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

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**Civil Writ Petition No.3498 of 2014
Date of decision: May 23, 2016**

Hemant Kumar Punia

....Petitioner

versus

Union of India and others

...Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. Rajeev Anand, Advocate
for the petitioner.

Mr. Vivek Singla, Senior Penal Counsel
for the respondents.

P.B. BAJANTHRI, J. (Oral)

1. In the instant writ petition, the petitioner has sought the following reliefs:

(i) To issue a writ, order or direction in the nature of mandamus/or any other writ of like nature directing the respondents to grant the disability pension consisting of disability as well as service element of pension and ex-gratia pension in pursuance of letter dated 28.06.2010 (Annexure P-5) and letter dated 21.02.2011 (Annexure P-9) for having sustained permanent incapacitation while in

service and undergoing training which is attributable to and aggravated by Military service.

(ii) To issue a writ, order or direction in the nature of mandamus or any other writ of like nature with the directions that the petitioner be paid the disability pension consisting of service and disability element as also ex-gratia pension alongwith arrears and interest @ 18% thereupon from the date of invalidation till actual realization as well as the ex-gatia award of pension from 29.06.2008 onwards.

2. The petitioner is stated to have appointed as Cadet in National Defence Academy on 29.12.2007 and he had got severe injury on the back on 16.04.2009 by which he was unable to discharge the duty on the post held by him. The respondents by observing the petitioner's status, come to the conclusion that he cannot discharge the duties of the post, therefore, he had been invalidated from service. It is learnt that the petitioner was not willing to undertake operation which is evident from unwillingness certificate dated 10.11.2010 for treatment vide Annexure P-8.

3. The petitioner claimed his pension under the scheme called for 'Scheme for grant of ex-gratia awards in cases of death/disablement of cadets (direct) due to causes attributable by military training' dated 16.04.1996 (Annexure R-3) (colly.). Under the aforesaid Scheme, two benefits have been given (i) Ex-gratia Award and (ii) Disability Award. The petitioner is stated to have disability of

20%, therefore, he claimed that he is entitled for ex-gratia as well as disability award but the same have not been granted to him on the sole ground that he was not willing to undertake operation and thereby percentage of disability could vary if, he had undertaken operation etc. To that effect, a confidential report/Medical Board proceedings/opinion of the Medical Board (Annexure P-16) produced by the petitioner where from the following facts have been evident :

“ Attributable to the service (Y/N) : Y (yes);

Point (f) : if the reply to(e) is in affirmative what is the probable percentage to which the disability could be reduced by operation/treatment? : 20%;

Para 6 : what is present degree of disablement as compared with a healthy person of the same age and sex? (percentage will be expressed as nil or as follows) 1-5 %, 6-10%, 11-14% and thereafter in multiples of 10 from 20% to 100% : the percentage of disablement with duration has been shown as 30% for five years and 20% in view of the refusal for surgery and

Disability qualifying for disability pension with duration : 6-10% for five years.”

4. In view of the above opinion of the medical board, the petitioner has been denied the benefit of ex-gratia as well as disability awards. Under the scheme dated 16.04.1996, there is no provision, if an injured person refused to undertake surgery, percentage of disability should be reduced to 20% for five year. The said procedure is not reflected in the Scheme dated 16.04.1996 and the respondents are arbitrarily rejected the claim of the petitioner.

5. In view of these facts and circumstances, the petitioner is entitled for ex-gratia as well as disability award and the respondents are directed to calculate the grant of ex-gratia as well as disability awards to the petitioner and to release the monetary benefits in accordance with Scheme dated 16.04.1996 within a period of three months from the date of receipt of copy of this order. It is made clear that the petitioner's claim for ex-gratia and disability award shall be calculated from the date when he was invalidated from service i.e. w.e.f. 21.02.2011. The petitioner is also entitled to cost of ₹ 5,000/- towards litigation fee.

6. Civil writ petition is allowed.

May 23, 2016

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