

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19198-2022

Date of decision:26.04.2023

Col. Jaswinder Pal Singh (Retd)

....Petitioner

V/s.

Principal Commissioner of Income Tax-1

....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Navdeep Singh, Advocate
for the petitioner.

Ms. Gauri Neo Rampal, Senior Standing Counsel
for the respondent.

Ritu Bahri, J.

1. The petitioner is seeking quashing of the order dated 21.01.2021 (Annexure P-13) read with order dated 01.12.2021 (Annexure P-14) and order dated 07.02.2022 (Annexure P-22) rejecting the claim of the petitioner for refund of the income tax for the past years on his exempted income of disability pension (service element and disability element) which is against the provisions of the circular issued by the Central Board of Direct Taxes dated 02.07.2001 (Annexure P-4).

2. The brief facts of the case are that the petitioner is a disabled officer of the Indian Army who was commissioned on 23.03.1975 and retired on 31.11.2008 with service pension. He was not granted disability pension at the time of retirement and the same was released w.e.f. date of retirement i.e. 01.12.2008 vide order dated 04.12.2017 (Annexure P-1)

passed by the learned Armed Forces Tribunal. The said order was implemented and arrears were released to the petitioner on 26.07.2018.

3. Keeping in view the circular/instructions No. 2/2001 dated 02.07.2001 issued by Central Board of Direct Taxes (CBDT) (Annexure P-4), the petitioner applied for a sanction to file revised returns vide letter dated 14.08.2018 (Annexure P-5) and also sent a reminder letter on 16.01.2019 (Annexure P-6) for the entitlement of income tax exemption for financial years 2008-09 to 2016-17. The petitioner has placed on record documents (Annexure P-10) to show that the amount of income tax to be refunded was Rs.8,30,244/-. The claim of the petitioner has now been rejected vide orders dated 21.01.2021 (Annexure P-13) read with corrigendum order dated 01.12.2021 (Annexure P-14) and order dated 07.02.2022 (Annexure P-22). Hence, the present writ petition has been filed.

4. On notice of this petition, reply dated 31.01.2023 has been filed by the Principal Commissioner of Income Tax-1, Aayakar Bhawan, Sector 17E, Chandigarh. The stand taken by the respondent in the reply is that as per the Board's Circular No. 09/2015 dated 09.06.2015 and Circular No. 13/2019 dated 24.06.2019 the delay in filing ITR cannot be condoned and hence, the application of the petitioner was rejected on this ground. The Board's Circular No. 13/2019 dated 24.06.2019 has been challenged by the disabled soldiers which has been stayed by the Hon'ble Supreme Court on 30.08.2019 in ***Pradeep Mathur and others vs. Union of India and others.*** Now the case of the petitioner can only be considered after a decision in ***Pradeep Mathur's case (supra)***. It is admitted in the reply that the petitioner had made his application 10 months before the issuance of

Circular No. 13/2019 dated 24.06.2019. The orders of the Hon'ble Supreme Court have been placed on record as Annexures R-1 and R-2.

5. On 07.02.2023, a direction was given to the respondent to file an affidavit of the concerned officer as to why as per the Circular dated 02.07.2001 (Annexure P-4), when disability pension has become tax free then why tax is being charged from the petitioner on the arrears of disability pension which became due to him in the year 2018 with retrospective effect from 31.11.2008. However, no affidavit has been filed.

6. Learned counsel for the petitioner has referred to the judgment of Delhi High Court in *Mahavir Singh Narwal vs. Union of India and another, 2004 SCC OnLine Del 348*. In that case, the Delhi High Court was examining Rule 173 of the Disability Pension applicable to armed forces in Low Medical Category are to be treated as “invalid” from service for the purpose of disability pension.

7. Keeping in view the aforesaid judgment, the Disability Pension Rules would be applicable in the case of the petitioner as well and Board's Circular No. 13/2019 dated 24.06.2019 (Annexure P-15) cannot be made applicable to deny the benefit to the petitioner who has been given disability pension. Moreover, the said circular has been challenged by the disabled soldiers in Hon'ble Supreme Court directing the parties to maintain status quo vide order dated 30.08.2019 (Annexure P-16). Pursuant thereto, the Principal Controller of Defence Accounts (Pensions) again issued Circular No. 210 dated 20.02.2020 (Annexure P-17) that such income tax exemption would not be admissible to the persons such as the petitioner. However, keeping in view the order dated 30.08.2019 passed by the Supreme Court, the Circular No. 210 dated 20.02.2020 (Annexure P-17) was subsequently

withdrawn vide another Circular No. 211 dated 03.03.2020 (Annexure P-18).

