

**(1995) 01 DEL CK 0002**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 4815 of 1993

Ved Parkash Chawla

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 12-01-1995

**Acts Referred:**

**Citation :** (1995) 1 AD 685 : (1995) 58 DLT 773 : (1995) LabIC 1234

**Hon'ble Judges :** A.D. Singh, J

**Bench :** Single Bench

**Advocate :** B.P. Ojha and K.C. Mittal, for the Appellant;

## **Judgement**

Anil Dev Singh, J.

(1) This is a Writ Petition whereby the petitioner seeks a direction to the respondents to pay disability pension at the rate of 60% to him w.e.f. 9/05/1988 for a period of 10 years as assessed by the Re-survey Medical Board.

(2) The facts giving rise to this petition are as under:

THE petitioner was enrolled in the Army (EME) on 17/10/1941. He was discharged from the Army on completion of his term of engagement on 7/07/1969. At the time of his discharge he was examined by "Release Medical Board", which found him to be in a low medical category. His disability was assessed at the rate of 30% and the same was held to be attributable to army service. Consequently the petitioner was granted disability pension at the rate of 30% besides the usual pension, which was admissible to him. The amount of disability pension was varied from time to time by the respondent depending upon the assessment of the disability by "Release Medical Board".

(3) On 9/05/1988 a Re-survey Medical Board again examined the petitioner for re-assessment of his disability. After examining the petitioner the Board came to the conclusion that the petitioner should be paid disability pension at the rate of 60%. The matter was, however, referred to CCDA (Pensions) Allahabad for

approval of the recommendation of the Board. The CCDA (Pensions) in consultation with the Medical Advisor attached with it, came to the conclusion that disability pension should be admissible to the petitioner at the rate of 30%. In this regard a communication dated 29/04/1989 was sent to the petitioner. THE petitioner not being satisfied with the decision of the CCDA preferred an appeal to the Government of India, Ministry of defense. The Government of India by its letter dated 27/07/1992 decided that the disability of the petitioner, which was attributable to military services, be deemed to be enhanced as assessed by the Re-survey Medical Board held on 9/05/1988. Having decided in this manner, the letter, however, stated that the disability pension rate be treated as 30% for a period of 10 years. There appears to be an apparent mistake in mentioning the rate of disability pension in the letter of the Government of India. Having said that the disability pension be deemed to be enhanced as assessed by the Re-survey Medical Board held on 9/05/1988, the petitioner would have been entitled to disability pension at the rate of 60% as was recommended by the Resurvey Medical Board. Learned Counsel for the petitioner, while emphasising this aspect of the matter, also contended that the action of the CCDA in accepting the disability of the petitioner as 30% was arbitrary and it could not differ with the recommendations of the Re-survey Medical Board without having the petitioner examined from a higher medical authority. He supported his contentions by the decision of the Supreme Court in Ex. Sapper Mohinder Singh v. Union of India being Civil Appeal No. 164/1993 (decided on 14/01/1993). In this connection, he laid emphasis on following observations of the Supreme Court :

"WE have examined the relevant materials and we do not feel satisfied with the plea taken in the counter affidavit. No details of the consultation has been disclosed by the respondent nor it is claimed that the appellant has been re-examined by any higher medical authority. We are not prepared to act on the vague allegations in the counter affidavit referred to above. In view of all the relevant circumstances of the case we are of the opinion that the Disability Pension assessed at the rate of 40% by the Medical Board, which had examined the appellant, should be respected until a fresh Medical Board examines the appellant again and comes to a different conclusion. Accordingly we direct that for the period 1.8.1989 to 31.1.1993 the appellant shall be paid the Disability Pension at the rate of 40% and it will be open to the authority concerned to have the appellant re-examined by a properly constituted Medical Board for re-assessment of the disability with effect from 1.2.1993."

I have considered the submissions of the learned Counsel for the petitioner. Having regard to the above noted observations of the Supreme Court, I am of the opinion that the petitioner is entitled to disability pension at the rate of 60%.

(4) It is not disputed that the Re-survey Medical Board assessed the disability of the petitioner as 60%. In case the CCDA was not satisfied with the recommendations of the Medical Board, it should have got the petitioner examined by another Medical Board or higher medical authority. But without

having the petitioner examined by a fresh Medical Board or higher medical authority, it was not proper to take a contrary view from the one taken by the Resurvey Medical Board.

(5) Learned Counsel for the respondent however, contended that the CCDA took the advise of a Medical Advisor attached with it before deciding the question of disability pension of the petitioner. It is, however, not disputed by learned Counsel for the respondent that the petitioner was not examined by the Medical Advisor before giving his opinion. It is difficult to imagine how the Medical Advisor could have given an opinion without examining the petitioner. It is also not disputed that the Medical Board is constituted of three members and is headed by a Lt. Col. of the Army Medical Corp. Learned Counsel for the respondent has also admitted that the Medical Advisor, who was attached with the CCDA at the relevant time was also a Lt. Col. How could he then over-rule the decision of the Board of three members presided over by a Lt. Col.? The manner in which the recommendations of the Re-survey Medical Board were rejected by the CCDA is highly unsatisfactory. The Supreme Court in Ex. Sapper Mohinder Singh (supra) took the view that the disability pension assessed by the Medical Board should be respected until a fresh medical board examines the person suffering from the disability and in whose favor the recommendation is made by the former Board.

(6) Having regard to the above discussion, I am of the opinion that THE petitioner is entitled to receive disability pension at the rate of 60% from 9/05/1988 for a period of 10 years as assessed by the Re-survey Medical Board. It is, however, clarified that in case the respondents are not satisfied with the finding of the Board they can appoint a fresh Medical Board to examine THE petitioner.

(7) Accordingly, this Writ Petition succeeds and it is directed that THE petitioner shall be paid disability pension at the rate 60% w.e.f. 9/05/1988 for a period of 10 years. The respondent will also pay costs to the petitioner in the sum of Rs.5,000.00.