

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).NO. 32856 OF 2010 (F)

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PETITIONER(S) :

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UDAYA KUMAR S.S.(EX.CT/GD 04 1578034)  
AGED 26 YEARS, S/O. M.SADASIVAN PILLAI,  
CENTRAL POLICE RESERVE FORCE  
RESIDING AT KUMAR BHAVANAM, MALIBHAGOM  
CHAVARA SOUTH P.O., KOLLAM - 691 584.

BY ADV. SRI.B.HARISH KUMAR

RESPONDENT(S) :

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1. UNION OF INDIA AND OTHERS  
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME  
AFFAIRS, NEW DELHI - 110 001.

2. THE DIRECTOR GENERAL (PENSIONS),  
DIRECTORATE CENTRAL POLICE RESERVE FORCE,  
CGO COMPLEX, NEW DELHI-110 001.

3. THE INSPECTOR GENERAL OF POLICE,  
NORTHERN SECTOR,  
CENTRAL POLICE RESERVE FORCE, NEW DELHI - 110 001.

4. THE DEPUTY INSPECTOR GENERAL OF POLICE,  
GROUP CENTRE, CENTRAL POLICE RESERVE FORCE, AJMEER,  
RAJASTHAN - 229001

5. THE COMMANDANT, 157/BN CENTRAL POLICE RESERVE FORCE,  
C/O 56 ARMY POST OFFICE, JAMMU AND KASHMIR-192101.

R1 TO 4 BY ADV. SRI.T.P.M.IBRAHIM KHAN,ASST.S.G OF INDIA  
R1-5 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA  
R1-R5 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL  
R1 TO R5 BY SMT.SHALINA.O.M,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: A TRUE COPY OF THE MEDICAL CERTIFICATE DATED 27.01.06

EXT.P2: A TRUE COPY OF THE REPRESENTATION DATED NIL SUBMITTED BEFORE THE 3RD RESPONDENT

EXT.P3: A TRUE COPY OF THE MEDICAL BOARD PROCEEDINGS DATED 1.12.2009

EXT.P4: A TRUE COPY OF THE OFFICE ORDER DATED 17.01.2010 PASSED BY THE FIFTH RESPONDENT

EXT.P5: A TRUE COPY OF THE PROCEEDING ISSUED BY THE RESPONDENT DATED NIL/2/2010

EXT.P6: A TRUE COPY OF THE APPEAL DATED 18.06.2010 SUBMITTED BY THE PETITIONER

EXT.P7: A TRUE COPY OF THE MEDICAL CERTIFICATE DATED 28.06.2010 ISSUED TO THE PETITIONER

EXT.P8: A TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE MEDICAL ATTENDANT

EXT.P9: A TRUE COPY OF THE JUDGMENT DATED 11.08.2010 PASSED BY THIS HON'BLE COURT

EXT.P10: A TRUE COPY OF THE ORDER DATED 12.10.2010 PASSED BY THE FOURTH RESPONDENT

EXT.P11: A TRUE COPY OF THE REVISION PETITION DATED 23.10.2010 FILED BY THE PETITIONER

EXT.P12: A TRUE COPY OF THE OFFICE MEMORANDUM DATED 10.12.2010 PASSED BY THE MINISTRY

EXT.P13: A TRUE COPY OF THE ORDER DATED 7.9.2011 PASSED BY THE FOURTH RESPONDENT

RESPONDENTS' EXHIBITS:

EXT R2 (A) :TRUE COPY OF THE LETTER NO.PIII-18/2010-PENSION DATED 12.10.2010

//TRUE COPY//

P A TO JUDGE

**A.K.JAYASANKARAN NAMBIAR, J.**

.....  
**W.P.(C).No.32856 of 2010**

.....  
**Dated this the 22<sup>nd</sup> day of July, 2015**

**J U D G M E N T**

The petitioner commenced service as a constable/general duty under the respondent Force with effect from 31.03.2004. It is his case that, while participating in a pre-induction training in Jammu and Kashmir, he fell down and injured his back pursuant to which he developed chronic back pain which affected his work. The facts in the writ petition would indicate that, although the petitioner had been treated for the said condition in various hospitals, the situation did not improve and ultimately, he was subjected to a scrutiny by the invalidation medical board on 01.12.2009. In Ext.P3 proceedings of the medical board, it is seen that the finding of the medical board is that the present stage of injury sustained /contracted by the petitioner was that, he was suffering from Prolapsed Inter Vertebral Disc L 4-5 with Degenerative Disc disease (PIVDL 4-5) since July 2005. He was, therefore, invalidated from service by Ext.P4 order dated 17.01.2010. In Ext.P4 order, it is stated that on perusal of the entire case and the opinion of the medical board, the petitioner is invalidated out of service with effect from 24.01.2010 (AN) and that, all benefits under the various provisions of Government and Central Reserve Police

Force (CRPF) orders issued from time to time will be paid to him as per admissibility on his invalidation from service. Although the petitioner, thereafter, put in a claim for invalid pension, the same was rejected by Ext.P10 order dated 12.10.2010, on the ground that, the petitioner had not rendered 10 years of qualifying service for the purposes of receipt of invalid pension. Although the petitioner filed Ext.P11 revision petition before the 3<sup>rd</sup> respondent against the said order rejecting his claim for invalid pension, no orders have been passed by the 3<sup>rd</sup> respondent till date. While so, by Ext.P12 Office Memorandum dated 10.12.2010, the Government of India relaxed the condition with regard to possessing 10 years qualifying service, at the time of discharge from service, for the purposes of receipt of disability pension and clarified that cases covered under category B, C, D and E, of the categories of persons who would qualify for disability pension as laid down in CCS (Extraordinary Pension) Rules Appendix-III, would be entitled to disability pension at the appropriate rate indicated against the said category. On coming across Ext.P12 Office Memorandum, the petitioner once again applied to the respondents for invalid pension with a request to treat him as a case falling under category 'B' or 'C' for the purposes of receipt of invalid pension. By Ext.P13 order dated 07.09.2011, the said request of the petitioner was also rejected by the 4<sup>th</sup> respondent, who found that there was no

dispensation from the requirement of minimum 10 years service in cases covered by category 'A' of Appendix III to the CCS (Extraordinary pension) Rules, and since the petitioner had felt illness while on sentry duty, but not due to performance of duty, his case would be covered under category 'A' thereby dis-entitling him for the benefit of any invalid pension. In the writ petition, the petitioner challenges Exts.P3, P4, P10 and P13, inter alia, on the ground, that the said orders have been passed without appreciating that the ailment of the petitioner, which necessitated his discharge from service on medical ground, was one that was contracted while the petitioner was on duty, and hence, it was not a case where the disability was due to natural causes not attributable to Government service.

2. A counter affidavit has been filed on behalf of the respondents 1 to 5, wherein the sequence of events leading to the hospitalisation, and subsequent discharge from service, of the petitioner are narrated. The findings in Exts.P3, P4, P10 and P13 orders are also sought to be justified on the basis of the reasons contained therein. It is also pointed out that, there was nothing to indicate that the petitioner had actually contracted the ailment/condition while he was on active duty, and hence, the categorisation of the petitioner for the purposes of

invalid pension could only be under category 'A' thereby dis-entitling the petitioner to invalid pension.

3. I have heard the counsel for the petitioner and the learned Standing counsel for the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the bar, I am of the view that, the writ petition in its challenge against Exts.P10 and P13 must necessarily succeed. A perusal of Ext.P3 proceedings of the medical board, that has been relied upon by the respondents for invalidating the petitioner from service with effect from 17.01.2010, would clearly reveal that the condition/ailment contracted by the petitioner was with effect from July 2005. It is not in dispute that, the petitioner commenced service as a constable on general duty under the respondent Force with effect from 31.03.2004. It is also not in dispute that, at the time of entry into service under the respondent Force, the petitioner was not suffering from the aforementioned condition/illness. The finding in Ext.P13 order which suggest that the ailment of the petitioner was not contracted while on duty is one that is not supported by any valid material. When it is the admitted case that, the petitioner at the time of entry into service did not suffer from

any disability, and that the ailment was contracted only in July 2005, when the petitioner was on duty and in the services of the respondent Force, I would think that, the burden of proof to show that the illness was not due to performance of duty would be squarely upon the respondents and they can discharge the said burden only by referring to material that would unambiguously indicate that the injury sustained by the petitioner was at a time when he was not on duty. It is relevant in this connection to note the decision of the Supreme Court in **Dharamvir Singh v. Union of India and Others [(2013) 7 SCC 316]** wherein, while interpreting a provision granting disability pension to a Sepoy of the Indian Army, it was found that, in the absence of any material to show that the Sepoy in question was suffering from epilepsy at the time of entrance into service, the presumption to be drawn was that the Sepoy was in sound physical and mental condition at that time, and that the deterioration in health had taken place during service, and that the disability of the Sepoy bore a causal connection with the service condition. Taking cue from the said decision, I am of the view that, inasmuch as the respondents have not been able to establish, through any cogent material, that the ailment of the petitioner was one that preceded his appointment in the Force, the ailment on the basis of which he was invalidated from service must be seen as one that was contracted or caused while he

was on duty. I accordingly find that the case of the petitioner would be one that would merit classification under category 'B' of the CCS (Extraordinary Pension) Rules and it is under this head that the petitioner would be entitled to invalid pension taking note of the relaxation from the requirement of a minimum 10 years service that is prescribed in Rule 38 read with Rule 49 of the CCS Pension Rules.

Resultantly, I quash Exts.P10 and P13 orders and direct the respondents 2, 3 and 4 to treat the petitioner as a person who has been discharged from service on medical ground, and entitled for invalid pension as contemplated for persons falling under category 'B' of the CCS (Extraordinary Pension) Rules read with the CCS Pension Rules. The respondents shall do the needful in quantifying the amounts due to the petitioner and disbursing the same to him within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

mns