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Delhi High Court

Case No: Writ Petition (C) No. 8487 of 2010

H.C. (Retired) Siya Ram Singh Bhadoria	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision: April 20, 2012

Acts Referred:

- Central Civil Services (Extraordinary Pension) Rules, 1939 - Rule 3, 3A, 3A(2), 3A(3), 3A(94)
- Constitution of India, 1950 - Article 14

Hon'ble Judges: Rajiv Sahai Endlaw, J; A.K. Sikri, J

Bench: Division Bench

Advocate: M.G. Kapoor, for the Appellant; Barkha Babbar, Advocate for UOI, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The petitioner was enrolled as a Constable (Driver) in the Border Security Force ("BSF" for brevity). In 1995, he was performing duties as driver of the school bus for the children of BSF personnel. On 09.8.1995, while the petitioner was driving the school bus carrying the children to the school, the bus met with an accident with a civil truck as a result of which the petitioner suffered serious injuries. The petitioner was hospitalized. On 08.8.1996, BSF Medical Board assessed petitioner''s disability at 50% "temporary for one year". On 18.11.1998, the petitioner was paid Rs. 38,172/- as compensation in lieu of "Disability Pension" for 50% disability. At that time, the disability was assessed as "temporary for one year" and the petitioner was still hospitalized. When petitioner''s condition was not improving, the petitioner was referred to AIIMS, New Delhi. While the petitioner was admitted in BSF hospital at R.K. Puram, New Delhi, surgery on the

petitioner was performed on number of occasions in AIIMS and also twice in Apollo Hospital. On 26.8.1998, AIIMS assessed petitioner''s disability at 80%. Later, another BSF Medical Board in 2001 assessed petitioner''s disability at 80% "permanent". The petitioner was retained in service and was not boarded out of service because of the disability. Later, when the petitioner was unable to perform his duties, he requested to proceed on Pension Establishment. He was discharged with effect from 01.8.2009. In this behalf, his request to proceed on voluntary retirement was accepted vide Office Order December, 2008 and voluntary retirement became effective from 01.8.2009, with full pensionary benefits. Though the petitioner is getting normal pension, according to him, he is entitled to disability pension corresponding to his 80% permanent disability assessed by the BSF Board on 09.11.2001, which is reckoned to be 100% disability in terms of Government of India, Department of Pension and Pensioners'' Welfare OM No. 45/22/97-P. & P.W. (c) dated 03.2.2000.

2. As already noted above, though the petitioner suffered the accident way back in the year 1995 and he underwent medical treatment for quite some time, the petitioner was retained in service despite having been declared unfit by the Medical Board and was even sent to J & K on I.S. duties and to harsh area on the Indo-Pak Border against the medical advice. On 18.11.1998, he was paid Rs. 38,192/- as compensation in lieu of "disability pension" corresponding to 50% disability, though it was "temporary for one year" and the petitioner was still hospitalized. Even when the BSF Medical Board assessed the petitioner 80% "permanent" disability in the year 2001, he was retained in service and continued as such for more than seven years thereafter and it was him who sought Voluntary Retirement from Service (VRS). The petitioner was discharged from service with effect from 01.8.2009.

3. Rule 9 of the Central Civil Services (Extraordinary Pension) Rules (hereinafter referred to as the "Rules") deals with payment of disability pension to those Government servants who acquired such disability during service. This rule reads as under:

9. (1) When disablement of a Government servant is conceded as due to Government service is conceded as due to Government service in terms of Rule 3-A, he shall be awarded disability pension in terms of sub-rule (2) or (3) or lump sum compensation in terms of sub-rule 94) of this Rule in accordance with the percentage of disability (suffered by him) as certified by the Medical Authority concerned.

(2) If the Government servant is boarded out of Government service on account of his disablement, the quantum of disability pension for cent per cent disability pension for lower percentage of disability shall be, "proportionately lower" (The minima and maxima given in Schedule II are applicable only for arriving at the monthly disability pension for cent per cent disability and are not applicable in respect of percentage of disability lower than cent per cent).

(3) If the Government servant is boarded out of Government service on account of such disablement, and further if, the percentage of his permanent disability as certified by the Medical Authority is not less than 60%, his monthly disability pension shall be related to the family pension admissible to the widow (as if he had died instead of being disabled).

(4) If the Government servant is retained in service in spite of such disability, he shall be paid a compensation in lump sum (in lieu of the disability pension) on the basis of the disability pension admissible to him in accordance with the provision of sub-rule (2) of this Rule, by arriving at the capitalized value of such disability pension with reference to the Commutation Table, in force from time to time.

