

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

CWP No. 25472 of 2016

Date of Decision: 09.12.2016

LAKHI RAM

... Petitioner

VS.

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Ashok Bhardwaj, Advocate,
 for the petitioner.

KULDIP SINGH, J (ORAL)

The petitioner has preferred the present writ petition under Articles 226 and 227 of the Constitution of India for issuance of writ of certiorari for quashing the orders dated 06.08.2012, 03.05.2013 and 12.09.2014 (*Annexure P-18, P-23 and P-27 respectively*) vide which the claim of the petitioner for Constant Attendant Allowance has been declined. The petitioner also sought issuance of writ of mandamus for directing the respondents to grant Constant Attendant Allowance w.e.f. 01.07.1991 to 31.12.1995 alongwith interest.

Brief facts of this case are that the petitioner-Lakhi Ram while working as Octroi Clerk, in the Municipal Council, Lehragagga, was injured in the terrorist violence in the State of Punjab on 13.10.1990 while on duty. As a result of injury, he was rendered handicapped and as such retired from service of Municipal Council, Lehragagga, at the age of 53 years as he was not fit for the post of Octroi Clerk. Consequently, he was granted invalid pension w.e.f. 01.07.1991. Now, the claim of the petitioner is that the

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Government have issued instructions dated 17.08.2009 (Annexure P-9) in which Constant Attendant Allowance has been allowed @ ₹3000/- per month which is in addition to the disability pension and other benefits.

The relevant extract from the said instructions regarding Constant Attendant Allowance are reproduced as under: -

“7. **Constant Attendant Allowance: -**

A Constant Attendant Allowance @ ₹ 3000/- per month shall be given to the Punjab Government Employees who suffer 100% disability as a result of action against extremists or anti-social elements and who are dependent on somebody for day to day functions. This shall be in addition to the extra ordinary disability pension and other benefits.”

The petitioner claims that his disability is to be treated as 100% and he be entitled to the said benefit. He also challenged impugned orders dated 06.08.2012, 03.05.2013 and 12.09.2014 (Annexure P-18, P-23 and P-27 respectively) vide which the claim of the petitioner for grant of Constant Attendant Allowance has been declined.

I have learned counsel for the parties and carefully gone through the file.

The instructions for constant medical attendant allowance show that the petitioner is required to fulfill the following three conditions:-

1. He should suffer 100% disability;
2. The disability should be result of action against the extremists or anti-social elements;

3. He is dependent upon somebody for day to day functions.

So far as condition No. 2 is concerned, there is no doubt about the same that he was injured in the terrorist violence. Now, the question would arise that whether the petitioner suffered 100% disability and is dependent upon somebody in relation to day to day functions?

The petitioner has relied upon the certificate issued by Christian Medical College, Ludhiana (*Annexure P-1*), where in the disability of the petitioner has been assessed at 60%. His right arm was amputated from shoulder joint. However, vide certificate issued by the Department of Orthopedics, PGIMER, Chandigarh (*Annexure P-2*), the disability of the petitioner is assessed as 52%. In concession certificate issued by the Ortho Surgeon, PGIMER, Chandigarh, shows that the petitioner cannot travel without an escort and has inability to use his upper limb. The petitioner has relied upon the identity card for disabled person issued by the District Social Security Officer, Sangrur showing the disability of the petitioner as 100% in view of the guidelines of Hon'ble the Supreme Court of India.

I am of the view that the Identity Card issued by the District Social Security Officer, Sangrur will not override the certificate issued by the Christian Medical College, Ludhiana and PGIMER, Chandigarh. Now, it is to be seen whether 52% or 60% of disability is to be assessed at 100% or not? For this purpose, the petitioner has relied upon the instructions of Central Civil Services (*Annexure P-7*) wherein amputation through right shoulder is to be treated as 90% loss of earning capacity. It indicates that the disability given only in respect of the earning capacity only and not in respect of the disability as a whole. Further, reliance is also placed on instructions

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(Annexure P-8) which are also relating to the Central Government Services whereby, the disability assessed by the Medical Board between 76% to 100% is to be computed as 100%.

I am of the view that first of all instructions of Central Government Services are not binding upon the Punjab Government. Further, the said instructions were regarding loss of earning capacity and not regarding the claim for Constant Attendant Allowance.

The learned counsel for the petitioner also relies upon the judgement of the Apex Court passed in *Civil Appeal No. 1536 of 1970* titled as *Pratap Narain Singh Deo Vs. Shrinivas Sabata and Another*: **1976 AIR (SC) 222**. On perusal of the said judgement, it comes out that in the said case it was interpreted that the total disability as defined under Section 2(I) of the Workmen's Compensation Act, 1923, for the purpose of grant of compensation is for loss of earning capacity only. Therefore, the interpretation of total disability under the Workmen's Compensation Act, 1923, cannot be applied to the disability for the purpose of grant of constant medical Attendantallowance.

In the present case, the medical certificate of the PGIMER, Chandigarh shows that that the disability is of 52% and attendant is required only while travelling. Therefore, the disability of the petitioner is not 100% as he is not dependent upon somebody for day to day functions. The dependency is only limited to travelling only. Therefore, the petitioner does not satisfy the conditions No. 1 and 3 of said instructions.

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In view of the foregoing discussion, I do not find any illegality and infirmity in the impugned orders. Accordingly, the present writ petition is dismissed.

December 9, 2016
Suresh Kumar

(KULDIP SINGH)
JUDGE

<i>Whether speaking / reasoned</i>	✓ Yes / No
<i>Whether Reportable</i>	✓ Yes / No