

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

+ **W.P.(C)No.7321/2011 and CM No.2389/2012**

% Date of decision: 24th July, 2012

BALJIT SINGH Petitioner
Through : Mr. S.M. Hooda, Adv.

versus

UNION OF INDIA AND ANR Respondents
Through : Ms. Barkha Babbar, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

W.P.(C) 7321/2011

1. The petitioner by way of the present writ petition assails the order dated 30th September, 2010 passed by the Armed Forces Tribunal dismissing his petition seeking setting aside of the speaking order dated 8th April, 2004 rejecting the claim for grant of disability pension.

2. It appears that the petitioner had suffered injury on 16th January, 1999 outside his accommodation. The petitioner suffered a fracture in the neck of the right femur bone and also was suffering from osteoarthritis in the right hip. The petitioner was to be released from service and consequently a Release Medical Board was held prior to his discharge on 31st

December, 2001. The Release Medical Board assessed the following disability percentage of the petitioner:-

- (a) Fracture neck Femur Rt Optd : 20% for 2 years
- (b) Ostoarthritis Rt Hip : 15-19% for 2 years.

3. Based on the above assessment, the composite disability for both disabilities was assessed at 30% for two years. The Release Medical Board also held that the disabilities which the petitioner suffered during his service were neither attributable to nor aggravated by his airforce service. The petitioner's disability pension claim was taken up for adjudication with Pension Sanctioning Authority i.e. PCDA(P) Allahabad in consultation with the Medical Advisor (Pension) attached to them by an order dated 25th February, 2003. The PCDA upheld the findings of the Release Medical Board noticed hereinabove and rejected the claim of the petitioner for award of the disability element of the pension. The petitioner was discharged from service w.e.f. 31st December, 2001.

4. Aggrieved by the rejection of his claim by the PCDA, the petitioner had earlier filed W.P.(C)No.5363/2003 in this court praying for grant of disability pension. This writ petition was disposed of by an order passed on 27th November, 2003 directing the respondents to dispose of the case in terms of the earlier judgment dated 6th March, 2003 passed in

W.P.(C)No.5166/2000 entitled **Ex.Constable Jasbir Singh v. Union of India & Ors.** and connected petitions.

5. The respondents disposed of the petitioner's claim for disability pension by a detailed speaking order dated 8th April, 2004.

6. The petitioner assailed the order dated 8th April, 2004 by way of W.P.(C)No.7153/2004 in this court still seeking a direction to the respondents to pay 50% disability element pension w.e.f. 1st January, 2002 and the arrears and interest thereon as well as 50% amount of group insurance.

7. Simultaneously, the petitioner also preferred an appeal dated 24th December, 2003 against the rejection of his claim by the PCDA(P) Allahabad. The Appeal Committee rejected the appeal by an order dated 14th November, 2005 concluding that the disabilities from which the petitioner was suffering on which his claim for disability pension was based, were neither attributable to nor aggravated by military service.

8. The respondents have pointed out that directions were made on 11th July, 2008 in the petitioner's W.P.(C)No.7153/2004 directing that the Appeal Medical Board be conducted. Accordingly, an Appeal Medical Board of the petitioner was conducted on 22nd September, 2008 at the Base Hospital, Delhi Camp for examining the attributability of the

disabilities. The Appeal Medical Board has also held both disabilities to be neither attributable to nor aggravated by the petitioner's service with the airforce. The percentage disability of the petitioner was assessed at 20% for life and composite 40% for life.

9. In this background and given the findings of the Release Medical Board as well as Appeal Medical Board, the respondents held the petitioner ineligible for grant of disability pension which decision was communicated to him by an order dated 24th October, 2008.

10. The respondents have pointed out that the Second Appeal Committee also considered the case of the petitioner. By a communication dated 4th March, 2009, this second appeal by the petitioner was also rejected by the Ministry of Defence.

11. The petitioner challenged the aforementioned speaking order of the Ministry of Defence and sought grant of 50% disability element of pension w.e.f. 1st January, 2002 in the revised rate from 1st January, 2006 by way of a petition being O.A.No.260/2010 before the Armed Forces Tribunal (Division Bench), New Delhi. The Armed Forces Tribunal has dismissed the said petition by an order dated 30th September, 2010 upholding that the injury suffered by the petitioner was not suffered by him on duty and was neither attributable to nor

aggravated by his service and thus disentitled the petitioner for grant of disability pension.

12. The present writ petition has been filed before this court, assailing the order dated 30th September, 2010 passed by the Armed Forces Tribunal, again praying for a direction to the respondents to make payment of 50% disability element of pension w.e.f. 1st January, 2002. The petitioner claims that injury was suffered while he was returning from duty.

13. We find that the order dated 30th September, 2010 of the Armed Forces Tribunal is based on the original record of the petitioner's case which was examined by the tribunal. The Armed Forces Tribunal has noticed the following statement made by the petitioner:-

"I, 266031 – N WO BS Dhaker of 3 Wing, AF state that I fell down (and) hit with a stone in front of my house No.49/6 at 2015 hrs at Pinto Park, New Delhi."

14. The impugned order also extensively deals with the report by the medical authorities to the effect that the injuries suffered by the petitioner were neither attributable to nor aggravated by his airforce service. The two medical boards have also observed the same. It is nowhere on record that the petitioner has ever claimed that the injuries were suffered by him while he was on duty. The petitioner's Commanding

Officer, Group Captain Sood has also observed that the petitioner's injury was neither attributable to nor aggravated by his airforce service before dispensing with the Court of Inquiry in terms of para 796 (c) (ix) Regulations for the Airforce Act, 1964.

15. The petitioner has contended that the Medical Board could have only assessed the disability of the petitioner and was not competent to give an opinion on the attributability or aggravation of the injury by the service. We find that even if the findings of the Medical Board to this effect were ignored, the Air Force with which the petitioner was engaged, had also held that the injuries were not attributable to or aggravated by his service.

16. In this background, the case of the petitioner before this court to the effect that his injuries were attributable to and aggravated by his military service and the bald statement in the writ petition that he suffered the injury while on duty cannot be accepted. The impugned judgment is based on the records of the respondents. No legal infirmity has been pointed out.

We find no merit in this writ petition which is hereby dismissed.

CM No.2389/2012

In view of the order passed in the main writ petition, this application does not survive for adjudication and thus hereby dismissed.

GITA MITTAL, J

JULY 24, 2012
aj

J.R. MIDHA, J