

REPORTABLE

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **WP(C).No.12454/2006**

% **Date of Decision : March 28, 2008**

#Ex.S/K.Kanhaiya Lal Petitioner
! Through: Mr.R.N.Mahlawat & Mr.Gagandeep
Sharma, Advocates

Versus

Union of India & Ors. Respondents

^ Through: Mr. Sewa Ram & Mr.R.K.Bacchan
Advocates

CORAM:-

*** HON'BLE MR. JUSTICE T.S. THAKUR**

*** HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

Per S.N. AGGARWAL, J.

1. The petitioner in this writ of mandamus has prayed for directions to the respondents to release his disability pension along with interest at the earliest.

2 The brief facts of the case giving rise to this petition are as follows :

The petitioner was enrolled in 13 Battalion CRPF Ajmer in the year 1976 as Safai Karamchari (No.761240871). On 26.10.83 while the petitioner was posted at Agartala (Tripura), he was injured while on duty and on 7.2.84 his left leg below knee was amputated. The petitioner, thus, became permanently disabled with one leg. It is alleged that the petitioner had suffered injury while he was working in Taliyamore, D Company, 73 Battalion and was asked by Mast.Havaladar to clean the store. When he was cleaning the store, some setroys were putting Iron Pickets and due to negligence of one Sepoy, one iron picket slipped and fell on the foot of the petitioner which allegedly led to the aforesaid permanent disability. On 3.8.84 a medical board was constituted by the Chief Medical Officer, Base Hospital, New Delhi to carry out the medical examination of the petitioner. The Medical Board recommended for boarding out the petitioner on medical grounds. The petitioner was accordingly discharged from the service due to permanent disability on 30.9.84 without any disability pension. The petitioner thereafter approached the higher authorities for granting the disability pension but the same was refused on the ground that he did not have qualifying service of 10 years and was, therefore, not entitled for invalidation pension/disability pension under the provisions of Rule 49 (CCS Pension) Rules, 1972. The respondent no.3 issued a certificate dated 8.4.95 whereby the petitioner was informed that he was not entitled for pension since his service was less than 10 years. Thereafter, the petitioner made a number of representations dated 1.9.94, 31.10.94, 1.1.95, 23.2.95,

25.10.95, 7.6.96, 26.8.96 and 7.10.96 to the respondents requesting them to release invalidation pension and disability pension as per Rule 9(3)(b) of CCS(EOP) Rules 1939 and the Pension with Disability Equal Opportunities etc. Act, 1995. Vide letter dated 3.10.1997, the case of the petitioner was again referred for re-examination by the Joint Deputy Director (Pension) to the respondents. The respondents thereafter re-examined the matter in view of letters dated 3.10.1997, 10.2.1998, 8.5.1998 and 17.12.1998 written by respondent no.4, Ministry of Public Grievances and Pensions Welfare and decided to grant the benefit of pension to the petitioner which was communicated to him vide letter dated 24.3.1999 and the petitioner was asked to submit the necessary application in the prescribed format. On receipt of order dated 24.3.1999, the petitioner made a representation dated 1.5.1999 and requested the respondents to intimate him the Pension Payment Order (PPO) Number and the relevant details so that he could fill up the prescribed format. When such details were not received by the petitioner from the respondents he again made a representation dated 1.11.1999 and requested for prompt action on his representation. The respondent no.2 vide order dated 22.6.2001 intimated the petitioner that his matter was re-examined and it was decided that since he had not completed ten years of qualifying service, he was not entitled for disability pension under the CCS (Pension) Rules. Being aggrieved by the order of the respondents denying him disability pension, the petitioner filed a Civil Writ Petition on 6.9.2001 being CWP No. 5478/2001 in this Court and alleged

that the denial of disability pension to him was in violation of Rule 9(3)(b) of CCS (Extra Ordinary Pension) Rules. This Court vide its judgment dated 17.9.2002 set aside the impugned order and the matter was remitted back to the respondents for consideration of the matter afresh. This Court also directed the respondents to examine Head Constable Jaswant Singh, then Commandant D/13. This Court also observed in its aforementioned order that by reasons of provisions of pension rules, completion of 10 years of service was not required. On 10.1.2003 the Assistant Commandant Manoj Kumar recorded the statement of Head Constable Jaswant Singh at his residence. Head Constable Jaswant Singh deposed in his statement recorded by Assistant Commandant Manoj Kumar that he had not given any order to the petitioner for cleaning the store on 26.11.1983.

