

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

218

**CWP No. 20904 of 2013(O&M)
Date of decision:21.11.2016**

Inderjit Singh

.... Petitioner

Versus

Union of India and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Ms. Jyoti Sareen, Advocate for the petitioner.

Mr. Sanjay Vasisth, Sr. Panel Counsel for the respondents.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of Annexure P7 dated 27.06.2013 by which claim of the petitioner for disability pension has been turned down.

2. The petitioner joined Border Security Force on 16.04.1966 as a Constable in 53rd Battallion BSF. During 1967 to 1974 he was working in J& K and Punjab Border areas and high altitude area. In the year 1974 he was declared as medically unfit. Consequently, his services have been discharged on 28.07.1974. On 15.08.2012 legal notice was sent to the respondents with reference to his service particulars read with medical condition due to which the petitioner's servies have been discharged, while contending that he is entitled to disability pension as he was suffering from

Gastritis for which he has taken treatment. Thereafter, he suffered paralysis. The same was not considered by the respondents. Consequently, he has compelled to approach this court. This court while disposing of CWP No. 25906 of 2012 directed the respondents to consider the legal notice. Accordingly, the respondents have considered and sent a reply to the legal notice dated 27.06.2013 vide Annexure P7 which is under challenge.

3. Learned counsel for the petitioner submitted that admittedly, the petitioner was posted to border areas and high altitude area during the year 1967 till he was discharged from service. Cause of Gastritis to the petitioner is attributable to the services rendered by him in the border areas and high altitude area. Therefore, he is entitled for disability pension. In this regard, the petitioner counsel relied on Central Civil Services (Extraordinary Pension) Rules, 1939 rule 3-A. (1)(a) reads as under:-

*“3-A (1) (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.”*

Read with Government of India's orders Revised provisions effective from 01.01.1996. The petitioners case would fall under category B which reads as under:-

“Category 'B' Death or disability due to causes which are accepted as attributable to or aggravated by Government service. Diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupations hazards resulting in death or disability would be examples.”

Further she relied on Schedule 1-A(C). Gastritis is one of the item which falls under diseased affected by dietary complusions.

4. In view of the above provisions, the petitioners case is fit into the aforesaid provisions to claim disability pension.

5. Learned counsel for the petitioner further submitted that while issuing Annexure P7 there is a total non-application of mind for the reasons that in para 5 of reply of legal notice dated 27.06.2013 claim of the petitioner has been rejected with reference to Rule 38 of CCS(P) read with Rule 49 of CCS(P) contending that petitioner do not fulfil the qualifying service of 10 years. Whereas, the petitioner's claim is with reference to disability pension which covers under the Extraordinary Pension Rules called the Central Civil Services (Extraordinary Pension) Rules, 1939.

6. On the other hand learned counsel for the respondents submitted that the petitioner is not entitled to relief claimed by him on the ground of delay and latches on the part of the petitioner. Since he was discharged from service on 27.07.1974 and the claim of disability pension is being made in the year 2012. It was further submitted that the petitioners Gastritis is not attributable with reference to service rendered by him in the high altitude area and borders areas. It is natural.

7. Heard learned counsel for the parties.

8. Admittedly, the petitioner's claim is highly belated. Since the petitioner was discharged from service on 27.07.1974 due to medical unfitness. One of the reason assigned is that he was suffering from Gastritis and he was admitted to hospital during the year 1971 to 1973. Question of delay in claiming disability pension or pension is not a hurdle for the reasons that

once disability pension is granted, the petitioner would be getting disability pension every month. Therefore, it is a continuing cause of action. At the best the relief can be restricted prior to 38 months from the date of filing of writ petition whereas in the present case, the petitioner filed the petition in the year 2012 (CWP No. 25906 of 2012).

9. Having regard to the illness of the petitioner that he is suffering from Gastritis which is not disputed by the respondents, dispute is relating to whether it is attributable with reference to service rendered by the petitioner in the high altitude area and border areas or not. The contention of the respondents that he fell ill naturally and not due to service attributable. No material has been produced by the respondents to contend that it is due to natural and not attributable with reference to service rendered in high altitude and border areas.

10. On the other hand, in para 3 of the reply to legal notice dated 27.06.2013 they have admitted that disability developed due to continuous posting of the petitioner in border areas and high altitude area. An extract of para 3 of reply of legal notice is as under:-

“Para 3

As per the Service Record, Ex-Constable Inderjit Singh was remained posted in 53 Bn BSF from 01.06.1967 to 31.03.1968 in area of Mandirmandi (J & K), from 01.04.1968 to August 1973 Naushera (J&K), from 01.09.1973 to 16.11.1973 in Gurdaspur (Punjab) and thereafter posted 24 Bn BSF and remained deployed at Khemkaran (Punjab) from 17.11.1973 to 27.07.1974. As regards, individual developed the disability due to continuous posting on border areas and high altitude area, it is inevitable to mention that BSF is the organization raised for guarding the International

border/LoC wherever exist, as per existing terms and condition of service.”

11. Having regard to the provision of the Extraordinary Pension Rules, 1939, in particularly 3-A (1) (a) (i) and (ii) read with Government order insofar as category B (Supra) and reading of Schedule 1-A under rule 3(4) the Gastritis item is one of the item included in the schedule for the purpose of considering disability pension under the Extraordinary Pension Rules, 1939.

12. In view of the above discussion, Annexure P7 dated 27.06.2013 is set aside. The respondents are directed to reconsider the claim of the petitioner with reference to Extraordinary Pension Rules, 1939 read with the fact that respondents have admitted in para 3 in the communication dated 27.06.2013 and extend disability pension to the petitioner. However, the petitioner is entitled to disability pension only prior to 38 months of filing of writ petition no. CWP No. 25906 of 2012. Monetary benefits be granted within a period of 4 months from today. It is made clear that petitioner is not entitled to interest on belated claim.

13. Accordingly, petition stands allowed.

21.11.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No