

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4923 of 2012
Date of Decision:-02.12.2016.

Dev Raj

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Rohiteshwar Singh, Advocate for the petitioner.

Ms. Ranjana Shahi, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has questioned the validity of the orders dated 2.6.2010 and 25.3.2011 issued by respondent Nos.2 and 3, respectively (Annexure P-2 and P-4). The petitioner was appointed as a Constable in the Cobbler discipline on 11.8.1990. While he was in service, on 20.3.2007, he had hyper-tension. Due to aggravation, he was moved to Soura Cardiology Hospital. Later on he got treatment in the Cardiology Hospital. Thereafter, he had paralysis attack by which more than 50% of his body remained not functioning. To that extent, he had a medical examination by the Civil Hospital, Hoshiarpur on 15.3.2008. The petitioner was examined by two Specialists and one Medical Officer of the Civil Hospital, Hoshiarpur and they have given their opinion that the petitioner is suffering from 80% permanent disability. With the disability,

the petitioner was allowed to discharge the lighter duty in the respondents' organization. The petitioner was subjected to medical examination with the Boarder Security Force on 9.5.2008. While examining him, insofar as percentage of disability is concerned, it is stated "N.A." vide Annexure R-I. The petitioner's claim for disability pension was rejected by the respondents on 2.6.2010. The petitioner's ailment is not attributable to Government service nor indicated any percentage of disability. Thus, his case would not come in the purview of Rule for grant of disability compensation and medically boarded out. Thereafter, petitioner's wife submitted representation. Even the same was rejected on 25.3.2011. Subsequently, on 31.5.2011 with reference to the petitioner's application for seeking voluntary retirement was accepted under Rule 48 (A) of Central Civil Service (Pension) Rules, 1972.

2.) Learned counsel for the petitioner submitted that the respondents have failed to record percentage of disability so as to deny the disability pension on 9.5.2008. Whereas, on 15.3.2008 when the petitioner got examined himself in the Civil Hospital, Hoshiarpur, the Medical Examination Board consisted of two Specialists and one Medical Officer who have held that the petitioner is suffering from disability to the extent of 80%. The same has not been taken note of by the respondents so as to extend the benefit of disability. On the contrary, the respondents, when subjected petitioner to medical examination with the BSF Authorities, they have not recorded the percentage of disability for no reasons. Therefore, learned counsel for the petitioner submitted that the petitioner is entitled for disability pension and rejection of petitioner's claim for disability on the score that petitioner's ailment is not attributable to the Government service

and in not boarding out him is highly arbitrary and illegal.

3.) On the other hand, learned counsel for the respondents submitted that it is true that the medical examination conducted by BSF officials have not identified/disclosed the percentage of disability of the petitioner on 9.5.2008. However, it is evident that the petitioner was permitted to continue to discharge the duties of the post by giving lighter duty till 31.5.2011 in order to facilitate him to get the pension since the petitioner did not fulfill the pensionable service as on March, 2008. That apart, it was contended that the petitioner has been discharging on his request for seeking voluntary retirement under Rule 48-A of the Central Civil Services Pension Rules. Therefore, the petitioner has not made out a case so as to interfere with the rejection of the claim of the petitioner for disability pension.

4.) Heard learned for the parties.

5.) Claim of the petitioner for disability pension, the petitioner got examined himself before the Medical Experts, Civil Hospital, Hoshiarpur who have opined that the petitioner is suffering from 80% disability. At the same time, the petitioner was subjected to Medical Board of the BSF wherein the BSF have not determined the percentage of disability as on 9.5.2008. The Medical Experts of the BSF have not recorded the percentage of disability as is evident from the opinion of the Medical Board dated 9.5.2008.

6.) In view of the above facts and circumstances, Annexure P-2 dated 2.6.2010 and Annexure P-4 dated 25.3.2011 are set aside.

7.) Therefore, the respondents BSF are directed to subject the petitioner to Medical Board Examination once again and find out the

percentage of disability so also related ailment of the petitioner of Hypertension followed by paralysis attack are in connection with the service or not. Such action shall be taken by the respondents-BSF within three months from today and further take necessary action if the disability of the petitioner is on par with the medical opinion given by the Civil Hospital, Hoshiarpur and if he fulfills the conditions stipulated for the purpose of granting disability pension, the same shall be granted at the earliest.

8.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

December 02, 2016.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.