

GAHC030005222022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/132/2022

Sh. Saranga Chakma
S/o Kamla Kanta Chakma (L)
R/o Tipperaghat-I, Lunglei District, Mizoram - 796751

VERSUS

Union of India and 3 Ors.
r/b the Secretary, Ministry of Home Affairs, North Block, New Delhi - 1100012:The
Director General
Border Security Force
3:The Commandant
HQ 112 Bn BSF
4:The Branch Manager
State Bank of India

Advocate for the Petitioner : Mr. C Lalfakzuala

Advocate for the Respondent : Ms Zairemsangpuii (CGC) for R1 - R3

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

O R D E R

24.01.2024

1. Heard Mr. C Lalfakzuala, learned counsel for the petitioner. Also heard Ms. Zairemsangpuii, learned CGC appearing for the respondent nos. 1, 2 & 3. No

one appears for the respondent no.4. However, the affidavit-in-opposition filed by the respondent no.4 is in the records.

2. The basic issue in the present case is that the petitioner has not been given his invalid pension from August, 1992 till date.

3. The petitioner's counsel submits that the petitioner was enrolled in the BSF and his Number was 739903007, where he worked as a Cook since 05.03.1973. The petitioner was thereafter posted to 112 Bn. BSF on 14.05.1984. The petitioner was declared unfit for retention in service by the Medical Board on 02.10.1984 and he was retired from service on the ground of invalidation w.e.f. 15.01.1985, along with all pensionary benefits in accordance with the provisions of Rule 38 of the CCS (Pension) Rules, 1972 and struck off from the strength of BSF on the same day.

4. The petitioner was granted invalid pension amounting to Rs.1250/- per month w.e.f. 16.01.1985 and he used to withdraw his pension from the State Bank of India (SBI), Kohima, Nagaland till the month of July, 1992.

5. The petitioner thereafter went back to his native village at Chotapansury, Lawngtlai district, Mizoram in the month of July, 1992. The petitioner however lost his service documents in a flood during the relevant time. The petitioner submitted an FIR regarding the loss of his service documents and pension papers. The petitioner thereafter approached the SBI, Tlabung Branch, Lunglei District for grant of pension. However, the respondent no.4 failed to process the

case of the petitioner. The petitioner's further case is that the respondent no.3 wrote letters dated 08.10.2021, 08.02.2022 and 11.02.2022 to the respondent no.4, to release the petitioner's pension. However, the respondent no.4 did not release the pension of the petitioner. In view of the petitioner not being given his invalid pension from August, 1992 till date, the petitioner had to approach his Court for payment of his invalid pension. The petitioner's counsel submits that the petitioner has got a savings bank account in SBI, Tlabung Branch, Lunglei District, Mizoram from where he can draw his pension.

6. Ms. Zairemsangpuui, learned CGC submits that the 112 Bn. BSF, vide letter No. Adm/Inv-Pen/Cook SC/2018/10816-17 dated 28.11.2018, has forwarded the case of the petitioner along with other related documents to the Accounts Officer, Pension Section (North) EOP, PAD, BSF, New Delhi for re-settlement of his invalid pension. She further submits that at present the issuance of a fresh PPO in respect of the petitioner is under process at PAD, BSF, New Delhi and accordingly, the current and arrear pension payable to the petitioner will be calculated and remitted to the petitioner's bank, after issuance of a fresh PPO. The learned CGC submits that the submission made by her is in terms of the affidavit-in-opposition of the respondent nos.1 to 3.

7. The affidavit of the respondent no.4, i.e., the Branch Manager, SBI, Tlabung Branch, is to the effect that the respondent no.4 had sent a letter dated 21.04.2021 to the respondent no.3, stating that the pension of the writ petitioner might not have migrated/transferred to the respondent no.4's bank, as there was no record of the petitioner's pension details in the SBI, Tlabung

Branch, District-Lunglei, Mizoram. As such, the respondent no.3 was instructed to issue a new PPO or to contact the last payment branch/Treasury Department for his pension book, to enable pension migration to the SBI, Tlabung Branch, District-Lunglei, Mizoram.

8. A perusal of the pleadings made by all the parties herein clearly show that there is no dispute with regard to facts, i.e, that the petitioner is entitled to payment of invalid pension, as he is an ex BSF Cook, having no. 739903007, who was invalidated from service w.e.f. 15.01.1985.