8. Issuance of Circular No. 13/2019 dated 24.06.2019 (Annexure P-15), Supreme Court order dated 30.08.2019 (Annexure P-16), Circular No. 210 dated 20.02.2020 (Annexure P-17) and Circular No. 211 dated 03.03.2020 (Annexure P-18) are not disputed by the respondent in the reply.

9. It is a sad situation to see that ex-army person had to once again approach the authority vide letter dated 08.02.2021 (Annexure P-19) for sanction to file revised returns for the financial year 2009-10 to 2015-16 as the revised returns have been filed within 20 days of the receipt of the amount on implementation of the court's orders whereby he has been granted arrears of disability pension and filing the revised returns was within the time stipulated in CBDT Circular 2009/2015 (Annexure P-20). The petitioner again approached the authority through CPGRAMS portal of Government of India vide grievance dated 22.11.2021 (Annexure P-21) and even this was rejected vide reply received on 27.02.2022 (Annexure P-22). The relevant portion of the impugned order dated 21.01.2021 (Annexure P-13) is reproduced as under:-

“1. The submission of the applicant have been considered by the undersigned. In view of documents produced and explanations offered, it is found that the assessee retired on 30.11.2008 and the disability pension was sanctioned to him consequent to the order of the Hon'ble Armed Force Tribunal after his superannuation and he has not been invalided from service on account of bodily disability attributable to or

aggravated by such service. Moreover, keeping in view of the facts and circumstances of the case and further clarification by the Board in Circular No. 13/2019 dated 24.06.2019, assessee's pension element and disability element of pension is not exempted from Income Tax. Therefore, the condonation of delay in filing the return of income for the A.Y. 2017-18 is hereby rejected.”

10. Thereafter, corrigendum dated 01.12.2021 has been passed on 01.12.2021 (Annexure P-14) that the assessment years be read as A.Y. 2010-11 to 2016-17 instead of A.Y. 2017-18 as mentioned in order dated 21.01.2021 (Annexure P-13). The impugned order dated 21.01.2021 (Annexure P-13) has been passed on the basis of Circular No. 13/2019 dated 24.06.2019 which is the subject matter of consideration before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 30.08.2019 (Annexure R-1) directed the parties to maintain status quo.

11. The petitioner has also placed on record judgment passed by Madhya Pradesh High Court in ***W.P. No. 29017/2018*** titled as ***Madan Gopal Singh Nagi vs. Commissioner of Income Tax II (2019) 419 ITR 413*** (Annexure P-2) wherein the Madhya Pradesh High Court was examining the case of the tax on disability pension and reference was made to Circular dated 02.07.2001 whereby the Board after re-examining the issue decided to reiterate that entire disability pension i.e. “disability element” and “service element” of a disabled officer of the Indian Armed Forces continues to be exempted from income tax. The relevant portion of the said Circular is reproduced as under:-

“3. The matter has been re-examined in the Board and it has

been decided to reiterate that the entire disability pension i.e. “disability element” and “service element” of a disabled officer of the Indian Armed Forces continues to be exempt from income tax.”

12. Keeping in view the above Circular, the above said writ petition i.e. W.P. No. 29017/2018 was allowed and the respondents were directed to refund the entire amount of income tax they had recovered, which was the exempted amount and which the petitioner had paid in respect of disability pension. The said judgment has attained finality.

13. The petitioner has further placed on record another judgment of Madhya Pradesh High Court passed in ***W.P. No. 8858/2019*** titled as ***Colonel Ashwani Kumar Ram Singh (Retd.) vs. Principal Commissioner of Income Tax***, decided on 29.08.2019 (Annexure P-3) wherein again by referring to the case of the ***Colonel Madan Gopal Singh Nagi*** (Annexure P-2), a direction was given to grant refund to the petitioner on the tax paid by him on the disability pension within a period of 60 days from the date of receipt of the certified copy of the order and the respondents were further given direction to pay interest in respect of the entire amount.

14. In the present case as well, no explanation has been given as to why as per the Circular dated 02.07.2001 as referred to in the case of ***Colonel Madan Gopal Singh Nagi*** (Annexure P-2), once the disability pension was exempted from income tax then why this benefit has not been given to the petitioner. More so, the Board's Circular No. 13/2019 dated 24.06.2019 has been challenged by the disabled soldiers which has been stayed by the Hon'ble Supreme Court by passing the following order on 30.08.2019:-

“Learned advocate for the respondents prays for and is granted three weeks' time to file affidavit in reply. Rejoinder, if any, be filed within a week thereafter.

Pending further consideration, the parties shall maintain status quo in the matter.

List on 18.10.2019.”

