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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7804/2016**

MOHAN LAL

..... Petitioner

Through Mr.Mohan Kumar with Ms.Rashmi
Singh & Ms.Neetu Singh, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through Mr.Amrit Pal Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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10.10.2018

1. This is a second round of litigation that the petitioner has initiated based on the same cause of action. Prior hereto in the year 2016, the petitioner had raised the same grievance as raised in the present petition about his entitlement to 20% disability pension on account of suffering from defective eye-sight and night blindness, due to which he was invalidated from service w.e.f. 20.07.1979, upon being declared unfit for being retained in service on the basis of a report submitted by the Medical Board on 06.04.1979.

2. The first writ petition filed by the petitioner registered as *W.P.(C)No.994/2016*, was disposed of vide order dated 12.02.2016 with directions to the respondents to consider his representation dated 06.01.2015, in the light of the decisions of the Supreme Court in the case of *Union of India v. Tarsen Singh* [(2008) 8 SCC 648] and *Dharamvir*

Singh v. Union of India & Ors. [(2013) 7 SCC 316]. Further, liberty was granted to the petitioner to seek legal recourse in case he was aggrieved by the decision that may be taken by the respondents.

3. In compliance of the aforesaid order, the respondents passed an order dated 09.03.2016 stating *inter alia* that the disability on account of which the petitioner had been invalidated, had been categorised under Category ‘A’ i.e. “*disability due to natural causes not attributable to Government service of Rule 9 (2) of Schedule II of the CCS (Extraordinary Pension), Rules*”, and therefore, he was not entitled to grant of disability pension. The respondents had therefore sanctioned invalidation pension in favour of the petitioner @ Rs.80/- and RIP @ Rs.40/- per month, in accordance with the existing rules.

4. Aggrieved by the aforesaid order, the petitioner has filed the present petition stating *inter alia* that the decision of the respondents of declining to grant him disability pension on being invalidated from service, is in contravention of the settled law; that the disability in question was contracted by the petitioner during the course of his service and while passing the impugned order, the respondents have not considered the decisions cited by this Court in the order dated 12.02.2016 passed in *W.P.(C)No.994/2016*.

5. On the last date of hearing, learned counsel for the respondents had stated that the records pertaining to the petitioner related to the year 1978-79 and therefore, there was a probability that the same may not be available. Directions were issued to the respondents to file an affidavit, if

the records were not available.

6. Today, learned counsel for the respondents states that some records relating to the petitioner are available in the Department and the same includes the report of the petitioner's Medical Examination issued by a Three Member Medical Board held at Jammu, which records he was suffering from "*impaired visual acuity*". The said certificate was forwarded by the Medical Officer In-charge GC, CRPF Hospital, Jammu under cover of letter dated 09.04.1979, to the Commandant, Group Centre, CRPF, Jammu, for further necessary action.

7. On the basis of the report of the Medical Board, an office order dated 01.05.1979, invalidated the petitioner from CRPF w.e.f. 20.07.1979, was passed. It is undisputed before us, that till December 2014, the petitioner did not raise any grievance for claiming disability pension. He did so for the first time on 06.01.2015, which is after a passage of 36 years reckoned from the date when an actionable cause of action, if any, had accrued in his favour.

8. We find that during the hearing in the earlier writ petition filed by the petitioner, learned counsel for the petitioner had submitted that if the respondents are directed to consider his representation, he would be ready and willing to confine his relief to a period of 3 years prior to 06.01.2015. Even today, learned counsel for the petitioner reiterates the said submission. He however states that the respondents have failed to decide the petitioner's representation in the light of the decisions of the Supreme Court in the cases of Tarsem Singh (supra) and Dharamvir Singh (supra)

and submits that if they had carefully examined the said decisions, then the impugned order dated 09.03.2016 would not have held that the disability in respect of the petitioner having been categorised under Category A, had to be treated as not being attributable to service. He argues that the respondents have completely overlooked the fact that Medical Board had not given any reasons in support of its opinion for invalidating the petitioner as there was no diagnosis as to whether the “*impaired visual acuity*” from which the petitioner was found to be suffering from, was a condition attributable to his service. It is thus contended that the respondents have failed to appreciate that the decision in the case of **Dharamvir Singh** (supra) would apply on all fours, to the facts of the present case.

9. Learned counsel for the petitioner also draws the attention of this Court to the report dated 02.02.1979, issued by the Professor and Head of the Department of Ophthalmology, Silchar Medical College and Hospital, which certified that the petitioner was suffering from defective eyesight and night blindness for about 2 years and that he had been investigated and treated for the said eye ailment in the Eye-Department of the Hospital as an outdoor patient since 08.12.1978. The report further states that because of his night blindness and poor eyesight, which was deteriorating gradually, he was unfit for any work.

10. We may note that the report dated 02.02.1979, had been prepared at a time when the petitioner was still in service and the very fact that the said report mentions that he was suffering from the eye ailment for two years shows that the disability on account of which the petitioner had been

invalidated, had arisen during the course of his service.

11. In our view reliance placed by learned counsel for the respondents on Schedule – IA of the Central Civil Services (Extraordinary Pension) Rules, 1939, which lays down a list and classification of diseases which can be contracted during the service as also a list of those diseases that are not normally affected by service, including diseases relating to eyes, would not be of any assistance to the respondents in light of the admitted position that the Medical Board had neither specified the nature of the eye ailment from which the petitioner was suffering at the time of his invalidation nor did the Board give any opinion regarding its attributability to or aggravation on account of service conditions.

12. In view of the admitted position that the eye ailment on account of which the petitioner had been invalidated had arisen during the course of his service and in the absence of any reasons given by the Medical Board regarding the attributability or aggravation of the petitioner's disability, following the ratio of the decision in the case of **Dharamvir Singh** (supra), we have no hesitation in holding that the petitioner's disability has to be treated as a result of his service conditions.

13. For the reasons stated above and in the given facts and circumstances of the present case, we deem it appropriate to quash and set aside the impugned order dated 09.03.2016 issued by the respondents. The present petition is allowed and the respondents are directed to pay the petitioner the disability pension in accordance with law for a period of three years prior to 06.01.2015, the date when the petitioner had first submitted a

representation to the respondents seeking disability pension. Needful shall be done within eight weeks from today.

14. The petition is disposed of with no order as to costs. The original medical records are returned to the counsel for the respondents.

(HIMA KOHLI)
JUDGE

(REKHA PALLI)
JUDGE

OCTOBER 10, 2018

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