

CWP No. 3263 of 2014

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 3263 of 2014.
Date of Decision : 17.11.2015.

Sadhu Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

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

Present: Mr. G.S. Nagra, Advocate for the petitioner.

Mr. S.S. Chandumajra, Addl. A.G., Punjab.

Paramjeet Singh, J.(Oral)

The instant writ petition has been filed for quashing the order dated 03.02.2014 (Annexure P-5), whereby legal notice served by the petitioner has been rejected.

Brief facts of the case are that petitioner joined the Indian Army on 21.11.1959. He was recruited in Sikh Regiment (4 Sikh) and was allotted Sepoy No. 3348158. The petitioner took part in Indo China War (Chinese Aggression of 1962). During the war he suffered Gun Shot injury in the right arm including fore arm and right elbow. His right arm was operated

upon and surgically a bone was put inside the right arm with four screws. It is averred that petitioner also remained in the custody of Chinese Army and was returned to the Indian Army in December, 1962. The petitioner was admitted in Army Hospital, Artificial Limb Centre, Pune and thereafter was sent to Merrut Unit. After examination, the disability of the petitioner was found to be 50% as per disability certificate dated 24.12.1964 (Annexure P-1) issued by the Army Medical Authorities. The petitioner superannuated from the Army service in the year 1965 and a provision was made in the Punjab Package Deal Properties (Disposal) Rules, 1976 (for short 'the 1976 Rules) for permanently disabled soldiers, widows or parents or children of soldiers killed in Chinese Aggression of 1962, Pakistan Aggression of 1965 and Indo-Pak Conflict of 1971 for allotment of land up to 10 ordinary acres of land.

The petitioner is stated to be owner of 12 kanals of land in Village Jodhe, Tehsil Baba Bakala, District Amritsar. In view of this, he is entitled to 68 kanals of land as per the policy and Rule 4(1) of the 1976 Rules.

For the purpose of allotment of land, the petitioner submitted an application dated 09.12.2013 (Annexure P-3) and legal notice dated 03.01.2014 (Annexure P-4). The claim of the petitioner has been rejected on the ground that last date for

making the application was 27.01.1976 but the same was not filed within stipulated period. Hence, this writ petition.

In pursuance of the notice of motion, reply has been filed on behalf of respondents No. 1 to 3. In the reply, it is mentioned that only permanently disabled soldiers during Indo-China Aggression 1962 are entitled to 10 ordinary acres of evacuee agricultural land under Rule 4 of the 1976 Rules. In this regard, they were required to move application for this purpose on or before 30.11.1967. The application filed by the petitioner is delayed one. It is stated that firstly, he is not permanently disabled person and secondly, he has not filed application within stipulated period under the 1976 Rules. It is further mentioned that the Rehabilitation Department had issued a Press Note dated 16.06.1971 (Annexure R-1). It may be mentioned here that there is no reflection that it was issued in any newspaper and was made available to the various agencies including the Ex-servicemen etc.

I have heard learned counsel for the parties.

Learned counsel for the petitioner contended that the petitioner is virtually permanently disabled person because disability has been assessed as 50% as per Annexure P-1. There is no dispute regarding the fact that the petitioner has suffered injuries at the time of Indo China War (Chinese Aggression of 1962). The application has been rejected only on

flimsy grounds. Learned counsel for the petitioner in support of his contentions, has relied upon a Division Bench judgment of this Court in CWP No. 8962 of 2007, titled ***Smt. Jaswant Kaur (War Widow) Vs. The State of Punjab and others***, decided on 20.11.2008 (Annexure P-6) and a Single Bench judgment of this Court in CWP No. 387 of 2010 titled ***Ex. Sepoy Kulwant Singh Vs. The State of Punjab and others***, decided on 01.12.2011 (Annexure P-7), whereby the disabled persons were held entitled to allotment of the land. It is further contended that the matter is squarely covered by these judgments.

On the other hand, learned State counsel vehemently contended that petitioner is not entitled for allotment of land because he is not a permanently disabled person and even application has been filed after a considerable delay.

I have given anxious thoughtful consideration to the contentions of the learned counsel for the parties and perused the record.

Admittedly, the disability of the petitioner is 50% as per Certificate Annexure P-1 issued by the Army Medical Board and the injury has been caused during the Indo China War. The petitioner also remained in Chinese Army custody and has suffered torture. The injuries can be termed as a result of battle casualty. Now the question arises whether the

Government is duty bound to consider the claim of the petitioner on merit or not?

So far as the issue of limitation for filing the application under Rule 4 of the 1976 Rules is concerned, the same has been considered by this Court in a Single Bench Judgment passed in **Ex. Sepoy Kulwant Singh (supra)**. The relevant extract of this judgment reads as under :

“9. An identical question came to be decided by a Division Bench of this Court, by virtue of order dated 20.11.2008 (Annexure P-4) in CWP No. 8962 of 2007 titled as 'Smt. Jaswant Kaur Vs. The State of Punjab and others.’ Having considered the respective stands of the parties as in the present case, it was ruled as under :-

“Through the instant writ petition, the petitioner claims allotment of land in terms of Rule 4 of the Punjab Package Deal Properties (Disposal) Rules, 1976. This claim of the petitioner has been vehemently opposed by the learned counsel for the respondents by asserting that the petitioner has never moved an application under the statutory Rules reflected here-in-above, nor any policy/ instructions issued by the State Government from time to time.

Learned counsel for the petitioner states that the petitioner be afforded one opportunity to move a proper application in terms of the mandate of Rule 4 of the Punjab Package Deal Properties (Disposal), 1976 and that the

respondents be directed to take a final decision thereon in terms of the mandate of the aforesaid Rules.

Learned counsel for the respondents states, that if and when such an application is made by the petitioner, a decision thereon shall be taken by the respondents in accordance with law.

Having considered the submissions made by the learned counsel for the rival parties, we consider it just and appropriate to dispose of the instant writ petition, with liberty to the petitioner to move an application in terms of the mandate of Rule 4 of the Punjab Package Deal Properties (Disposal) Rules, 1976, within one month from today. In case, such an application is made by the petitioner within the time stipulated here-in-above along with a certified copy of the instant order, the same shall be considered by the competent authority by passing a well-reasoned speaking order, within two months. In case, a decision favourable to the petitioner is taken, the petitioner shall be allotted land within a further period of two months.

Disposed of accordingly.

Order dasti on payment of usual charges."

From the perusal of judgments of Division Bench dated 20.11.2008 and the learned Single Bench dated 01.12.2011, it is clear that the case in hand is squarely covered

by those judgments and deserves to be decided in the same terms.

In the light of aforesaid reasons, and since the matter is covered by the aforesaid judgments, the instant writ petition is disposed of with liberty to the petitioner to move an appropriate application in terms of Rule 4 of the 1976 Rules within a period of two months from receipt of certified copy of this order. In case, such application is made by the petitioner along with certified copy of this order, the same shall be considered by the competent authority without adhering to the technical objection of non-filing of the application within time and will pass a well-reasoned and speaking order within two months from the date of filing of the application. In case, the authorities come to a conclusion that the petitioner deserves to be allotted land, the same shall be done within a period of two months thereafter.

The present writ petition is disposed of in aforesaid terms.

November 17th, 2015.
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(PARAMJEET SINGH)
JUDGE