4. As per sub-rule (4) of Rule 9 of Rules, when a Government servant is retained in service in spite of such disability, he will be paid compensation in lump sum, in lieu of the disability pension. As the petitioner was retained in service, by virtue of aforesaid sub-rule (4) he could be given only lump sum amount as compensation which he has already received. Fully conscious of the fact that the aforesaid sub-rule (4) comes in the way of the petitioner to get disability pension, the petitioner has challenged the vires of sub-rule (4) of Rule 9 of the Rules a well. The vires are challenged on the ground that this Rule does not give option to the Government servant who is retained in service after having suffered disability to elect either "disability pension" or "compensation in lieu of disability pension" and therefore, this Rule is ultra vires the Constitution offending Article 14. To make out the case of discrimination, the petitioner referred Rule 37A of the CCS (Pension) Rules, which according to him, gives such an option. Rule 37A along with Rule 37 thereof which is also relevant are reproduced below:

37-A, Payment of lump sum amount to persons on absorption in or under a corporation, company or body.

(1) Where a Government servant referred to in Rule 37 elects the alternative of receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension, he shall, in addition to the death-cum-retirement gratuity, be granted -

(a) on an application made on this behalf, a lump sum amount not exceeding the commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of the Civil Pensions (Commutation) Rules; and

(b) terminal benefits equal to the commuted value of the balance amount of pension left (after) commuting one-third of pension to be worked out with reference to the commutation tables obtaining on the date from which the commuted value becomes payable subject to the condition that the Government servant surrenders his right of drawing two-thirds of his pension.

37. Pension on absorption in or under a corporation, company or body. - A Government servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or

in or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him.

Provided that no declaration regarding absorption in the public interest in a service.....

5. It is difficult to accept the aforesaid argument of the learned counsel for the petitioner. There is no comparison between Rule 37 of CCS Rules on the one hand and Rule 9(4) of Rules on the other hand. Rule 37A deals with a situation where a Government servant is given an option to accept lump sum amount not exceeding the commuted value of one-third on absorption of corporation company or a body. Rule 9 of the Rules on the one hand deals with disability pension. Disability pension can be given to a Government servant who because of which disability acquired during service become incapacitated to perform his duty and is retired from service on acquiring such disability. However, in case the Government servant is retained in service in spite of such disability, question of pension would not arise as such a Government servant would keep on getting all the benefits of a serving employee including salary, perquisites, etc. It is for this reason that sub-rule (4) of Rule 9 of the Rules entitled him to get compensation. Therefore, we are of the opinion that sub-rule (4) of Rule 9 of the Rules is not arbitrary or discriminatory.

6. In the present case, however, the petitioner was given compensation at a time when the disability was assessed at 50% for one-third. The BSF Medical Board at that time recommended that due to injury or further treatment required, the petitioner be put on "sedentary job" and to continue treatment through regular check ups. It is explained by the respondent in the counter affidavit that due to his on-going medical treatment and taking into account the recommendations of the Medical Board, the petitioner was allowed to continue in service despite 50% disability and was not considered for invalidation from service. That in order to provide continued specialized treatment to the petitioner, he was posted to BSF Academy Tekanpur for follow-up treatment at BSF Composite Hospital ,Tekanpur from the duty Bn, i.e., Bn BSF and was relieved from the Unit on 20.8.1997 (on paper) to avoid physical movement of the petitioner due to his on-going treatment. The petitioner had in his application dated 11.11.1997 addressed to the Commandment 67 Bn BSF mentioned that in view of the injury suffered by him while performing Government duty and the fact that he was continuing in service despite injury he should be paid the lump sum compensation pension. The application of the petitioner was forwarded vide letter dated 12.11.1997. The petitioner was not on the posted strength of 67 Bn BSF during the period in which he had applied for payment of lump sum compensation for disablement/injury attributable to Government service but taking a sympathetic view, his request was considered. Accordingly, the compensation in lump sum in lieu of disability pension for Rs. 38,172/- had been paid to the petitioner.

7. We, thus, do not find any fault in action of the respondent in making payment of lump sum compensation to the petitioner, as the entire action was taken on the request of the petitioner himself. Learned counsel for the petitioner also submitted that as per the judgment of the Apex Court in the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and another, (which case dealt with Rule 37A of the CCS (Pension Rules). After 15 years of service, those petitioners who had opted for commutation of pension, became entitled to restoration of commuted pension. It was argued that even if the petitioner was paid lump sum compensation in the year 1999, after the expiry of 15 years disability pension be restored. This argument ignores the fact that by virtue of Rule 9(4) of the Rules, as he was retained in service and in a case like this, there is no question of restoration of disability pension. Finding no merit in this writ petition, the same is dismissed. However, there is no order as to costs.