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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: November 01, 2023

+ W.P.(C) 14194/2023

NAWAL KISHOR

..... Petitioner

Through: Mr.Virendra Singh Tomar, Advocate

versus

UNION OF INDIA AND ANR .

..... Respondents

Through: Mr.Raj Kumar Yadav, Sr.Panel
Counsel with Mr.Ravindra Vikram,
G.P. for UOI.Mrs.Avnish Ahlawat, Standing
Counsel with Mrs.Tania Ahlawat,
Mr.Nitesh Kumar Singh,
Ms.Laavanya Kaushik, Ms.Aliza
Alam and Mr.Mohnish Sehrawat,
Advocates for DCP / R-2.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ANOOP KUMAR MENDIRATTA, J. (ORAL)**CM APPL. No.53893/2023 (exemption)**

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 14194/2023

1. The challenge in this writ petition is to an order dated September 25, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter, referred to as the 'Tribunal') in OA No. 403/2023 whereby the OA preferred by the petitioner was dismissed.



Vide aforesaid OA, petitioner challenged the order dated January 14, 2023 passed by the Deputy Commissioner of Police, Central District whereby the claim of the petitioner seeking handicapped allowance, disability pension and constant attendance allowance w.e.f. November 01, 2019 was held to be not tenable.

2. In brief, the case of the petitioner is that he joined BSF on May 05, 1969 and was thereafter absorbed in Delhi Police on March 01, 1970 as a Constable. Petitioner was medically fit as per police standards and did not suffer from any disease or disability. In the month of September, 1984, petitioner was hit by a bull on his lower back, in the course of his duty during deployment at Sardar Patel Marg, New Delhi, for route arrangement of Prime Minister. Despite treatment, injury aggravated and by the year 2000, petitioner could walk only with the help of a stick. Later, the condition further deteriorated, constraining the petitioner to use walker and subsequently shifted to wheel chair.

3. It is further the case of the petitioner that he was examined by Medical Board on July 12, 2010 consisting of Medical Specialists as well as Orthopaedician and the disability was assessed as 75% permanent physical impairment in relation to his both lower limbs.

4. Petitioner further submits that he was paid Special Conveyance Allowance from July, 2010 till December, 2010 before his superannuation owing to disability.

5. Petitioner claims that as per the Central Civil Services (Extra Ordinary Pension) Rules, 1939 {hereinafter, referred to as the 'CCS (EOP) Rules, 1939'} and Order No.45/22/97-P&PW(C) dated February 03, 2000 issued by



Govt. of India, special benefits are conferred to the Central Govt. Employees in case of death or disability, by way of disability pension. Further, in terms of paragraph 5-A of CCS (EOP) Rules, 1939 amended vide OM No.38/37/2008-P&PW(A) dated September 02, 2008, entitlement is also to 'Constant Attendance Allowance'.

6. Accordingly, a representation dated October 10, 2018 was made by the petitioner to the respondent-Deputy Commissioner of Police claiming disability pension and Constant Attendant Allowance but the same remained unanswered. Consequently, petitioner filed OA No.75/2022 alongwith M.A. No.4020/2019 before the Tribunal which was disposed of vide order dated January 11, 2022 with liberty to the petitioner to submit relevant medical certificate alongwith supplementary representation to respondents within 15 days and further directing the respondents to pass a speaking and reasoned order. The representation of petitioner was finally considered and rejected vide order dated January 14, 2023 passed by the Deputy Commissioner of Police, New Delhi.

7. Aggrieved against the aforesaid rejection order dated January 14, 2023 of the Deputy Commissioner of Police, New Delhi, petitioner preferred OA No. 403/2023 seeking following reliefs:

“(a) Grant disability pension to the Applicant at the rate of 100% disability w.e.f. 01.01.2011, i.e. date of his retirement: and

(b) Declare the present amount of constant attendant allowance too meagre and enhance it to minimum wages; and

(c) Grant constant attendant allowance to the Applicant from the elate of his retirement at the rate of Rs.18000/- pm; and



(d) *Award exemplary cost to the applicant*”

8. Learned counsel for the petitioner reiterates the contentions made before the Tribunal and submits that the petitioner suffered disability in 1984 during the course of his duty due to bull hit and the same got aggravated despite medical treatment undertaken at Dr.Ram Manohar Lohia Hospital, New Delhi (‘RML Hospital’, for short). Reference is also made to the medical treatment documents for the period 2005 to 2007 alongwith Medical/Disability Certificate dated July 12, 2010. Placing reliance upon Clause 3A of CCS (EOP) Rules, 1939 and OM No.45/22/97-P&PW(C) dated February 03, 2000, petitioner is stated to be entitled for disability pension.

9. Learned counsel appearing for the respondents on advance notice vehemently opposes the writ petition and reiterates the stand taken by the respondents in counter affidavit filed before the Tribunal. As per the stand of the respondents, petitioner retired in the year 2010 and was granted pension on superannuation *w.e.f.* January 01, 2011. The representation for grant of disability pension was only made in the year 2018 but no evidence supporting the fact that petitioner was injured by bull hit was produced. The medical prescription slips related only to the period from 2005 to 2007. Further, though the claim of using a stick, walker/wheel chair was made by the petitioner but as per the remarks of the Supervisory Officer in the ACR for the periods 1996 to 2008, the ‘status of health’ of petitioner was reflected as either excellent or good. Further, petitioner was also detailed for traffic regulator general duty and as per his ACR for the period from April 01, 1996 to March 31, 1997, the health was good. It is pointed out that it could not be feasible to perform PSO duty by petitioner using a stick while on duty and



the plea is stated to be an afterthought. The Medical Certificate issued on July 12, 2010 by RML Hospital is stated to have been neither submitted by petitioner during service nor at the time of his retirement on December 31, 2010. The matter is stated to have been fully examined and considered by the respondents and was finally rejected vide order dated January 14, 2023.

