

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.3949 OF 2004

Mr.R.S.Apte, Senior Advocate i/b Mr.M.S.Lagu for the
Petitioner

ORAL JUDGMENT: (A.S.OKA, J.)

1 Heard the learned counsel for the petitioner. The petitioner was appointed on the post of Superintendent (Buildings and Roads), Grade II. The case of the petitioner is that while he was working as GO 002361X, AE(Civil) on 2nd August 1996, he was attacked by extremists in Tripura. He sustained injuries. The petitioner is relying upon the medical certificate issued by the Medical Superintendent of Civil Hospital, Aizwal dated 9th September 1998 in which the opinion of the Medical Board was recorded that the percentage of disability suffered by the petitioner will be 70% for the field work. The petitioner is also relying upon the disability certificate dated 19th August 2003 issued by the Medical Board which records that the percentage of disability of the petitioner will be 70%.

2 The petitioner has made various grievances in the petition including a grievance regarding his posting. The petitioner made a representation dated 29th September 2003 to the Head Quarters, Directorate General of Border Roads Organization pointing out that on 2nd August 1996, he sustained gun shot wound in the abdomen while he was on duty. He has stated that his disability has been assessed at 70% and due to disability, he was not in a position to serve in the organization. The petitioner requested the Director General to grant liberalised pension to him so that he could proceed to take voluntary retirement with effect from 31st December 2003. There is one more representation to that effect made by the petitioner on 8th April 2004. There is an affidavit in reply filed by Shri D. Palit, Commandant working in the office of GREF Centre in which a stand has been taken that the disability suffered by the petitioner was only to the extent of 30%. There is a rejoinder filed by the petitioner on 15th January 2005. In the said rejoinder, he has stated that his application for grant of voluntary retirement has been sanctioned. He has made a grievance that he has been sanctioned normal pension, but liberalised pension is not sanctioned.

3 The learned senior counsel for the petitioner stated that in November 2004, the petitioner has been granted voluntary retirement and therefore, the only issue which survives for consideration is

whether the petitioner is entitled to a liberalised pension. He relies upon consolidated orders on pensionary awards in case of death/disability as a result of (i) attack by or during action against extremists, anti-social elements etc., and (ii) Enemy action in international war or border skirmishes. He submitted that the case of the petitioner will be covered by category 'E'. Relying upon sub clause (ii) of clause 2 of Rule 6, he urged that the respondents cannot rely upon the disability certificate issued by the Medical Officer in as much as the findings of the Medical Board are to be treated as final and binding unless the employee himself seeks review thereof. He submitted that the case of the petitioner ought to have been considered for grant of liberalised pension on the footing that the petitioner falls in the category (E) under Rule 6 and that he suffers from 70% disability. He also invited our attention to the order dated 13th September 2004. He submitted that no decision has been taken on the representations made by the petitioner as regards grant of liberalised pension.

4 None appears for the respondent. We have perused the affidavit in reply filed by Shri D.Palit. There is nothing placed on record to show that the case of the petitioner was considered in accordance with law for grant of liberalised pension on account of disability suffered by him. There is a merit in the contention of the petitioner that the eligibility of the petitioner for grant of liberalised pension will have to be determined on

the basis of the percentage of the disability determined by the Medical Board and not by any other Doctor or any other Authority.

5 The petitioner in his rejoinder has stated that he has been granted normal pension but the liberalised pension has not been granted.

6 In the circumstances, appropriate Authority of the respondents will have to consider the case of the petitioner for grant of liberalised pension.

7 Hence, we dispose of the writ petition by passing the following order:

- (I) We direct the respondents to consider the case of the petitioner for grant of liberalised pension within a period of three months from the date of which an authenticated copy of this Judgment and order is produced in the office of the respondents;
- (II) We make it clear that the claim for liberalised pension will have to be considered by the concerned Competent Authority only on the basis of the findings recorded by the Medical Board on the extent of disability suffered by the petitioner;
- (III) It will be open for the petitioner to produce an authenticated copy of this Judgment and order in the office of the respondents along with a detailed representation enclosing therewith copies of the certificates issued by

the Medical Board;

- (IV) The decision taken shall be communicated to the petitioner by the concerned Authority within a period of four months from the date on which an authenticated copy of this Judgment and Order is produced by the petitioner in the office of the concerned respondents;
- (V) In the event, the decision is adverse to the petitioner, needless to add that the petitioner will be entitled to challenge the same in accordance with law;
- (VI) Rule is partly made absolute with no order as to costs;
- (VII) Parties to act upon an authenticated copy of this Judgment and order.

(A.A.SAYED,J.)

(A.S.OKA,J.)