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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 20th July, 2011

+ W.P.(C) 797/2011

SI SURESH KUMAR Petitioner

Through: Ms.Rekha Palli, Advocate with
Ms.Punam Singh and Ms.Amrita
Prakash, Advocates

versus

UNION OF INDIA ORS Respondents

Through: Mr.Madan Gera, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Issue pertains: Whether, on being invalidated from service on medical grounds, with disability certified to be 90%, is petitioner entitled to be sanctioned disability pension?

2. It is not in dispute that as per CCS (Extra Ordinary Pension) Rules, if it is to be found that the disability incurred by the petitioner is attributable to or aggravated by service, petitioner would be entitled to disability pension at 100%, in

view of OM dated 10.12.2010 issued by the Ministry of Personnel, PG & Pensions.

3. Petitioner claims to be enrolled as a Head Constable in CISF under Sports Quota. Winning laurels for the organization and in view of his excellent performance, petitioner claims to having earned accelerated promotion firstly to the rank of ASI and then as a Sub-Inspector. This is admitted by the respondents.

4. Petitioner claims that while representing CISF at All-India Police Games at Bhopal, in the month of December 1996, he had a fall due to which he later on developed Cervical Spondylosis with Brachialgia, resulting in the neck movement being affected as also numbness developing in the shoulder and hands; as time passed by.

5. Being declared medically unfit for service in CISF and being found to be 90% disabled, Medical Board, as per proceedings dated 25.7.2009, recommended petitioner to be discharged from service.

6. Based on the opinion of the Medical Board a show cause notice dated 5.12.2010 was served upon the petitioner requiring him to respond as to why he should not be invalidated from service.

7. It is apparent that the department was complying with the principles of natural justice. If the petitioner had something to show to the contrary pertaining to his physical condition, he could show so.

8. Petitioner was declared medically unfit and was

retired from service. Normal pension was sanctioned.

9. Petitioner claims disability pension.

10. There is no dispute between the parties on the fact that firstly, on 24.7.2006 the petitioner was examined by a Board of Doctors; the Board being constituted by CISF and the doctors opined that the Cervical Spondylosis with Brachialgia, which petitioner had developed over the year, was aggravated due to stress and strain caused by the service performed by the petitioner. It is also not in dispute that the Medical Board which examined the petitioner on 25.7.1999, with reference to the petitioner suffering from Cervical Spondylosis and Brachialgia, recommended his discharge from service but with reference to whether the disability was suffered in service or was attributable to or aggravated by service, recorded in the negative, i.e. against the petitioner.

11. At the core of the issue would be: Whether the petitioner suffered the injury during the All-India Police Games at Bhopal, where petitioner was representing CISF. If this is found in favour of the petitioner, it would certainly be the case of the petitioner suffering any injury while in service and over the period of time the injury resulting in the disability of the petitioner.

12. Commonsense tells us that fall injuries are overcome when suffered at a young age. But they act as a time bomb. Lying hidden in the body, with passage of time, they might show their effect.

13. If during a sports event a person suffers a fall at a

young age, it may happen that with passage of time the damage to either a nerve or a muscle caused then, would surface.

14. Thus, the area of fact to be adjudicated upon would be: Whether the petitioner suffered a fall when he was representing CISF at the All-India Police Games.

15. The respondents plead ignorance of the same.

16. As per the petitioner, since he was injured while participating on behalf of his organization at a wrestling and judo competition at Bhopal, which competition was held between 1.12.1996 to 10.12.1996, which participation is not in dispute, being injured he availed 30 days leave and over stayed the same by 72 days as his condition did not improve. Petitioner states that when he joined back service after over staying leave by 72 days, he submitted the requisite papers pertaining to the treatment which he had undertaken and based thereon 72 days' leave availed of by him was regularized.

17. In a nut shell, petitioner claims that the relevant medical documents were submitted by him to the department.

18. Noting said contention of the petitioner, on 2nd May 2011, we had deferred further hearing in the writ petition to enable learned counsel for the respondents to look into the record and produce, if filed, the medical papers pertaining to the treatment undertaken by the petitioner.

19. Learned counsel for the respondents tells us that the relevant record has been weeded out inasmuch as it pertained to events of the year 1996.

20. But, one thing is clear. Petitioner availed 72 days'

leave without a prior sanction and this was regularized. Obviously, it was regularized for the reason the petitioner gave justification, with proof, of overstaying leave.

21. Petitioner asserts on oath that the reason why he overstayed leave and the reason why the same was regularized is that the department found it to be true that the petitioner's medical condition was such that he could not join duty. The petitioner states on oath that his medical condition deteriorated during said period of 72 days when the injury suffered by him while competing at Bhopal, flared up.

22. Being a statement on oath, we have to prima facie accept the same. This would be our compulsion in law, unless repelled.

23. The department ought to have preserved all medical record of the petitioner for the reason he is a force personnel in a Para Military Force. Those who are incharge of the administrative control of Para Military Forces owe a special duty of care to preserve all the medical record of the force personnel for the reason it can be reasonably foreseen that the injury suffered may cause an effect at a later date. Those who are in control of the administration of Central Para Military Forces ought to know that under the Extra Ordinary Pension Rules, disability pension has to be sanctioned if the injury is during service or is attributable to or aggravated by service.

24. Since the respondents are at fault in not preserving the medical record of the petitioner and we find the respondents having breached the duty of reasonable care which law enjoins

upon them; it not being in dispute that the petitioner has been certified to be 90% disabled and on said count has been invalidated from service, we dispose of the writ petition directing the respondents to sanction disability pension to the petitioner.

25. Needful would be done within a period of 8 weeks from today. Arrears would be computed and paid within said period, failing which the arrears would be paid with interest @ 10% per annum reckoned from 8 weeks from today till payment is made.

26. No costs.

PRADEEP NANDRAJOG, J.

P.K.BHASIN, J.

JULY 20, 2011
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