

01.09.2023

Ct. No.12

Sl. No.13

NAREN

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 702 of 2019

Union of India & Ors.

Vs.

Asrafur Rahaman.

Mr. Pulakesh Bajpayee ... For the appellant.

Mr. Rudra Jyoti Bhattacharjee,
Ms. Debjani Ghosal ... For the respondents.

The respondent was working as Constable (GD) in BSF on temporary basis. He was posted duty in 181 Battalion, Border Security Force, Fazilka SHQ, Faridkot of Punjab FTR. On 31st July, 2022, while he was going to his native place, he met with a road accident and after treatment in 2003, the Medical Board certified that he suffered 34% disablement.

According to the respondent, he spent Rs.2,76,264.27 towards medical expenses by borrowing money from the friends and well-wishers. The respondent made a claim under “Seema Prahari Beema Jojna” (for short, “SPBJ”) scheme. Subsequently, in the year 2004, he was appeared before the second Medical Board. The second Medical Board certified that the respondent suffered 65% disablement. As per the letter of the appellant, the respondent opted for retirement on medical disablement. The respondent sought for

disablement pension and also payment for 65% disability as per SPBJ scheme. The appellant rejected the request of the respondent for disablement pension on the ground that the respondent had not rendered 10 years of qualifying service and he has only put up only five years ten months and eleven days of service. In such circumstances, the respondent has filed the writ petition being WP3311(W) of 2006.

Before the learned Single Judge, it was the contention of the respondent that as per Rule 38 of CCS Pension Rules, 1972, the respondent is entitled to disablement pension. On the other hand, it is the case of the appellant that Rule 38 and Rule 49 of CCS Pension Rules, 1972 must be read together and unless an employee had put in 10 years of qualifying service, he is not entitled to even disablement pension. The learned Judge considering both Rule 38 and Rule 49 of CCS Pension Rules held that both the rules are distinct and separate and directed the appellant to reconsider the case of the respondent for disablement pension and also for just compensation for his disability @ 65% as declared by the Medical Board constituted on behalf of the appellant authority.

Against the said judgment and order of the learned Single Judge, the appellant has come up with the present appeal.

Learned counsel for the appellant contended that the Learned Judge did not consider the stand taken by the appellant in the affidavit-in-opposition filed in the writ petition. The interpretation of Rules 38 and 49 of CCS Pension Rules, 1972 is not correct. The respondent had not completed 10 years of qualifying service and hence, he is not entitled to even disablement pension. Rule 49 is only procedure for calculation of quantum of pension payable. As far as compensation for 65% disability under SPBJ Scheme, the claim has to be made within one year. The delay in assessment of 65% of disability of the respondent is only due to the respondent and hence, he is not entitled for further compensation for 65% disability under the scheme and prayed for setting aside the order of the learned Single Judge.

Learned counsel appearing for the respondent submitted that as per Rule 38 of CCS Pension Rules, 1972, the respondent is entitled to invalid pension. Learned Single Judge considered both Rule 38 and Rule 49 and rightly held that both Rules are distinct and separate. The contention of the learned counsel for the appellant that both the Rules must be read together is not correct and prayed for dismissal of the appeal.

Heard the learned Advocates appearing for the parties and perused the materials on record placed before us.

From the materials on record, it is seen that the respondent claimed disablement pension from the appellant. The Rule applicable for disablement pension is Rule 38 of CCS Pension Rules. The said Rules reads as follows:-

“38. *Invalid pension.*

(1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mentally infirmity which permanently incapacitates him for the service.

(2) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority namely:-

(a) a Medical Board in the case of Gazetted Government servant and of non-Gazetted Government servant whose pay, as defined in “Rule 9(21) of the Fundamental Rules, exceed [two thousand and two hundred rupees] per mensem ;

(b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases.”

A reading of the said Rule reveal that no qualifying service is prescribed for payment of disablement pension. Rule 49 is concerned, it prescribes the procedure for calculating the quantum of pension payable to the retired employees. In the said Rule, it has been prescribed the

procedures to be adopted even when an employee has put up less than 10 years of service. In view of no qualifying service is prescribed in Rule 38 of CCS Pension Rules and the procedure is prescribed in calculating the quantum of pension for the persons, who had put in less than 10 years of service, the appellant is liable to consider the payment of invalid pension to the respondent.

As far as compensation for 65% disablement of the respondent is concerned, the first Medical Board of the appellant authority has assessed that the respondent suffered 34% of disability and the second Medical Board of the appellant authority assessed that the respondent suffered except submitting 65% disablement. Learned counsel for appellant except submitting that assessment of 65% of disability of the respondent was delayed and the delay in assessing the quantum of disability is due to the respondent, no material is placed before this Court to substantiate this contention.

In view of the aforementioned discussion, we do not find any reason or error in the order of the learned Single Judge warranting interference by this Court.

For the above reasons, the appeals fails and is hereby dismissed.

(V. M. Velumani, J.)

(Rai Chattopadhyay, J.)

