

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 328 of 2015 (O&M)
Date of Decision: October 21, 2015

Union of India and others

.....Appellants

Versus

Amarjit Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Shri Puneet Gupta, Advocate, for the appellants.

Shri G.S. Ghuman, Advocate, for the respondent.

1. Whether Reporters of 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?

Hemant Gupta, J.

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against the order 28.10.2014 passed by the learned Single Judge holding that the writ petitioner (respondent herein) is entitled to invalid pension in terms of Rules 38 and 49 of the Central Civil Service (Pension) Rules, 1972.

In the present appeal, the learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court reported as Union of India v. Bashirbhai R. Khiliji, (2007)6 SCC 16, to contend that the member of the Border Security Force will not be entitled to the disability pension prior to completing of qualifying service in terms of the Central Civil Service (Pension) Rules, 1972 (for short 'the 1972 Rules').

However on 8.9.2015, learned counsel for the writ petitioners submitted that it is not the Central Civil Service (Pension) Rules, 1972, which are applicable, but the disability pension is admissible under the Central Civil Services (Extraordinary Pension) Rules, 1939 (for short 'the 1939 Rules'), which were not brought to the notice of the Court in Bashirbhai R. Khiliji's case (supra). Such Rules are applicable to all persons paid from civil establishment except to those who are governed by the Workmen's Compensation Act, 1923 and irrespective of the fact whether the appointment is permanent or temporary, fixed or at piece work rates etc. The appellants sought time to examine the applicability of the said Rules.

We have heard learned counsel for the parties and find that the order of the learned Single Judge does not warrant any interference in the present appeal, but for the reasons other than those recorded by the learned Single Judge.

The facts out of which the present appeal has arisen are that the writ petitioner joined the Border Security Force in Medical Category Shape-I on 11.08.1967. He was invalidated out from service with 100% blindness on 27.02.1975, but has not been paid any disability pension for the reason that he had less than 10 years of qualifying service required under the 1972 Rules. It is the categorical case of the petitioner that while posted in Ladkha Sector in high altitude area, the petitioner suffered acute eyesight failure and was medically treated in various hospitals. On 12.12.1974, the appellants issued a letter to the effect that the writ petitioner shall not be entitled to pensionary benefits as per the Rules. Subsequently, the petitioner was invalidated out from service on 27.2.1975. The petitioner has been seeking disability pension from the date of discharge but without any success.

The categorical stand of the respondents is that the petitioner has put in less than 10 years qualifying service to make him eligible for invalid pension. It was specifically stated to the following effect:-

“6. That the petitioner had made several representations before the respondents for grant of invalid pension on account of his disability which he was not entitled for on account of his disability which he was not entitled for on account of not having requisite qualified service period. Subsequently, the petitioner filed a suit for mandatory injunction before the Civil Judge, IInd Class, Moga on 16.07.1992 which was dismissed as withdrawn on 05.12.1994.

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8. That the main grievance of the petitioner is that the disability pension has not been released by the respondents on account of his being 70% disabled. The petitioner's case was considered for the said pension but it was found that the petitioner served with the respondent department for only 7-1/2 years and therefore the qualifying service of the petitioner was below the required 10 years as per Rule 49 of the CCS (Pension) Rules, 1972. A government servant shall be entitled to service gratuity and not pension, if he retires before completion of qualifying service of 10 years in terms of Rule 49(1) of the CCS (Pension) Rules, 1972. It is pertinent to mention here that in cases, where the Government servant retires on completion of 10 years of qualifying service, he shall be paid 80% of the pension emoluments or average emoluments in the light of Rule 49(2) of the CCS (Pension) Rules, 1972.”

The question of qualifying service arises to earn pension or invalid pension on attaining the age of superannuation under the 1972 Rules. However, the writ petitioner was invalidated out from service on account of medical condition and such discharge entitles all persons paid from civil estimates to extraordinary pension, which includes disability pension.

The relevant extracts from the 1939 Rules, read as under:-

“2. These rules shall apply to all persons paid from Civil Estimates, other than those to whom the Workmen’s Compensation Act, 1923 (VIII of 1923), applies, whether their appointment is permanent or temporary on the scale of pay or fixed pay or piece work rates who are under the rule making control of the Governor-General, and

Who entered or enter service under the Central Government on or after the 1st April, 1937, or

Who having entered such service before the 1st April, 1937, did not hold a lien or a suspended lien on a permanent post on that date.

3-A (1) Disablement shall be accepted as due to Government services, provided that it is certified that it is due to wound, injury or disease, which,

- (i) is attributable to Government service, or
- (ii) existed before or arose during Government service and has been and remains aggravated thereby.

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- (2) There shall be a casual connection between,
 - (a) disablement and Government service; and
 - (b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix which shall be treated as part and parcel of these Rules.”

Subsequently, a provision was inserted on 13.12.2003 to state that nothing in the said Rules which apply to the Government servants appointed on or after 01.01.2004. Rule 2 has since been substituted vide notification dated 15.02.2011, but it continues to apply to all persons paid from the Civil Estimates with the exception to those to whom the provisions of the Workmen’s Compensation Act, 1923 apply.

