

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.205 of 2014 (O&M)
Date of decision: 29.10.2015**

Union of India and others

... Appellants

Vs.

Satbir Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Pankaj Gupta, Advocate, for
Mr. Kunal Dawar, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.464-C of 2014

For the reasons stated in the application, duly supported by an affidavit, delay of 159 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.205 of 2014 (O&M)

The appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit filed by the respondent-plaintiff claiming disability pension, has been decreed.

Mr. Pankaj Gupta, learned counsel appearing on behalf of the appellant-defendants submits that the Courts below have wrongly applied the provisions of Pension Regulation 173, which are not

applicable to the employees serving in CRPF, but the same are applicable to the military employees and therefore, there is illegality and perversity in the findings rendered by both the Courts below. He further submits that the respondent-plaintiff on his request was relieved from the service in the year 1999 on account of the report submitted by the medical board that he had been suffering from Schizophrenia. As a result thereof, he is getting invalid pension as per Rule 38 of the Central Civil Services (Pension Rules) 1972 (hereinafter referred to as 1972 Rules). He further submits that no doubt, as per the provisions of Rule 3A of the Central Civil Services (Extra-Ordinary Pension) Rules 1939 (hereinafter referred to as 1939 Rules), there is provisions of claiming disability pension to the employees, who, suffered injury/disability while in service. The lower Appellate Court, being the last Court of fact and law, was enjoined upon an obligation to discuss the entire evidence and law but failed to address such issues, therefore, substantial questions of law arise to be determined by this Court.

I have heard learned counsel for the appellant-defendants and appraised the impugned judgments and decrees of the Courts below.

On going through the pleadings, it reveals that claim of the respondent-plaintiff was for disability pension as he suffered from a disease, i.e., Schizophrenia while in service. It has been categorically pleaded that he was assured that he will get the invalid pension,

including the disability pension but the same was not released and the legal notice dated 08.09.2005 was served upon the defendants through his counsel which was duly replied. Thereafter, the suit was filed on 07.04.2006. The appellant-defendants in the written statement contested the claim on the premise that he was declared invalid on medical ground, therefore, he was entitled to invalid pension as per the rules applicable and not as per allegedly assessed disability to the extent of 70%.

Rule 38 of 1972 Rules, deals with the entitlement of Invalid Pension, in case, a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service. For the sake of brevity, the same is reproduced herein below:-

Rule 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 :-*

<i>(a)</i>	<i>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 ³[Two thousand and two hundred rupees] per mensem ;</i>
<i>(b)</i>	<i>Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases.</i>

NOTE 1. - No medical certificate of incapacity for service may be granted unless the applicant produces a letter to show that the Head of his Office or Department is aware of the intention of the applicant to appear before the medical authority. The medical authority shall also be supplied by the Head of the Office or Department in which the applicant is employed with a statement of what appears from official records to be the age of the applicant. If a service book is being maintained for the applicant, the age recorded therein should be reported.

NOTE 2. - A lady doctor shall be included as a member of the Medical Board when a woman candidate is to be examined.

(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.

(4) Where the medical authority referred to in sub-rule (2) has declared a Government servant fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

As per Rule 38 of 1972 Rules, a Government employees who has suffered a disease or injury will also be entitled to invalid pension. Admittedly, in the instant case, respondent-plaintiff was relieved from the service in the year 1999 on account of having suffering from Schizophrenia disease. The aforementioned fact was ascertained by the Medical Board constituted in this regard.

It would be apt to reproduce Rule 3-A of Rules 1939 Rules which reads thus:-

“3-A. Eligibility

	(a)	Disablement shall be accepted as due to Government service, 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.
	(b)	Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by -
	(i)	a wound, injury or disease which was attributable to Government service, or
	(ii)	the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.
	There shall be a causal 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.	

Clarification. - It will be seen from the new (revised) [Forms 'C', 'D' and 'E'](#) that these forms of medical certificates have been so designed that they would indicate whether the entitlement criteria laid down in new [Rule 3-A](#) have been satisfied or not, and therefore, normally, no other separate certificates in that behalf may be necessary. It is essential for the Administrative Officer as well as the Audit Office (PAO) concerned to satisfy themselves that the death/disability is, in fact, attributable to or aggravated by the Government service which alone makes an EOP Award admissible and for that purpose, it is essential for both of these authorities to satisfy themselves in that behalf and certify the nexus and causal connection between disablement and Government service or between death and Government service (as the case may be), in any particular case, as laid down in the new [Rule 3-A](#) on the basis of the

medical and other documents regarding the case. If a Government servant had died in such circumstances and that a medical report could not be secured, even then, the nexus and the casual connection between death and Government service has to be established before conceding acceptance of death due to Government service.

[G.I., M.H.A. (Dept. of Per. & A.R.), O.M. No. F. 23 (9)-E. V (A)/79, dated the 28th November, 1980.]

(3) Notwithstanding anything contained in these rules, the degree of default or contributory negligence on the part of a Government servant may be taken into consideration in making an award under these rules in favour of such Government servant, but, shall not be taken into account where such award is made in favour of the family of such Government servant.”

On perusal of the aforementioned Rules, it is evident that employee who has suffered disability while in Government service is entitled to disability pension. I am in agreement with the plea of Mr.Gupta, that the provisions of Regulation 173, is applicable to the Army persons and not to the CRPF but the fact remains that the rules governing CRPF, also envisage disability pension. In essence, employee who has suffered injury/disability has to avail both disability pension/invalid pension.

There is another aspect of the matter. The appellant-defendants have not taken up the plea in the appeal filed before the First Appellate Court. Be that as it may, the fact remains that rules envisage applicability of both pensions.

In view of the aforementioned facts, as well as, Rules, I do not intend to differ with the findings rendered by both the Courts

below and observe that Rule 3A instead of Regulation 137 would apply in the present case. The judgments and decrees of both the Courts below are upheld, much less, no substantial question of law arises to be determined by this Court.

Accordingly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 29, 2015
savita