

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4703 of 2019 (O&M)

Date of Decision: 11.08.2023

Rohtash Kumar

... Appellant(s)

Versus

Government of India, Ministry of Home Affairs and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Naveen S. Bhardwaj, Advocate
for the appellant(s).

Mr. S.K.Sharma, Senior Panel Counsel
for the respondents.

Anil Kshetarpal, J.

CM-13427-C-2019

1. For the reasons stated in the application, the same is allowed and delay of 86 days in re-filing the appeal is condoned.

RSA-4703-2019

2. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

3. The correctness of the concurrent findings of fact, arrived at by both the Courts below, are assailed by the plaintiff in this second appeal.

4. The plaintiff's suit for grant of the decree of declaration to the

effect that he is entitled to the benefit of the first and second Assured Career

Progression has been rejected by both the Courts below. It has come on record that on account of serious injuries suffered by the appellant in the month of June, 1994, he remained in low medical audition. The respondents constituted a medical board to review in order to grant an opportunity to the appellant to appear in order to assess his improvement. However, the appellant did not appear before the Review Medical Board despite repeated opportunities given to him. Subsequently, the appellant has sought voluntary retirement which was allowed. After having sought voluntary retirement, the appellant applied for grant of the benefit of Assured Career Progression which was rejected. As per the reply submitted by the Commandant to the legal notice, before the benefit of Assured Career Progression Scheme is extended to the employee, he/she was required to be in medical category Shape-I, whereas the appellant was in the low medical category. Though, both the Courts below have held that the Court at Jhajjar has no jurisdiction, however, both the Courts below have also examined the case on merits. Hence, this Court has heard the learned counsel representing the appellant on merits of the controversy.

5. The learned counsel representing the appellant contends that the appellant applied for the grant of Assured Career Progression and thereafter, he was never called for to attend the Review Medical Board.

6. This Court has considered the submissions. The appellant was due to be granted Assured Career Progression during his service. When the appellant was in service, he refused to appear before the Review Medical Board. After the appellant was permitted to seek voluntary retirement, he cannot force the respondents to hold a fresh Review Medical Board at this

stage.

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, the present appeal is dismissed.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 11, 2023
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No