

(2008) 02 P&H CK 0066

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Chandgi Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Feb. 28, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2008) 2 PLR 372

Hon'ble Judges: Mohinder Pal, J; Hemant Gupta, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Mohinder Pal, J.

The question involved in this writ petition filed under Articles 226/227 of the Constitution of India is - whether a soldier, who had been invalidated out of Military service with disability pension, consisting of both the elements i.e. service and disability element, is entitled to get service element of pension after the benefit of disability pension was withdrawn from him on reassessment of disability at below 20 per cent.

2. Brief facts of the case are that the petitioner joined the Military service on December 27, 1957. He was invalidated out from this service with effect from March 31, 1965 with 20 per cent disability due to Hysterical Reaction (Fits) on the recommendation of the Medical Board. According to the petitioner, the disability of the petitioner was attributable to and aggravated by the Military service. The petitioner was granted disability pension, consisting disability element and service element (Rs. 20/- per month plus Rs. 5/- = Rs. 25/- per month with effect from March 31, 1965. Initially, it was granted from March 31, 1965 to January 15, 1967 and the same was extended from January 16, 1967 to September 20, 1969. On August 21, 1969, the petitioner was brought before Re-survey Medical Board and his disability

was re-assessed less than 20 per cent. The C.C.D.A. (Pensions), Allahabad, vide letter No. G3/RA/69/68974/II dated. December 30, 1969, discontinued the disability pension of the petitioner with the remark that percentage of his disability was re-assessed less than 20 per cent. Disability pension of the petitioner was discontinued with effect from September 20, 1969. In this writ petition, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to release the service element of pension to him with effect from September 20, 1969.

3. In the written statement filed by the respondents, it has been pleaded that disability pension to the petitioner was rejected in the year 1969, but he never challenged the same. Now, after 37 years, his claim is liable to be rejected on account of delay and laches. It has further been pleaded that as per Circular No. Tech./182 dated May 06, 1992 (Annexure R-1) issued by the office of the Controller of Defence Account (P.D.), Meerut Cantt. service element of pension is admissible for only those pensioners who have rendered minimum ten years" service before March 01, 1968. However, in the present case, the petitioner was invalidated out from service on March 31, 1965 (i.e. before March 01, 1968) after rendering seven years, three months and four days service. As such, he is not entitled for earning service element of pension. It has also been pleaded that the disability of the petitioner, as per the opinion of the Invalidating Medical Board, was not attributable to Military service, but aggravated due to stress and strain of Military service in a field area, from April 1964 to September, 1964.

4. We have heard Mr. R.A. Sheoran, Advocate, appearing for the "petitioner and Mr. S.K. Sharma, Advocate, appearing for the respondents and have gone through the records of the case.

5. So far as delay in filing the present writ petition is concerned, it is now well-settled that in such matters the question of delay would not be material and it cannot be used to defeat the rights of the petitioner to get pension.

6. In the present context, reference to the relevant provisions of Regulations 173 and 186 of the Pension Regulations for the Army, 1961 (for short "the Pension Regulations) is necessary. Pension regulation 173 reads as under

Primary conditions for the grant of disability pension:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated from 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 above.

Pension Regulation 186 is as follows:

186(1) An individual who is invalidated out of service with a disability attributable to or aggravated by service but assessed at below 20" per cent shall be entitled to

service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall, however, continue to draw the service element of disability pension.

7. A perusal of Pension Regulation 173 reveals that disability pension, consisting of service element and disability element, is payable to an Army personnel who is invalidated from service on account of disability which is attributable to or aggravated by military service and is assessed at 20 per cent or above. Pension Regulation 186 (1) states that an Army personnel who is invalidated out of service with a disability assessed at below 20 per cent shall be entitled to service element only. The present controversy is covered under Pension Regulation 186 (2) which clearly states that an Army personnel, who was initially granted disability pension but whose disability was re-assessed at below 20 per cent subsequently, shall cease to draw disability element of pension from the date it falls below 20 per cent. However, he shall continue to draw the service element of disability pension.

8. On August 21, 1969, when the petitioner's disability was assessed below 20 per cent, he ceased to have any right to get disability element of pension, but he continued to be entitled to get service element of pension. As stated above, the disability element of pension was Rs. 20/- per month and the service element of pension paid to the petitioner was Rs. 5/- per month.

9. A Division Bench of this Court in a judgment rendered in the case of Amerjit Singh v. Union of India (Civil Writ Petition No. 12311 of 1996 decided on February 27, 1997), where in similar circumstances, the petitioner therein was denied service element of pension of Rs. 13/- and 5 Annas, from March 05, 1986, held that he was entitled to minimum service pension of Rs. 375/- per month payable to an ex-military personnel as per the orders issued by the Central Government. The respondents were directed to disburse pension (service element) to the petitioner therein at the rate of Rs. 375/- per month and the arrears due were ordered to be quantified and disbursed within three months from the date of receipt of a copy of that judgment. It is relevant to mention here that the judgment in Amarjit Singh's case (supra) was challenged by the respondents in the Hon'ble Supreme Court by way of filing SLP No. 7400 of 1997, which was dismissed on September 22, 1997, upholding the judgment of the Division Bench of this Court. We are also of the view that once the service element of pension was granted to the petitioner, the same cannot be denied for the remaining period by asserting that he lacks ten years of qualifying service in view of the clear cut provisions of Pension Regulation 186(2), reproduced above.

10. Resultantly, the petitioner is held entitled to be paid service element of pension as per the rates fixed by the Central Government from time to time. His pension will

be calculated/fixed at the relevant rates from the date it was discontinued i.e. September 20, 1969. However, arrears of pension, so calculated, shall be restricted to three years and two months preceding the filing of this writ petition.

11. The respondents are directed to disburse the arrears to the petitioner within three months from the date of receipt of copy of this order. In case the arrears are not disbursed within the said period, the entire arrears will carry interest at the rate of nine per cent per annum from the date of expiry of three months till the date of payment. This writ petition is allowed in the above terms with no order as to costs.