

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.4449/2006

% Date of decision: 11.09.2008

EX.HONY.CAPT. KIRORI LAL ...PETITIONER
Through: Mr.S.M.Hooda, Advocate.

Versus

UNION OF INDIA & ORS ...RESPONDENTS
Through: Mr.Sewa Ram, Advocate with Major
S.S.Pandey

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The petitioner was enrolled in the Regular Army as a combatant soldier on 18.10.1955. The petitioner suffered a heart attack on 24.01.1973 and remained under treatment. The petitioner was brought before a properly constituted medical board which assessed the disability of the petitioner at 30 per cent and also opined that the disease was aggravated by military service. The petitioner, however, continued in service and it was only on 31.10.1983 that the petitioner was discharged from service on completion of his tenure. At the stage of the discharge, the petitioner was in low medical category with 30 per cent composite disability. Despite this, the PCDA(P) Allahabad rejected the claim of the disability element of pension in the case of the petitioner as per a letter dated 05.01.1985.

2. The petitioner remained silent on the aforesaid issue for quite some time and it is only vide WP(C)8833/2003 that the authority of the PCDA(P) Allahabad to go into the aspect on which the medical board had already opined was challenged. The petitioner succeeded in the writ petition on 05.03.2004 and the respondents were directed to examine the case of the petitioner since the PCDA(P) Allahabad had no authority to go into the question of either the percentage or the question of attributability or aggravation of the disease by military service. The respondents thereafter issued a corrigendum dated 18.03.2005 assessing the disability of the petitioner at 20 per cent and the same being aggravated by military service.

3. The disability pension of the petitioner consists of two parts – service element and disability element. The petitioner had been conferred with the honorary rank of a Captain before he was discharged from service and the service element of the pension was assessed on the basis of the rank of the petitioner as an honorary Captain. The dispute has arisen in the present case on account of the fact that the respondents are paying the disability element of pension to the petitioner calculated not for the rank of honorary Captain, but for the rank of a Havildar. The basis for the same is alleged to be the stand of the respondents that the rank of the petitioner on the date when the disability was detected is relevant for the basis of payment of the disability element of pension.

4. It is the case of the respondents that Regulation 179 of the Pension Regulations for the Army, 1961 ('the said Regulations' for short) would apply to the case of the petitioner more specifically para 2. The Regulations reads as under:

"Disability at the time of retirement/discharge

179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or attaining the age of 50 years irrespective of their period of engagement, if found suffering from a disability

attributable to or aggravated by military service and recorded by service medical authorities, shall be deemed to have been invalidated out of service and shall be granted disability pension from the date of retirement if the accepted degree of disability is less than 20 per cent or more and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity if already sanctioned and paid, shall be adjusted against the disability pension/service element as the case may be.

2. The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease;

Note: In the case of an individual discharged on fulfilling the terms of his retirement, his unwillingness to continue in service beyond the period of his engagement should not effect his title to the disability element under the provision of the above regulation."

5. The petitioner on the other hand pleads that it is Regulation 180 of the said Regulations which would apply to his case which reads as under:

"Rank for assessment of disability pension"

180. The rank for the purpose of assessment of service element and disability element of disability pension, shall be the substantive rank or higher paid acting rank, if any held by the individual on any of the following dates, whichever is most favourable:

- (a) the date of discharge/invalidment from service, or
- (b) the date on which he/she sustained the wound or injury or was first removed from duty on account of a disease causing his disablement ; or
- (c) if he/she rendered further service and during and as a result of such service suffered aggravation of disability, the date of the later removal from duty on account of the disability,

Note – In the case of an individual who on account of misconduct or inefficiency is reverted to a lower rank subsequent to the date on which the wound or injury was sustained or disability contracted, the rank for assessment of service and disability elements of pension shall be the rank held on the date of invaliding from service."

6. Learned counsel for the respondents seeks to contend that Regulation 179 is applicable in the case of an individual who is retired/discharged on completion of tenure or on completion of service limits while Regulation 180 applies in a case where there is invalidation from service before the date of superannuation. On a reading of the aforesaid Regulations, we find no such limiting factor in Regulation 180.

7. Regulation 180 falls under the heading "Rank for assessment of disability pension". Thus, the specific subject matter dealt with in Regulation 180 is stated to be the aspect of rank for assessment of disability pension. Regulation 180 provides that the rank shall be the substantive rank or higher paid acting rank of the individual on any of the dates specified in Regulation 180(a), (b) and (c). Not only that the Regulation stipulates a favourable consideration for the individual as it is provided that the most favourable of the three dates would be taken into account for purposes of calculation of the disability pension. The petitioner having been discharged from service on completion of his tenure would fall under Regulation 180(a).

8. The respondents seek to refer to Regulation 179(2) to contend that the disability element shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained. Regulation 179 falls under the heading "Disability at the time of retirement/discharge". The heading of Regulation 179 itself makes it clear that the same is applicable to the disability at the time of retirement/discharge and it is the disability element which forms the subject matter of Regulation 179(2) and not the rank at which such disability element has to be paid. The rank at which such disability element has to be paid is dealt with in Regulation 180 which is the subsequent Regulation to Regulation 179. If the plea of the respondents on the interpretation of Regulation 179 was to be accepted, Regulation 180, the subsequent Regulation, would be otiose.

9. In view of the aforesaid, we are of the considered view that Regulation 180 would form the basis of the calculation of the disability element of pension to be paid to the petitioner.

10. We see no reason why the rank for the purposes of calculation of service element and the disability element would be different and the petitioner would consequently be entitled to disability element for the same rank at which service element of the pension is to be paid. The mere fact that the word "honorary" is used before the rank of the petitioner as a Captain, would make no difference since undisputedly the rank is taken into consideration for the purposes of service element of pension. There is no separate Regulation pointed out to us whereby an exception has been carved out for giving service element of pension for an honorary rank while the disability element should be given at a lower rank.

11. We also cannot lose sight of the fact that the said Regulations, taking into consideration the fact that they are beneficial in nature in the absence of any social security systems in our country, must be construed liberally and in favour of the individual.

12. A writ of mandamus is issued directing the respondents to also pay to the petitioner the disability element of pension for the rank of an honorary Captain and the arrears for the period in question be cleared within three months from today. This would apply to the period for which the service element of pension has been paid to the petitioner.

13. The petition stands accordingly allowed leaving the parties to bear their own costs.

14. Dasti.

SANJAY KISHAN KAUL, J.

SEPTEMBER 11, 2008
dm

MOOL CHAND GARG, J.