The 1972 Rules are applicable to Government servants including civilian Government servants in defence services. The defence services have been defined to mean services under the Government of India in the Ministry of defence and in the Defence Accounts Department under the control of the Ministry of Finance paid out of the defence services estimates and not permanently subject to the Air Force Act, Army Act and the Navy Act.

The relevant Rules from 1972 Rules would read as under:-

“2. Application

Save as otherwise provided in these rules, these rules shall apply to Government servants appointed on or before the 31st day of December, 2003 including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to:-

- (a) railway servants;
- (b) persons in casual and daily-rated employment;
- (c) persons paid from contingencies;
- (d) persons entitled to the benefit of a Contributory Provident Fund;
- (e) members of the All India Services;
- (f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;
- (g) persons employed on contract except when the contract provides otherwise; and
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

3. Definitions

In these rules, unless the context otherwise requires –

- (a) to (c)

(d) 'Defence Service' means services under the Government of India in the Ministry of Defence and in the Defence Accounts Department under the control of the Ministry of Finance (Department of Expenditure) (Defence Division), paid out of the Defence Services Estimates and not permanently subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957).

38. Invalid pension.

(1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority, namely:-

(a) A Medical Board in the case of a Gazetted Government servant and of a non-Gazetted Government servant whose pay, as defined in Rule 9(21) of the Fundamental Rules, exceeds two thousand and two hundred rupees per mensem;

(b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases.

(3) The form of the Medical Certificate to be granted by the Medical Authority specified in sub-rule (2) shall be as in Form 23.

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A perusal of the two sets of Rules shows that the 1972 Rules deal with the invalid pension, whereas the 1939 Rules deal with the disability pension. The distinction between the two is available on the website <http://pensionersportal.gov.in> under the head 'Frequently Asked Questions'. FAQ No. 9.2 and its answer read as under:-

“9.2. How Disability pension is different from Invalid Pension?

The invalid pension is granted under Rule 38 of CCS (Pension) Rules, when the Government servant seeks invalidation from service for any bodily or mental infirmity whereas disability pension is granted under CCS(EOP) Rules. The CCS (COP) Rules provides that if a Government servant is boarded out of service on account of injury attributable to Government service, he shall be granted disability pension which includes service element as well as disability element. Invalid pension and disability pension cannot be combined.”

The distinction between the disability pension and invalid pension is also made out from Office Memorandum No.45/86/97-P&PW(A)-Part-II dated 17.10.1997 issued by the Government of India, Department of Personnel, Public Grievances & Pensions. The said Office Memorandum deals with the pension under 1972 Rules as well as under 1932 Rules. It is pointed out that the minimum limit of pension is Rs.1275/- which will apply to total of two pensions. The relevant extracts from the said Office Memorandum read as under:-

“2.1 These orders apply to all pensioners/family pensioners who were drawing pension/family pension on 1.1.1996 under the Central Civil Services (Pension) Rules, 1972, CCS (Extraordinary) Rules and the corresponding rules applicable to Railway pensioners and pensioners of All India Services including officers of the Indian Civil Service, retired from service on or after 1.1.1973.”

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5.2 Where the disability pension under the CCS (EOP) Rules, is drawn in addition to invalid pension under the CCS (Pension) Rules, 1972, the minimum limit of Rs.1275/- will apply to total of two pensions as indicated in paragraph 5.1. Where the disability pension is drawn in isolation, the minimum limit of Rs.1275/- will apply for 100% disability. For lesser degree of disability the minimum limit will be proportionately less.”

We find that under the 1972 Rules, invalid pension is availed by an employee if he seeks retirement on account of any bodily or mental infirmity. Such bodily or mental infirmity is not connected with the

service and is admissible even if such bodily or mental infirmity is neither attributable to or aggravated by the service. However, disability pension under the 1939 Rules is admissible if a disability is suffered which is either attributable or aggravated by the service and an employee is discharged. Therefore, the circular dated 27.10.1997 puts a cap on the minimum limit of the pension, whether drawn as invalid pension or disability pension.

Invalid pension can be availed after an employee completes the qualifying service whereas the disability pension under the 1939 Rules, is payable when an employee suffers disability on account of service or such disability is aggravated by the service. An employee can suffer disability during the course of service even on the first day of joining. Therefore, there is no condition of length of service in 1939 Rules, which is required to be satisfied by an employee for being entitled to disability pension. The minimum qualifying service is a condition for grant of invalid pension under the 1972 Rules.

In Bashirbhai R. Khiliji's case (supra), Rule 38 read with Rule 49 of the 1972 Rules, was considered. Such Rules provided for invalid pension to a Government servant, who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service. Rule 49 on the other hand contemplates that in case a Government servant retiring in accordance with the provisions of the Rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six-monthly period of qualifying service. The attention of the Court was not drawn to the 1939 Rules, which deal with the disability pension on account of disability suffered during the course of employment.

In view of the said fact, we do not find any merit in the present appeal. The same is dismissed for the reasons which are other than those recorded by the learned Single Judge.

The writ petitioner shall be entitled to disability pension from the date of discharge, since the first communication rejecting the claim of disability pension was made in the year 1987 (Annexure P.2). If the amount of disability pension is not disbursed within a period of three months, then the petitioner shall be entitled to simple interest @ 9% p.a. The costs imposed by the learned Single Judge, does not call for any interference.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

October 21, 2015
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