3 In view of the statement of Head Constable Jaswant Singh, the respondents reiterated their stand and informed the petitioner vide their letter dated 14.2.2003 that he was not entitled to any pension because he has not completed minimum 10 years of qualifying service till 13.9.84.

4 Aggrieved with the said order of the respondents dated 14.2.2003, the petitioner again approached this Court by way of Civil Writ Petition No.6662/2003 on the grounds inter alia that he was not given an opportunity to appear before the Court of enquiry and no opportunity was given to him to cross-examine Head Constable Jaswant Singh. It was contended that the statement of Head Constable Jaswant Singh does not infer that the petitioner was not on duty at the time of the incident that

took place on 26.10.1983. It was further contended that the refusal of the pension was unwarranted after the same was approved by the respondents and was communicated to the petitioner vide letter dated 24.3.1999. This Court vide its order passed on 16.1.2006 in the aforementioned writ petition filed by the petitioner directed the respondents to examine whether the petitioner had suffered 'Burger's Disease' during the course of his employment with the respondents. The respondents were directed to pass a reasoned order on this aspect of the matter. In pursuance of the order dated 16.1.2006 passed by this Court, the respondent no.4 passed the order dated 25.3.2006 to the effect that the Chief Medical Officer has opined that the 'Burger's Disease' developed by the petitioner was due to excessive consumption of Tobacco and hence there was no direct involvement of the department for development of the said disease. The aforementioned writ petition filed by the petitioner was disposed of by this Court vide its order dated 22.5.2006 reserving liberty for the petitioner to file a fresh writ petition challenging the order dated 25.3.2006 also. Hence, the petitioner has filed this writ petition for directions to the respondents to release his disability pension forthwith because according to him the disability suffered by him was attributable to the service rendered by him with the respondents till 30.9.84.

5 The respondents in their counter affidavit filed in response to the present writ petition have denied the entitlement of the petitioner to disability pension on the ground that the petitioner had not completed 10

years of service at the time he was boarded out from the service on account of amputation of his leg. The stand of the respondents is that the disability suffered by the petitioner is neither attributable nor relatable to the Army service and, therefore, according to them, the petitioner is not entitled to any disability pension in view of provisions contained in Section 49 of the CCS (Pension) Rules, 1972. The respondents have prayed for the dismissal of this writ petition.

6 We have heard the arguments of the learned counsel for both the parties and have also perused the entire case file carefully.

7 The main question that calls for our determination in this writ petition is whether the disability suffered by the petitioner during his employment with the respondents was in any way connected with his service. This Court vide its order passed on 16.1.2006 in the earlier writ petition filed by the petitioner being CWP No.6662/2003 had directed the respondents to examine whether the petitioner had developed the 'Burger's Disease' during the course of his employment with the respondents. In compliance of the aforementioned order of this Court, the respondent no.4 passed the order dated 25.3.2006 to the effect that the Chief Medical Officer has opined that the 'Burger's Disease' developed by the petitioner was due to excessive consumption of Tobacco by him and there was no direct involvement of the department in the development of the said disease. Here it may be noted that the specific directions of this Court in its order dated 16.1.2006 was to examine as to whether the 'Burger's Disease'

