespondent is to continue during his lifetime. Therefore, if the aforesaid disability pension is to be computed on the basis of the reasonable number of years that the petitionerrespondent is expected to live, the amount which would be payable would be sufficiently high and can partake the character of the compensation that has been awarded by the learned Single Judge. In such circumstances, Sri Chakraborty, learned CGC has contended that the learned Single Judge ought not to have granted any further compensation, particularly, as no such further compensation is contemplated by the provisions of the Rules in force.

8. Sri S.S. Goswami, learned counsel for the respondentwrit petitioner, in reply, has argued that in the present case, the loss of both the upper limbs of the petitionerrespondent had rendered him virtually a destitute. Had the petitioner remained in service, his prospects of earning higher amounts up to the age of his normal retirement were certain. Instead the petitioner had met with a cruel fate at a relatively young age. The accident which had occurred in the course of performance of duties, apart from causing loss of income and prospects in service, had caused immense sufferings to the petitioner besides loss of amenities of life. In such a situation grant of disability pension even at the enhanced rate as per the recommendations of the Fifth Pay Commission, is grossly disproportionate resulting in serious inequities. Contending that the object of payment of compensation is to restore the injured, as far as possible, to his former state and relying on a judgment of the Apex Court in the case of Charanjit Kaur v. Union of India and Others, 1994 ACJ 499, Sri Goswami has argued that the right to receive a lump sum compensation in addition to normal pension clearly flows from the ratio of the judgment of the Apex Court in the aforesaid case. Sri Goswami has further argued that in the present case the injuries sustained by the respondentwrit petitioner in the course of his duties has seriously invaded the petitioner's right under article 21 of the Constitution of India to live a meaningful life and, therefore, the award of compensation by the learned Single Judge, in exercise of powers under article 226 of the Constitution, is just and fair and would not call for the interference of the appellate court.

9. The rival submissions advanced on behalf of the respective parties have received the due and anxious consideration of the court. At the outset, it must be noticed that in the present case it is not disputed that the injuries suffered by the petitioner were on account of an accident for which he was in no way responsible and that the said accident had occurred while the petitioner was engaged in the performance of his duties.

10. Compensation is awarded to an affected and injured person to restore him to his former status in so far as such restoration is possible in terms of money. In the present case, the loss of service benefits and earnings that the petitioner had suffered on account of the injuries sustained by him is one aspect of the claim for compensation. It is this aspect of loss, i.e., earnings and service benefits and earnings, the court must hold, is what is covered by what has been considered to be adequate by the Legislature or the Rule making authorities by framing the provisions of the Rules for grant of invalid pension as well as disability pension. If statutory rules have been framed and are in force, naturally, the entitlement of an affected person cannot be determined beyond the provisions of the Rules. A reading of the CCS (Extraordinary Pension) Rules would go to show that the said Rules elaborately contemplate what would amount to permanent disablement for being invalidated out of service and in such a situation what should be the adequate measure of the compensatory package that should be awarded. If the statutory Rules have contemplated such a situation, it is not for the courts, to substitute its judgment for what has been spelt out to be just and adequate by the Legislature. To that extent, it has to be conceded, the respondents are right in contending that the provisions of the Pension Rules, as noticed above, should govern the matter.

11. However, the damages sustained by the petitionerrespondent on account of loss of earnings and prospects in service is only one part of the claim for compensation that can be visualized to have been open to the petitioner. There is no manner of doubt that apart from loss of earnings and service benefits, compensation can be claimed and awarded under several other heads like mental and physical shock, pain, suffering, loss of amenities of life besides inconvenience, hardship, disappointment and perpetual mental stress, etc., and the other like heads.

12. In the present case the respondentpetitioner lost the use of both the upper limbs at a relatively young age, i.e., at around the age of 40 years. The consequential loss of amenities of life and pain and sufferings and a host of other consequential losses can very well be taken note of by the court. That the respondentwrit petitioner has not established the said facts in the course of a normal trial by adducing evidence will not fundamentally alter the situation ; the court is always entitled to presume such consequences which are normal incidence of human life. Serious loss of amenities of life ; deprivation of the quality thereof ; untold pain and sufferings, both physical and mental ; perpetual inconvenience are some of. he consequences that the court must assume to have

affected the petitioner in the present case. If that be so, will it be correct to relegate the petitioner to the civil court to "prove" what he had suffered ? The inbuilt negative answer to the above query leaves the court satisfied that even the compensatory nature of the package awarded under "Disability Pension" would not be sufficient in the present case and that the petitioner must receive more.

13. Determination of the quantum of compensation payable, following proof of loss or damage suffered, at times becomes subjective though courts always take care to make such determination as objective as possible. In the present case the respondentwrit petitioner lost the use of both his arms when he was around 40 years. Taking into account the normal life span of a human and visualizing the possible adverse consequences that the respondentwrit petitioner had suffered and is presently suffering from the injuries sustained by him, we are of the view that in the facts of the present case the award of compensation of Rs. 3,00,000.00 (Rupees three lakh) as made by the learned Single Judge adequately meets the ends of justice and, therefore, the said award need not be disturbed. In coming to the aforesaid conclusion, we have deemed it appropriate to take note of another fact, which, in our considered opinion would have some significance.

14. The respondentwrit petitioner lost the use of both his arms in the course of his duties. He was a young man with long years of service to follow. In such a situation, as already expressed by this court in its order dated 7.12.2006, it is the Union of India which should have come up with an offer of ex gratia payment. Surely, if the respondentwrit petitioner had lost both his arms while engaged in an offensive action against the enemy or even in a counter insurgency operation within the country, the Union, perhaps, would not have hesitated to come forward with an offer of ex gratia payment. Merely because the respondentwrit petitioner lost both his limbs while fixing a signal pole was it correct on the part of the Union not to so act ? However, ex gratia being an act of gratis and there being no legal right to receive the same, no mandamus can be issued by us to the Union in this regard. However, the above position, should not stop us from noticing the conduct and action of the Union of India in formulating our final opinion that the views expressed by the learned single Judge should be sustained.

15. On the discussions that have preceded, we deem it appropriate to dismiss the appeal and affirm the order dated 10.5.2004 passed in WP(C) No. 149/(K)/2003 by the learned Single Judge though on slightly different grounds. In the facts and circumstances of the case, we also deem it appropriate to leave the parties to bear their own costs. The compensation that will now be payable by the Union shall be so paid within a period of 3 months from today.