

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

CWP-97-2018

Decided on : 05.12.2019

Sahib Singh

... Petitioner

Versus

Union of India & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.S.S.Duhan, Advocate, for the petitioner.

Mr.O.P.Dabla, Advocate, for the respondents.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 28.04.2017 (Annexure P-2), whereby respondent No.3 has declined to grant the petitioner Constant Attendance Allowance (hereinafter referred to as 'CAA') under the provisions of Central Civil Services (Extraordinary Pension) Rules, 1939, as amended.

The reasoning in the impugned order to deny the said benefit, which is permissible to Rs.3000/- per month to the pensioner who retired on disability pension, is on account of the fact that the disability was not attributable to Government service but due to his own negligence and therefore it was held that the individual is not entitled for the CAA.

The said reasoning, on the face of it, apparently seems to be flawed, as there is no such condition in the Rules or in the instructions that the same would not be payable in case of negligence on the part of the employee. In order to appreciate the controversy, brief reference to the facts are to be noticed.

Petitioner was inducted as Constable in the Central Industrial Security Force, Ministry of Home Affairs on 30.08.1988. He earned his promotion as Head Constable and thereafter, was posted at CISF Unit DHEP, Dulhasti and was detailed for promotion cadre course of ASI/EXe at Regional Training Centre (RTC), Barwaha. He suffered an injury on 25.10.2001 due to falling from the second floor of the barrack in the night, while he was going to the bathroom. He was admitted to the Chitram Hospital, Indore and thereafter, in the Safdarjang Hospital, New Delhi, for treatment and thereafter, was retired on 09.10.2002 on medical grounds, having a disability of 100%. He was granted invalid pension which was issued on 08.05.2003.

The claim for CAA is based on account of insertion of Rule 9A in para 2(vi) of the Central Civil Services Rules, 1939 in a notification which was issued on 15.02.2011. The said rule reads as under:

“(vi) after rule 9, the following shall be inserted namely:-
9A. the pensioners who are drawing disability pension under the provisions of rule 9 for 100% disability and are completely dependent on others for day to day activities, shall also be granted in addition to disability pension, the Constant Attendant Allowance in accordance with the instructions issued from time to time.”

A perusal of the said rule would go on to show that the same is on a condition that the pensioner should be drawing a disability pension to the extent of 100% and be completely dependent upon others for his day-to-day activities. Therefore, in addition to the said pension,

CAA is payable, in accordance with the instructions issued.

A perusal of the order dated 28.04.2017 (Annexure P-2) would go on to show that serious injuries were suffered in the spinal cord due to falling from the second floor of the barrack of RTC Barwaha, while doing the training course. As per the findings of the Board of Doctors, admittedly, disability pension was granted but the claim for CAA was rejected, after this Court had directed on 03.02.2017, in an earlier writ petition filed, i.e., CWP-337-2017, to take a call on the issue.

In the written statement filed, it has been alleged that since there was negligence on account of the petitioner going to toilet from the rear window at RTC Barwaha on 25.10.2001 instead of front window, the injury was due to the influence of sleep and was not attributable to the performance of duty during the training activities. Reliance was placed upon Rule 5-A(2)(1) to reject the claim.

A perusal of the Office Memorandum dated 16.04.2009 would go on to show that the recommendations was made on the basis of the 6th Central Pay Commission, for the said payment, which was to be in addition to the disability pension, on the lines existing in Defence Forces. In pursuance of the said recommendations, the amendment has been made. Said recommendations read as under:

“Subject: Implementation of Government's decision on the Recommendations of the VIth CPC – revision of CCS (Extraordinary Pension) Rules, 1939 – Constant Attendant Allowance.

.....

The undersigned is directed to say that on the

Recommendations of Sixth Central Pay Commission in para 5.1.44 of its Report, orders were issued vide Department of Pension & Pensioner's Welfare O.M. No.38/37/2008-P&PW (A) dated 2.9.2008 that:

“In the case of pensioners who retired on disability pension under the CCS (Extraordinary Pension) Rules, 1939 for 100% disability (where the individual is completely dependent on somebody else for day to day function), a Constant Attendant Allowance of Rs.3,000/- p.m. shall be allowed in addition to the disability pension, on the lines existing in Defence Forces.”

2. Accordingly, the payment of the Constant Attendant Allowance (C.A.A.) shall be governed by the provisions as under:-

- (i) Constant Attendant Allowance (C.A.A.) will be Applicable to cases where the disability for which Constant Attendance Allowance is payable is attributable to or aggravated by service.
- (ii) Constant Attendant Allowance (C.A.A.) may be granted to a Government servant who is awarded a disability pension for 100 percent disablement, if in the opinion of the medical board, he needs the services of a constant attendant for at least a period of three months, and the necessity arises solely from the condition of the accepted disability or disabilities.
- (iii) Constant Attendant Allowance (C.A.A.) shall not be payable for any period during which the pensioner is an inmate or an in-patient of a Government institution or hospital.
- (iv) Payment of Constant Attendant Allowance (C.A.A.) shall be made along with disability pension. Payment shall be made on the basis of declaration as in Annexure which shall be submitted to the Pension Disbursing Authority in May & November each year.

3. Formal amendments to the Central Civil Services

(Extraordinary Pension) Rules, 1939, are being issued separately.

4. These orders are issued with the approval of the Ministry of Finance, Department of Expenditure vide their U.O.No.7.32/10/2009-IC dated 23rd February, 2009.

5. In their applicability to the personnel of the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller & Auditor General of India.”

A perusal of the above would go on to show that even the recommendations provided that the CAA will be applicable in cases where the disability would be attributable or aggravated by service. Under Clause (ii), the opinion of the Medical Board, is required that services of a constant attendant for at least a period of three months and that the necessity arises solely from the condition of the accepted disability, is to be kept in mind. The said claim is not payable when the person is an inmate or in-patient of a Government institution or hospital and payment is to be made as per the declaration in the annexure which is submitted to the Pension Disbursing Authority. The said rule has also been incorporated after Rule 9, which is pertaining to the disability pension when a Government servant is boarded out of the Government service, which the petitioner is, admittedly, drawing.

Counsel for respondent-UOI could not bring any such condition incorporated in Rule 9-A that the negligence is to be on the part of the pensioner for claiming the CAA. Even otherwise, once the petitioner was on training and the injuries were sustained during the course of training, the same are attributable to service conditions and

denial, as such, on the ground of negligence of the employee is not provided in the Rules, which has been done without justification and the same is, thus, not sustainable.

Resultantly, the petitioner has made out a case for reconsideration. Accordingly, as per the instructions dated 16.04.2009, as reproduced above, the case of the petitioner be put up before the Medical Board, as per the declaration form attached along with the said instructions. On the basis of the said opinion of the Medical Board, the case of the petitioner shall be duly considered for the benefit of CAA. Needful be done within a period of 3 months from the receipt of a certified copy of this order. In case the opinion of the Medical Board is positive, payment be made to the petitioner from the date the notification came into force.

Present writ petition stands allowed, in the above-said terms.

DECEMBER 05th, 2019
SAILESH

(G.S. SANDHAWALIA)
JUDGE

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