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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.1050/2012**Date of decision: 1st October, 2012**

RAJ DAYAL RAI

..... PETITIONER

Through Mr. Deb Nandan Rajak, Adv.

Versus

UOI & ORS

..... RESPONDENTS

Through Mr. Sunil Kumar, Adv. with Mr. Rajiv Ranjan Mishra, Adv.

CORAM:**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA****GITA MITTAL, J (Oral)**

1. This writ petition was filed by Shri Raj Dayal Rai (since deceased) who while serving as a Constable, retired from the Border Security Force w.e.f. 15th March, 2002. Shri Raj Dayal Rai suffered a spinal injury during the course of his training which rendered him unfit. As per the discharge certificate issued to soldier on 15th December, 1981 and recommendations of the Medical Board dated 28th October, 1981, he had been put in 'E' medical category.

2. Aggrieved by the failure of the respondents to give any compensation or any benefit on account of his disablement resulting in his release from the

Border Security Force, Shri Raj Dayal Rai served a legal notice dated 20th July, 2009 to the respondents calling upon them to make payment of all benefits with interest on account of his disability. The legal notice though termed as notice demand "compensation" clearly suggests that the petitioner was clearly seeking disability pension.

3. The respondents rejected the notice demand by their communication dated 31st December, 2009 holding that the claim made by the notice was generally time barred and against the rules made in this regard.

P. Aggrieved thereby, the petitioner assailed the order dated 31st December, 2009 passed by the respondents by way of a writ petition before the High Court of Judicature at Allahabad which did not entertain the same on grounds of want of territorial jurisdiction.

5. Thereafter, Shri Raj Dayal Rai filed the present writ petition seeking issuance of a writ of certiorari quashing the communication dated 31st December, 2009 and a writ of mandamus to the respondents to pay compensation and disability pension to him in accordance with rules. The respondents appeared in the matter on advance notice. Even without filing counter affidavit, the respondents have issued an order dated 29th May, 2012 for releasing disability pension to the respondents. A perusal of the order would show that the competent authority had sanctioned release of "disability pension" instead of "invalid pension" to Shri Raj Dayal Rai. It is, therefore, evident that the respondents have accepted the entitlement of

disability pension which had been wrongly denied to the petitioner.

6. Unfortunately, during the pendency of the writ petition, the petitioner Raj Dayal Rai expired on 19th March, 2012. An application being CM No.8706/2012 filed by his heirs under Order 22 Rule 3 of the CPC was allowed on the 27th July, 2012. From that date, the present writ petition is being pursued by the widow, son and daughter of the deceased petitioner.

7. The above narration would manifest the fact that Shri Raj Dayal Rai was wrongly denied the disability pension which accrued to him by the respondents. Even the legal notice issued by him in this behalf did not result in the respondents correcting their wrongful action. On the contrary, a stand was taken that the claim of Shri Raj Dayal Rai was barred by limitation which was legally incorrect. Payment of disability pension was the responsibility of the respondents which they failed to discharge.

8. The respondents vide their order dated 29th May, 2012 have assessed the entitlement of disability pension to the deceased pensioner w.e.f. 16th March, 1982 payable till his death on 19th March, 2012.

9. The deceased petitioner is represented by legal heirs who are unable to place before this court the amount which was paid by the respondents. It is also not clear from a reading of the order dated 29th May, 2012 as to whether any invalid pension was paid to Late Shri Raj Dayal Rai.

10. The petitioner has also prayed for interest as well as costs of the present litigation. There is substance in the prayer made by the petitioner.

11. In view of the above, it is directed as follows:-

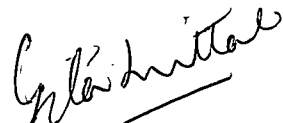
- (i) The order dated 31st December, 2009 is set aside and quashed.
- (ii) The respondents are directed to compute the pension including the invalid/disability pension which was admissible to Late Shri Raj Dayal Rai upto his death on 19th March, 2012.
- (iii) The computation in this behalf shall be communicated to widow of the deceased as well as learned counsel representing him within a period of four weeks from today.
- (iv) The respondents shall also compute the family pension and give it to the widow Smt. Parvati Devi who is the legally wedded wife of the deceased Shri Raj Dayal Rai w.e.f. 19th March, 2012. The computation in this behalf shall also be communicated to her as well as counsel for the petitioner within a period of four weeks from today.
- (v) The respondents shall ensure that payments of amounts due, either towards pension including disability pension to Shri Raj Dayal Rai or family pension to Smt. Parvati , are paid within a period to his widow Smt. Parvati of eight weeks from today.
- (vi) We direct that the respondents shall pay interest at the rate of 12% on amounts which are found due and payable to Shri Raj Dayal Rai and his widow with effect from the date from which the amount became due.
- (vii) Month by month pension shall be released to the widow of the deceased Shri Raj Dayal Rai on or before the tenth day of each English calendar month.
- (viii) The respondents shall pay costs of litigation which are assessed at

Rs.25,000/- to Smt. Parvati Devi, widow along with the payment of pension to her on the next date of hearing.

(ix) This writ petition is allowed in the above terms.

(x) The matter shall be listed on 10th December, 2012 to report compliance of the above order.

Dasti.


(GITA MITTAL)
JUDGE


(J.R. MIDHA)
JUDGE

OCTOBER 01, 2012
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