15. Since the parties were directed to maintain status quo, which means that no recovery of income tax could be effected from the Army officer. Another aspect which required to be considered is that the Delhi High Court in *Mahavir Singh Narwal vs. Union of India and another*, **2004 SCC OnLine Del 348** has already examined Rule 173 of the Disability Pension which has not been amended till date. The relevant portion of that judgment is reproduced hereunder:-

“6. On careful perusal of the aforesaid rule it is manifestly clear that invalidated from service is necessary condition for grant of disability pension. What has to be seen for entitlement for disability pension is whether an individual at the time of his release was in a low medical category than that in which he was recruited if it was so then such person will be treated as invalidated from service. It is the admitted case of the parties that at the time of recruitment the petitioner did not have any disability. It is also admitted case of the parties that the petitioner got disability on account of stress and strain of military service and his category was initially lower down temporary to CEE on 21st September, 1978 for a period of 6 months and after the Release Medical Board examined the

petitioner on 11th April, 1979, it found the disability to be 30% aggravated by stress of military service and he was down graded to permanent low medical category. Once the petitioner was in low medical category according to Rules 1 and 2 of Appendix II of Pension Regulations 173 he shall be treated as invalidated from service. It seems that on careful consideration of the Pension Regulations 173, read with Rules 1 and 2 of Appendix II, the respondents themselves have recommended for grant of disability pension to the petitioner vide their letters dated 3rd April, 1986 and subsequently on 11th April, 1986 which is as under:-

DISABILITY PENSION CLAIM: EX-NO. 3157896 SEP MAHAVIR SINGH NARWAL.

1. Further to this Headquarters letter of even number dated 03 Apr 86.
2. The disability pension claim in respect of Ex No. 3157896 Sep Mahavir Singh Narwal has been re-examined threadbare by the competent authority. During the course of examination it is seen that the individual was placed in temporary low medical category "CEE" for six months with effect from 21 Sep 78. Having been placed in low medical category he had applied for discharge on compassionate grounds on 19 Feb 79.
3. He was discharged from service on 24 Apr. 79 after completion of all the medical formalities which are applicable in case of disposal of permanent low medical category personnel.

4. It has been opined by the competent authority that his discharge from service cannot be legally termed as of “on compassionate grounds at his own request”. But it should be considered as disposal of low medical category personnel because of non availability of suitable sheltered appointment for him. Therefore the cause and clause of his discharge from service requires change to facilitate him to get disability pensionary benefits.

5. In view of foregoing, necessary action may therefore be taken to change the cause and clause of discharge and to initiate disability pension papers immediately. Actions taken by intimated to this Headquarters latest by 30 Apr. 86 and later a monthly progress report by 5th of each month by submitted till finalisation of his disability pension cause.

6. All previous letters issued on the subject will be treated as cancelled.

SD/- (P.N. Reddy)

Varishth Civilian Staff Adhikari/SCS Shayak Adjutant General/AAG PS4 for Adjutant General.”

7. The arguments advanced by the learned counsel for the respondents that these letters were not issued by the competent authority is not of any relevance for grant of disability pension. What is relevant is whether the mandate of Pension Regulation 173 read with Rules 1 and 2 of Appendix II has been taken into consideration or not. Merely because a person has attained discharge on compassionate ground

although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension, it has been invalidated act in terms of Appendix II of Rule 173. We allow the writ petition and direct the respondent to grant disability pension to the petitioner on the basis of assessment of 30% disability as opined by the Release Medical Board in the year 1979 upto date. For future disability pension the respondent may conduct another medical board to assess the percentage of disability of the petitioner. Arrears of disability pension be paid to the petitioner within a period of 8 weeks. If the same are not paid within 8 weeks the petitioner shall be entitled to the interest at the rate of 9% on the amount of arrears. With these directions the writ petition is allowed.”

16. Keeping in view the above, this writ petition is allowed and the amount of income tax paid by the petitioner for the relevant years be refunded to him alongwith interest @ 9% p.a. within a period of one month from the date of receipt of certified copy of this order alongwith costs of Rs.1 lac. Thereafter, compliance report of the order be sent to this Court by the concerned authority.

17. It is further clarified that if the payment is not made within the stipulated period then interest @ 18% p.a. from the date of entitlement till the amount actually paid to the petitioner shall be given as per the judgment passed by Madhya Pradesh High Court in ***W.P.No. 29017/2018*** titled as ***Madan Gopal Singh Nagi vs. Commissioner of Income Tax II (2019) 419***

ITR 413 (Annexure P-2).

(RITU BAHRI)
JUDGE

26.04.2023
Divyanshi

(MANISHA BATRA)
JUDGE

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