9. Paragraph 4 (vii), 9, 13, 18 & 21 of the affidavit-in-opposition filed by the respondent nos.1 to 3 are to the following effect :

*“4(vii) Further, 112 Bn BSF has approached to PAD BSF, New Delhi for releasing his pension with arrear and also to provide PRO to the retiree petitioner at the earliest vide letter No. Adm/29-10524(112)/Pay/85/BSF/23682-84 dated 31 December 2022. At present case for issuance of fresh PPO in respect of the Petitioner is under process at PAD BSF, New Delhi and accordingly arrear will be calculated and remitted to the Petitioners bank account after issue of fresh PPO. **Annexed a photocopy of 112 Bn BSF letter No. Adm/29-10524(112)/Pay/85/BSF/23682-84 dated 31 December 2022 and marked as Annexure - X.”***

“9. That the statement made in Para No. 5 of the writ petition is denied. However, the answering respondents states that petitioner was enrolled in BSF on 05.03.1973 and was medically boarded out from BSF w.e.f 15.01.1985. Further, invalid pension amounting to Rs. 84/- was sanctioned to the petitioner w.e.f 16.01.1985 vide PAD BSF New Delhi letter No. PAD/29-10524(112)PN/85-BSF dated 15.02.1985. Thereafter

petitioner neither approached nor any intimation was given regarding non drawl of his pension from July, 1992. Initially petitioner has submitted his application during the year 2018 and accordingly his case for Revision of pension as per 6th CPC and re-settlement of invalid pension had been forwarded to Accounts Officer, Pension Section (North) EOP, PAD BSF, New Delhi vide 112 Bn BSF Letter No. November, 2018 along with petitioners application and other connected documents."

*"**13.** That the statement made in Para No. 9 of the writ petition is denied. However, the answering respondents stated that petitioner has submitted his application dated nil to re-issue his new retirement card (PPO). Revision pension case as per 6th CPC and re-settlement of invalid pension of the petitioner has been forwarded to Accounts Officer, Pension Section (North), EOP, PAD BSF, New Delhi vide 112 Bn BSF letter No. Adm/Inv-Pen/Cook SC/2018/10816-17 dated 28 November 2018 along with individual application and other connected documents so that his invalid pension could be revised and revised PPO may be issued."*

*"**18.** That the statement made in Para No. 16 of the writ petition is denied, However the answering respondents states that the documents received from petitioner along with case file and other connected documents has been forwarded to PAD BSF New Delhi vide 112 Bn BSF letter No. Adm/29-10524(112) Pay/85/BSF/23682-84 dated 31st December, 2022 for release of his pension with arrear and issuance of duplicate PPO."*

The details regarding period for period for which petitioner has received pension is not available in 112 Bn BSF as such record is maintained by concerned bank from where the petitioner was receiving his pension."

*"**21.** That the statement made in para No. 19 of the writ petition is denied. However, the answering respondents stated that 112 Bn BSF has*

forwarded PPO of the petitioner of Branch Manager State Bank of India. Tlabung Branch, District Lunglei, Assam vide letter No. Adm/112Bn/Pensioner/2022/1935-38 dated 11.02.2022 which was issued by PAD BSF, New Delhi vide letter No. PAD/29-10524(112)PN/85-BSF and letter No.PAD/29-10524(112)PN/85-BSF dated 15.02.1985/”

10. As can be seen from the extract of the affidavit-in-opposition filed by the respondent nos.1, 2 & 3, the 112 Bn. BSF has forwarded the PPO of the petitioner to the Branch Manager, SBI, Tlabung Branch, District-Lunglei, Mizoram. Though there is a typographical error after the words District-Lunglei where the word “Assam” is written, the same has to be read as “Mizoram”. The above extracts clearly show that the respondents are in the process of calculating the arrear and current pension of the petitioner, for release to the petitioner. The affidavit-in-opposition on behalf of the respondent nos.1, 2 & 3 has been filed before this Court on 10.03.2023, i.e., more than 9 months ago. However, the petitioner has not been given his invalid pension till date after stoppage of the same w.e.f. August, 1992.

11. It is settled law that pension is not a bounty and as such will have to be paid to the petitioner. This fact is also not disputed by the respondents, as can be seen from the extracts of the affidavit-in-opposition filed by the respondent nos.1, 2 & 3. Accordingly, the only issue to be decided is as to when the payment of arrear and current pension will commence. In this regard, this Court is of the view that the respondents should complete the process of calculating the arrear and current pension payable to the petitioner on an urgent basis, as the petitioner’s PPO has already been furnished to the SBI, Tlabung Branch as per para 21 of the affidavit-in-opposition of the respondent nos.1 to 3.

Accordingly, the respondent nos.1, 2 & 3 are directed to complete the calculation of the arrear and current pension payable to the petitioner, within a period of one month from the date of receipt of a copy of this order. The actual payment of the arrear and current pension to the petitioner through the SBI, Tlabung Branch, District-Lunglei, Mizoram, should be done within a further period of one month thereafter.

12. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant