

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

CWP-13619-2014
Decided on: 24.02.2015

Ganpat SinghPetitioner(s)

vs.

Union of India and othersRespondent(s)

**CORAM HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**Present Mr. S.K.Chauhan, Advocate for the petitioner.
Mr. Arun Gosain, Advocate for respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

SURYA KANT, J (ORAL)

The petitioner impugns the order dated 27.01.2014 passed by Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir, whereby his claim for grant of disability pension has been turned down. The Tribunal has viewed that the petitioner's disability being 'constitutional', was not attributable to the Military service and that his claim for the award of disability pension is also barred by limitation prescribed under Section 22 of the Armed Forces Tribunal Act, 2007 (hereinafter ' the Act').

(2) The petitioner joined the Indian Army during national emergency in the year 1965. He also served the nation during 1971 INDO-PAK war before he was discharged from service w.e.f 31.10.1989.

(3) It appears that the petitioner's disability pension claim was forwarded to the competent authority on the

premise that he was discharged from Army service due to his placement in Low Medical Category. His disability was assessed more than 20%. Still the claim was declined on the ground that the disability was constitutional in nature and not attributable to Military service. After the rejection of claim vide order dated 19.07.1990, the petitioner is said to have represented the authorities time and again before unsuccessfully approaching the Tribunal in the year 2012.

(4) The respondents have through their written statement opposed the petitioner's claim on two counts; firstly, it is averred that the petitioner was discharged from Military service on fulfilment of enrolment conditions under item iii (i) of the Table annexed to Army Rule 13(3) of the Army Rules, 1954. Secondly, the petitioner was placed in Low Medical Category CEE (Permanent) due to the disability "*Mature cataract RT eye (OPTD) Immature Cataract LT eye*" which is neither attributable to nor was aggravated by Military service.

(5) We have heard learned counsel for the parties and gone through the record.

(6) Opinion given by different medical boards have also been produced by the respondents for our consideration.

(7) Column 11 of the Primary Medical Examination Report prepared at the time of recruitment of petitioner on 07.10.1965 reveals that the distant vision of his both eyes was 6/9 i.e normal and no disease whatsoever was detected. Thereafter, the petitioner was subjected to Re-Survey Medical Board on 29.05.1989 and the opinion of the Board is to the following effect:-

<i>"No.1280476 Hav Ganpat Singh</i>	<i>Height-168 cm</i>
<i>Unit HQ 8 Mtn Arty Bde C/O 99 APO</i>	<i>Weight 60 kg</i>
<i>Service-24 years</i>	<i>chest 82-5</i>
	<i>Age 42 years</i>

Diag: "MATURE CATARACT RT EYE (OPTD) IMMATURE

CATARACT LT EYE

Summary and opinion of LT Col BL Goswami, Classified Specialist in authority.

An old case of cataract both eyes Rt eye (OPTD) in cat "CEE" (Temp) for 6/12 years w.e.f 01 Feb 89. Now reported for SMS.

He noticed diminution of vision in Rt eye in the month of Sep 88 was NOT associated with redness, pain or watering. No history of DM.

He was diagnosed as a case of Mat Cat Rt eye and Immature Cat Lt. Eye. Rt eye was operated on 11 Jan 89. Intracapsular lens extraction with cryo was done. The capsule broke at the terminal stage of Lens delivery. Lens extraction completed extracapsularly by vectis and Lens Look. Vitreous followed the lens. Vitrectomy was done. Act was red with rigors lactate.

*At present Rt e Cye - No congestion
Aphaskic
Wound well healed
AC Deep
Pupil slightly updrawn
Most capsule seen behind the
pupil in upper part 4
Vit clear
Fundus NAD
Lt eye-No congestion
Cornea { }*

*AC { } N
Pupil { }*

.....XXX...XXX..XXX.....XXX...XX

"His all laboratory tests are within normal limits. A case of Mat Cat Rt Eye (optd) and Immature Rt.

Fit for release in Cat CEE (Permanent)".

In view of the above the indl is brought before release medical board.

*Sd/-B.L.Goswami
Eye Specialist".*

(8) The Medical Board has lastly opined that the cause of the disability is "constitutional".

(9) The fact that petitioner was placed in the Low Medical Category on the basis of above stated medical opinion is an admitted fact. The alleged conditions on fulfilment whereof the petitioner is said to have discharged from service, have neither been placed on record nor pleaded in the written statement. It can not be a mere coincidence that soon after categorizing him in Low Medical Category, the petitioner was discharged from service. It can, thus, be safely conferred that only and the only cause of petitioner's discharge from service was 20% disability suffered by him due to the eye's ailment.

(10) Having held that, the next question to be determined is whether the cause of disability is attributable to or aggravated by the Military service?

(11) The facts will speak for themselves. The petitioner's both eyes were perfectly fine, normal and healthy at the time he was enrolled in the year 1965. The petitioner continued to serve the Army for 24 years and actively participated in two wars also. It is, therefore, difficult to accept that the loss of eye sight was not attributable to or was not even aggravated by the Military service. The onus to prove that the disability suffered by the petitioner was not even remotely connected to the Military service was on the respondents. The Re-Survey Medical Board has assigned no reason whatsoever over looking the mandatory requirement of assigning reason(s) in support of its opinion, as to how the disability or disease was not aggravated due to Military service.

(12) In the light of the principles laid down by the Hon'ble Supreme Court in **Dharamvir Singh v. Union of India and others (2013) 7 Supreme Court Cases 316**, we unhesitatingly hold that if not attributable, the loss of eye sight was certainly aggravated by the Military service. Since the disability suffered by the petitioner was 20%, he is entitled

to the benefit of disability element of pension in accordance with Reg. 173 of Pension Regulations for the Army, 1961.

(13) This takes us to the second ground of rejection of the petitioner's claim by the Tribunal, namely that the claim was barred by limitation.

(14) The pension claim is a recurring cause of action which accrues and is revived every month. It is difficult to hold that such a claim can be barred by limitation. The issue is no longer *res integra*. Such a situation has been elaborately dealt with by a co-ordinate Bench in **Umed Singh (Ex. Naik) v. Union of India and others** 2014(2) RSJ 658 after referring to the binding precedents of the Supreme Court to conclude as follows:-

"24.... However, since a person has approached after delay, the claim of arrears would be restricted to a period of three years prior to initiation of lis, as any claim for money could be lodged only within three years from the date right to recovery arises in terms of Article 137 of the Limitation Act, 1963. Therefore, we find that the claim of disability pension cannot be declined for the reason that it was not raised within three years of discharge from the Army, but the payment of arrears would be restricted to a period of three years before the limitation of lis."

We, thus, need not to burden this order with more reasons for accepting the petitioner's claim.

(15) Resultantly, the writ petition is allowed. The order of Tribunal dated 27.01.2014 is set aside and the Original Application filed by the petitioner is allowed to the extent that he is held entitled to disability pension notionally w.e.f

01.11.1989 which is to be rounded off @ 50% w.e.f 01.01.1996. The petitioner shall be paid arrears of pension only for the period commencing three years preceding the date of filing the Original Application in the Tribunal and thereafter. The petitioner shall also be entitled to interest @ 7% per annum on the arrears of pension.

(16) The benefits shall be released within a period of three months from the date of receipt of certified copy of this order.

(SURYA KANT)
JUDGE

24.02.2015
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(RAJ MOHAN SINGH)
JUDGE