

CWP No.20331 of 2013

[1]

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

**CWP No.20331 of 2013
Date of decision:30.11.2016**

Ex. Nk/DMT Sahab Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Jasneet Kaur, Advocate,
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 15.11.2010 and prayed for release of ex-gratia amount as per the policy dated 17.06.1999 and 30.09.1999.

In brief, the petitioner served in the Indian Army from 28.08.1985 to 01.08.2003. He suffered a Gun Shot Wound (GSW) in the Right Gluteal Region in a terrorist attack at Kalu Chak on 14.05.2002 and suffered 50% disability as per the Disability Certificate dated 12.07.2002. He is also in receipt of the War Injury Pension. The petitioner has alleged that the Government of Haryana had issued a policy dated 17.06.1999 for the ex-gratia grant of ₹50,000/- for the army personnel belonging to the State of Haryana in other ranks who have suffered disability of more than 50%. In this regard, reference is made to Clause 7(d) of the policy dated

17.06.1999, which reads as under:-

(d) The families of personnel killed and disabled while on duty for the internal Security of the security of the country or while fighting natural calamities like floods etc. in aid of civil authority in peace time but disability should be attributable to Military Service.”

It is further alleged that the said amount was increased to ₹4.5 lacs in the policy dated 30.09.1999 but the application made by the petitioner for ex-gratia grant has been rejected on the ground that he was not boarded out of the military service due to his medical disability but discharged under Rule 13(3) Table III(IV) of the Army Rules on his own request made on 01.08.2003.

In the reply filed by the respondents, it is averred that since the petitioner was discharged from service on 01.08.2003, therefore, his case would be governed by the policy dated 15.06.2001 and not by the policies dated 17.06.1999 and 30.09.1999 and as per the policy dated 15.06.2001, the ex-gratia grant is entitled only to those disabled defence personnel whose disability is attributable to military service and classified as battle casualty in operational area and who are medically boarded out from defence forces on account of their disability, whereas the petitioner was retained in service after the injury and later on discharged at his own request and was not medically boarded out from the Army due to said disability which is not permanent in his life. In this regard, extract of the service particulars were also attached with the reply in which the cause of discharge is mentioned as “*Army Rule 13(3) Item III (IV)-Transferred to pension*

establishment at his own request before fulfilling the conditions of enrollment under item III(iv) of table annexed to Army Rule 13(3)."

After hearing learned counsel for the parties and examining the available record, it is found that the petitioner was admitted in the Military Hospital on 14.05.2002, discharged in July, 2002 and it is mentioned in the history-sheet that he had suffered GSW on 14.05.2002 but by that time, the policy dated 15.06.2001 was in operation, which provides as under:-

"Ex-gratia is admissible to those disabled soldiers of defence services only whose disability is attributable to military service and classified as battle casualties in operational areas and who have been medically boarded out of Defence Forces on account of their disability. The disability element should be of permanent percentage fixed by the Initial Medical Board. Subsequent Review Medical Board reports will have no effect on the payment of Ex-gratia grant which may increase or decrease the disability element."

The only bottleneck before the petitioner to claim ex-gratia grant is that he had been discharged from the Army on his own request and was not medically boarded out on account of his disability and in the case of **Krishna Kumari vs. State of Haryana and others**, 2012(3) PLR 383, the Full Bench of this Court has held that "*in view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed*".

According to the Full Bench decision of this Court in **Krishna Kumari's case (supra)**, the policy dated 15.06.2001 has to be followed because the Gun Shot Wound was suffered by the petitioner on 14.05.2002

CWP No.20331 of 2013

[4]

and thus, there is no error on the part of the respondents in passing the impugned order.

Consequently, the present writ petition is hereby dismissed being denuded of any merit.

November 30, 2016
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No