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**(2001) 05 P&H CK 0136**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 5658 of 2000

Balbir Singh Johar

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** May 11, 2001

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227

**Hon'ble Judges:** R.L. Anand, J

**Bench:** Single Bench

**Advocate:** Mr. S.K. Bishnoi, for the Appellant; Mr. R.C. Dimri, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

R.L. Anand, J.

Shri Balbir Singh Johar petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India against the Union of India and others and he has made a prayer that this Court may issue a writ in the nature of certiorari quashing the order Annexure P-8 dated 30th June, 1997 vide which the case of the petitioner for disability pension was rejected. The petitioner further made a prayer that directions be issued to the respondent-authorities to release the benefit of disability element along with interest at the rate of 18 per cent.

2. The case set up the petitioner is that he joined the Indian Air Force as Electrical Fitter on 23rd June, 1962. At the time of his admission or entry into the Air Force, he was medically checked up thoroughly and he was found fit to perform duty. He was also declared medically fit on number of occasions while in service. So much so the petitioner rendered the service during Indo- Pak War of 1965 and 1971. He was declared medically fit several times during the course of his service and different tests were performed upon him by the competent medical authorities from 1962 to 1977, but in the year 1977 the

petitioner felt low backache and started taking medical treatment in various hospitals and his treatment continued up to 1980 and subsequently the petitioner was placed in Permanent Low Medical Category for Sacralisation of LV5 (Lower Vertebra 5) by a classified surgical specialist. On 30th June, 1993 the medical authorities examined the petitioner and recommend for his release from the service by reducing him in Category "C" permanent. The petitioner made a request to discharge him on compassionate ground. At the time of discharge in 1993 the disability of (he petitioner was assessed 20%. He made a claim for disability element but it was rejected on the ground that it was not clear whether disability suffered by the petitioner is attributable to Air Force service or it was before service. The petitioner made a prayer that his request may be sympathetically considered, but to no effect. He also filed an appeal, issued various reminders and finally the appeal of the petitioner was rejected in the year 1997. Hence the present writ petition.

3. Notice of the writ petition was given to the respondents who filed the written statement and denied the allegations. It is alleged by the respondents that since the petitioner was retired on compassionate ground upon his own request and he was not invalided from Air Force Service, therefore, in terms and Regulation 153 of Pension Regulations for the Air Force, 1961 (Part-I), the petitioner is not entitled to any disability pension or disability element. It was also pleaded that the alleged disability is not attributable or aggravated by his service. The respondents pray for the dismissal of the writ petition.

4. I have heard the learned counsel for the parties and with their assistance, have gone through the record of this case.

5. Learned counsel appearing for the respondents submitted that in view of Rules and Regulation 7.1 contained in Chapter 7 of pensionary benefits for Airmen, the petitioner is not entitled to the benefit of disability element. He has submitted that the petitioner was retired on compassionate ground upon his own request and, therefore, he is not entitled to any relief. Moreover, the disease suffered by the petitioner is not attributable to the Armed services.

6. On the contrary, learned counsel for the petitioner relies upon Regulation 7.6 *ibid* which governs the grant of disability pension and submitted that the petitioner is entitled to the benefit of disability element because his initial term of engagement was for 15 years. Thereafter he served for about 30 years. Irrespective of the fact that the petitioner made a request for his discharge on compassionate ground firstly by virtue of the provisions of Regulation 7.6, the petitioner is entitled to the benefit of disability element.

7. I have considered the rival contentions of the learned counsel for the parties and, in my opinion, the petitioner is entitled to the benefit of disability, element. Regulation 7.1 reads that the personnel who are invalided out of service and not discharged at their own request due to a disability of 20% or more, which is accepted as attributable to or aggravated by Air Force Service are eligible for the grant of a disability pension consisting

of a service element and a disability element. This regulation which has been reproduced by the learned counsel has given answer to his own argument. We all know that disability pension is constituted of two things, i.e. service element and disability element, meaning thereby that when a person seeks discharge on his own request, he will not be entitled to the benefit of service element and disability element which are two parts of disability pension, but Regulation 7.6 only talks of disability element which is independent from Regulation 7.1. For the sake of convenience and for the benefit of this order, it will be appropriate for me to reproduce Regulation 7.6 which reads as follows :

7.6 Individuals discharged after completing the initial term of engagement for colour service and unwilling to continue in service beyond the period of their engagement, remain entitled to disability element of pension in addition to their service pension/gratuity, despite their unwillingness, to extend their colour service.

Meaning thereby, that the petitioner may not be entitled to the benefit of service element but he is definitely entitled to the benefits of disability element.

8. With regard to the second argument raised by the learned counsel for the respondent that the disease is not attributable to Air Force Services, I must say that it has to be rejected outrightly. It is a common case of the parties that when the petitioner was taken into service, he was subjected to medical test. He was declared medically fit to enter into service. At no point of time it has been mentioned in the personal data of the petitioner that the disease suffered by him is not attributable to Air Force service. The petitioner developed pain in Lower Vertebra 5. This disease can appear in human body with the passage of time and with the weakening of bones and other related factors. There is no cogent evidence on record to suggest that the disease suffered by the petitioner is not attributable to Air Force service.

9. Resultantly, I allow this petition, set aside the impugned order and declare that the petitioner is entitled to the benefit of disability element alone and the said amount should be worked out and calculated and shall be disbursed to the petitioner within three months from the receipt of copy of this order, failing which the petitioner shall be entitled to interest at the rate of 12 per cent. The benefit of disability element shall be calculated for a period of 38 months only, starting earlier from the date of the filing of the writ petition.

The petitioner shall appear before the Re-Survey Medical Board as and when called upon by the respondent-authorities.

No order as to costs.

10. Writ petition allowed.