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

% ***Date of decision: December 15, 2022***

+ **W.P.(C) 15136/2022**

**RADHEY SHYAM PANDEY**

..... Petitioner

Through: **Mr. Arun Kumar Tiwari, Advocate**

versus

**UNION OF INDIA AND ORS**

.... Respondents

Through: **Mr. Siddharth Khatana, Senior Panel  
Counsel**

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

1. Vide the present petition, petitioner seeks following relief(s):

*“(a) issue a writ of mandamus or other appropriate writ(s) commanding the respondent authorities to grant the Disability Pension in light of circular no.*

*E/TPC/70/Pension, dated 19.09.1978 plus Constant Attendant Allowance (CAA) at the rate applicable from time to time as provided in the rule 10(4) r/w 10 A of the Railway Services (Extraordinary Pension) Rules 1993 AND;*

*(b) direct the Respondents to make payment of apposite lump sum at the revised rate of Rs.750/- effective from the year 1986 after deducting the amount of Rs.80010/- paid previously on account of Injury pension and further to pay gross amount of the said lump sum calculated and revised every 15 years (falling due on 29.10.2002 & 29.10.2017) in the light of the above said circular applicable in the case of the petitioner AND;*

*(c) directing the Respondents to make payment of admissible disability pension for the period 28.06.1989 - 25.12.1989 approved by the Railways Board AND;*

*(d) directing the Respondents to make payment of Disability pension plus CAA from the day the petitioner retired from service i.e. 15.12.2017 or the day when the rule came in vogue whichever is*

*earlier AND;*

*(e) May pass such other order(s) in favor of the petitioner the Hon'ble Court may deem fit and proper."*

2. Learned counsel for the petitioner submits that petitioner was appointed as Constable in RPSF on 17.08.1977 and was transferred to RPF Divisional Railway, Danapur in the year 1983. On 28.10.1987-29.10.1987, while inspecting trains at 00:30 hrs, petitioner met with an accident to the extent of loss of limbs, i.e. left arm & left leg above knee. On 28.06.1989, the petitioner was issued a certificate of 100% disability holding that he was fit for B-1 service and was unfit for all duties where active movement is required.

3. Petitioner made a representation dated 28.12.1993 for payment of disability benefits and ex-gratia for 100% disability before the Chief Security Commissioner, Eastern Central Railway, Danapur, however, the same was rejected vide DEP no.19/94 dated 27.01.1994 holding that the disability pension would not be available to him since he had been retained in service and the ex-gratia would also be not available to him since the ex-gratia is paid to the dependents of a deceased employee.

4. Thereafter, Chief Security Commissioner, RPF, East Central Railway, Calcutta having been informed about the injury to the petitioner resulting in 100% disability instructed the Divisional Security Commissioner, RPF, East Central Railway, Danapur that pursuant to the issuance of letter no. 92-SEC(E)/Pen-5/22 dated 29.07.1994 docketed under the office No.SC.1/32/RSP dated 16.11.1994 all cases of disablement and injury to the staff of the RPF as a result of accident etc. on duty should be initiated and considered under the Railway Service (Extra Ordinary Pension) Rules 1993 for grant of compensation and not under the Central Civil Services (Extra

Ordinary Pension) Rules 1939. On 06.12.1994, petitioner filed an application for contempt of court order bearing MJC no.752/1994 which was also rejected with liberty to represent before the appropriate authority.

5. Thereafter, on 12.09.1995, petitioner moved an application in CWJC No.11211/1994 at the High Court of Judicature at Patna seeking payment of compensation amount in lieu of disability pension along with interest which was rejected as a lumpsum amount of Rs.80,010/- had already been paid to the petitioner. The said order was assailed in LPA which was dismissed. Subsequently, Civil Review No.07/2007 was filed which was also dismissed being devoid of any merits.

6. Learned counsel for the petitioner further submits that while petitioner was working on the post of Chief Officer Superintendent, under DSC Office, RPF, Danapur, he retired voluntarily on 15.12.2017 as he was not in a position to continue for services because of his deteriorating health.

7. Admittedly, the petitioner had filed a petition seeking ex-gratia as well as the disability pension which was dismissed in the year 1995 by the High Court of Judicature at Patna. Since for the said relief a petition had already been dismissed, therefore, the present petition is not maintainable.

8. Accordingly, the present petition is dismissed.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**DECEMBER 15, 2022/rk**