

(2001) 01 P&H CK 0221

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 7010 of 2000

Avtar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Jan. 10, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

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

Bench: Single Bench

Advocate: Bhim Sen Sehgal, for the Appellant; B.S. Guglani, for the Respondent

Final Decision: Allowed

Judgement

R.L. Anand, J.

Shri Avtar Singh has filed the present Civil Writ Petition under Articles 226/227 of the Constitution of India and he has prayed that a writ of certiorari may be issued against the respondents by quashing orders Annexures P-2 and P-4 and direction be given to the respondents to release the benefit of disability pension to him with effect from 16.1.1996.

2. The case set up by the petitioner is that he was born on 15.2.1960. He was enrolled in the army after having been found medically fit and was placed in category "AYE" on 26.11.1980. He was sent for training and after completion of the training he was allocated to Unit No. 8 of Mount Division. He was admitted in the military hospital due to ear disease while posted in adverse climate condition in the high altitude in the year 1983. He was invalidated out of the army service on the recommendation of the invalidating Medical Board and he was placed in medical category "BEE" on 1.4.1984. The petitioner was granted disability pension on 2.4.1984 for a period of 2 years at the rate of 20%. This was extended up to a period of ten years i.e. up to 15.1.1996. The petitioner was again brought before the Re-survey Medical Board for reassessment of the disability on 7.5.1997. The

petitioner received a letter from the Record Office that his disability has been assessed at 20% on 30.6.1997 but this disability has been reduced to the surprise of the petitioner by the CCDA (P) with effect from 16.1.1997. The petitioner filed an appeal before the Ministry of Defence which was rejected on 2.3.2000. Hence the present writ petition has been filed by the petitioner.

3. Notice of the writ petition was given to the respondent who filed the reply and denied the allegations. The stand taken by the respondents is that the opinion of the Medical Board is not binding upon the CCDA (P) who is a competent officer to reduce the extent of disability. It was also the defence of the respondents that any opinion formulated by the Re-survey Medical Board is not binding upon the CCDA (P) who can independently form an opinion concerning the extent of disability. The impugned order has been passed by the CCDA (P) on the advice furnished by the Medical Advisor attached with the said officer. Also it was the defence of the respondents that there are 9 Re-survey Medical Boards throughout India and the Medical Adviser attached with the CCDA (P), has been empowered to re-assess the disability, shown by the Re-survey Medical Boards.

4. I have heard Shri B.S. Sehgal, learned counsel appearing on behalf of the petitioner and Shri B.S. Guglani, learned counsel, appearing on behalf of the respondents.

It is the common case of the parties that one Re-survey Medical Board determined the disability of the petitioner to the extent of 20%. This disability has been reduced by the Medical Adviser attached with the CCDA who never examined the petitioner and in these circumstances any opinion formulated by the Medical Adviser, will not have the superseding effect over the opinion of the Medical Board, which, alone had the occasion to examine the petitioner physically. Before reducing the percentage of the disability of the petitioner the CCDA did not even examine the petitioner.

5. In this view of the matter I repel the contention of the respondents, after relying upon the judgment of the Hon'ble Supreme Court dated 14.1.1993 passed in Civil Appeal No. 164 of 1993, Mohinder Singh v. Union of India 1997(4) RSJ 587 Ujagar Singh v. Union of India and 1998(3) SCT 546 (PH) : 1999(5) SLR 42, Roshan Lal v. Union of India and others,

6. Resultantly, this writ petition is allowed by setting aside the impugned orders Annexures P-2 and P-4 and directions are given to the respondents to release the benefit of disability pension to the petitioner by assessing his disability to the extent of 20% with effect from 16.1.1996, within a period of three months from the receipt of the copy of this Order, failing which the petitioner shall be entitled interest at the rate of 12%. The petitioner shall also appear before the Re-survey Medical Board as and when called upon by the respondents. There shall be no order as to costs.

7. Petition allowed.