developed by the petitioner was during the employment with the department but it appears that the respondents have not gone into this aspect at all. What they have done is that they have relied upon the opinion of the Chief Medical Officer to state the cause that led to the 'Burger's Disease' suffered by the petitioner. This Court had not asked the respondents to examine the cause of the disease but what this Court had directed the respondents to examine was as to whether the 'Burger's Disease' suffered by the petitioner was suffered by him during his employment with the respondents. There cannot be any denial by the respondents that the petitioner had suffered the 'Burger's Disease' while he was working with them. Admittedly, he was not suffering from the said disease when he joined the services of the respondents in June, 1976. According to the respondents, the petitioner was suffering from Peripheral Vascular Disease of left lower limb and was getting treatment in G.B.Pant Hospital for the same since 1982. The learned counsel appearing on behalf of the respondents had argued that the petitioner had suffered 'Burger's Disease' as he was suffering from Peripheral Vascular Disease of lower left limb which ultimately led to amputation of his left leg below knee on 7.2.1984. According to the respondents' counsel the amputation of leg of the petitioner had no connection with his service with the respondents. We do not find any merit in this argument. We are of the view that even if the contention of the respondents that the leg of the petitioner was amputated as he was suffering from Peripheral Vascular Disease of lower left limb, is

assumed to be true, still the petitioner cannot be refused disability pension because it is not the case of the respondents that the petitioner was suffering from the said disease while he joined their services in 1976. It may be noted that a proper medical test was held at the time petitioner was enrolled in the service of the respondents and in that medical test he was declared medically fit. This clearly shows that the petitioner was not suffering from the alleged Peripheral Vascular Disease of lower left limb at the time he had joined the service of the respondents. The said disease was admittedly suffered by him during his employment with the respondents. The petitioner has made a categorical plea that an iron picket fell on his foot on 26.10.83 while he was cleaning the store in Taliyamore, D Co., 73 Bn. on the instructions of Master Havaladar. The respondents in Para 2 of their counter affidavit at Page 104 of the paper book have admitted that the petitioner's middle toe of left leg was injured some time in October, 1983 which developed into Traumatic Ulcer. The respondents have further admitted that the petitioner was treated in MI Room of 13th Battalion and later referred to Civil Hospital, Jirania (Tripura) for 12 days. This further shows that the petitioner had suffered injury on the middle toe of his left leg due to fall of an iron picket while he was cleaning the store on the instructions of his superiors on 26.10.1983. It appears that it is this injury suffered by the petitioner which aggravated and became Traumatic Ulcer due to which his left leg was amputated to save his life. As per Part 1 of Schedule 1 of the CCS (Extraordinary Pension) Rules, loss of a hand or a

foot by a person is regarded as 100% disability. The petitioner was admittedly boarded out from the service w.e.f 30.9.1984 only because he had lost his left leg by way of amputation during his employment with the respondents. In **Lance Dafadar Joginder Singh vs. UOI & Ors., 1995 Supp. (3) SCC 232**, the Hon'ble Supreme Court had granted disability pension where the personnel had lost his leg when he was on Casual Leave. Relying on this judgment and also on the facts and circumstances of the case, we are of the view that it was not necessary for the petitioner to have completed 10 years of service to make him eligible for disability pension in view of provisions contained in CSS (Extraordinary Pension) Rules. In our considered opinion, the petitioner is entitled to get disability pension because he had suffered the disability on account of which he was boarded out from the service of the respondents during the course of employment for reasons directly attributable to his service.

8 The next question that now arises for our consideration is the date from which we need to grant disability pension to the petitioner. Mr.Mahlawat, learned counsel appearing on behalf of the petitioner before us on 21.9.2007 had made a statement at Bar that the petitioner was willing to give up his claim for arrears if the respondents agree to sanction the extraordinary pension (disability pension) payable to him. This statement was, however, made by the learned counsel without prejudice to his rights and contentions on merits. The petitioner was boarded out from the service of the respondents way back on 30.9.1984. He is litigating for

his legitimate right to get disability pension ever since then till now. More than 23 years have since elapsed since the petitioner was boarded out from the service on medical grounds. Though the petitioner has made a statement to give up his arrears on account of disability pension but we are of the view that the ends of justice shall be adequately served if we direct payment of disability pension to the petitioner w.e.f the date of filing of the present petition which was filed by him on 1.8.2006.

9 In view of the above and having regard to the facts and circumstances of the case, we allow this writ petition and direct the respondents to release the disability pension of the petitioner forthwith and pay him arrears on this account w.e.f 1.8.2006 till date within a period of four weeks from today. The parties are left to bear their own costs.

**S.N. AGGARWAL
(JUDGE)**

**T.S. THAKUR
(JUDGE)**

**March 28, 2008
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