10. A perusal of the impugned order dated September 25, 2023 passed by the Tribunal reflects that after considering the documents on record, the Tribunal was of the view that the petitioner failed to establish any direct linkage between the performance of his duty and the alleged disability during the service period. Tribunal also observed that categorization of the 'disability' of petitioner as category 'B' in terms of OM dated February 03, 2000 is not established and rather the condition falls under category 'A' of the said OM. The observations recorded by the Tribunal in paragraph 7 may be reproduced for reference as under:

"7. The facts and circumstances of the case clearly points out that no direct linkage can be established between the performance of the applicant's duty and the alleged disability during his service period. Hence, his categorisation as category 'B' as per OM dated 03.02.2000 is not established. The applicant has vainly tried to link his orthopaedic conditions treated in 2005 -2007 to an alleged incident of 1984. No reliance could be placed on such assertion. Rather his condition may fall under category 'A' as per the said OM and hence, the applicant could not lay claim to any disability pension. The facts and circumstances of the Dharamvir Singh case (supra) as cited by the learned counsel for the applicant is quite distinguishable from those prevailing in the instant case and hence, the ratio of the said judgment cannot be applicable to present case.

*7.1 On the other hand, the ratio of judgment of the Hon'ble Apex Court in **Union of India & Other Vs EX SEP R.Munusamy** (supra) case is fairly applicable in the instant case. The applicant is supposed to establish that the conditions of his police service determined or contributed to the onset of his orthopaedic condition and that the*



conditions were due to the circumstances of his police duty. The applicant has failed to establish such causal link.

7.2 In view of the above, the present OA lacks merit and hence, is dismissed. No order as to costs”

11. We have given considered thought to the contentions raised.

The disability/death ‘attributable’ to or ‘aggravated’ by the Government service, alone makes the Extra Ordinary Pension by way of Award admissible. By virtue of **Rule 9** of CCS (EOP) Rules, 1939, when ‘**disablement**’ of a government servant is conceded as due to government service in terms of Rule 3-A, he shall be awarded ‘disability pension’ in terms of sub-rule (2) or lump sum pension in terms of sub-rule (3) of Rule 9, in accordance with the percentage of disability as certified by the Medical Authority. Further, 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 be granted ‘**Constant Attendant Allowance**’ in addition to the ‘disability pension’, in accordance with the instructions issued from time to time as per Rule 9-A. It may further be noticed that the disability pension which is in the form of Award, granted under CCS (EOP) Rules, 1939 does not affect any other pension or gratuity for which the government servant concerned may be eligible under any other Rules.

Rule 3-A(1)(a) mandates that disablement shall be accepted as due to Government service provided that it is certified that it is due to wound, injury or disease which is attributable to Government service, or existed before or arose during Government service and has been and remains ‘aggravated’



thereby. Further Rule 3-A(1)(b) provides that death shall be accepted as due to Government service provided it is certified that it was due to or hastened by a wound, injury or disease which was attributable to Government service, or the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service. In term of Rule 3-A(2), for 'attributability' or 'aggravation' to be conceded, there shall be a 'casual connection' between, (a) disablement and Government service, and (b) death and Government service. Thus, the Authorities are required to be satisfied that there is nexus/casual connection of 'disablement'/'death' with Government service on the basis of medical and other documents produced by the employee.

In the aforesaid context, it may also be appropriate to notice that unless there is nothing repugnant in the subject or context, the 'date of injury' under Rule 3(2) means, (i) in the case of '**accident or violence**', the actual date on which the injury is suffered or such date, not being later than the date of the report of the Medical Board, as the President may fix; and (ii) in the case of '**disease**', the date on which the Medical Board reports or such earlier date as may be fixed by the President with due regard to the opinion of the Medical Board. Further, Rule 6 provides that no award shall be made in respect of injury sustained more than four years before the date of application. Also, no award shall be made in respect of death which occurred more than seven years after the injury due to violence or accident was sustained or after the Government servant was medically reported as unfit for duty, on account of the disease of which he died.



12. There is no quarrel on the proposition that in case the petitioner suffers an injury or disease during the course of employment which is attributable to or stood aggravated owing to the service conditions, the applicant would be entitled for Award of disability pension under CCS (EOP) Rules, 1939. However, mere fact that an ailment or disease may have arisen in service, does not mean that the same is 'attributable' or stands 'aggravated' by the service conditions. As per standard of proof which is kept at threshold, some cogent evidence needs to be produced to show that there is nexus/casual connection of disablement, owing to injury or disease which is attributable to service. The claim has been rejected by the Competent Authority and also not interfered by the Tribunal, on the ground that the petitioner has not provided any linking evidence in respect of the alleged injury being suffered due to bull hit in 1984 during the course of duty and further aggravation of the same due to service conditions which subsequently led to disability.

13. The burden had to be discharged by establishing that the onset of disease bore a 'casual connection' with the injury due to bull hit in 1984 and further the service conditions aggravated the same. Admittedly, the incident pertaining to the spinal injury due to bull hit in 1984 was never reported to the department for about two decades. Further, the medical prescription or record relating to treatment for degenerative disc relates to the prescription dated December 23, 2005 of RML Hospital, which only refers to complaint of "lumber PIVD (Degenerative Disc)". Thereafter, the prescription dated February 21, 2007, in the 'case summary', refers to trauma to lower back in 1984 (after hit by bull horn), as well as generation of symptoms from 2000 onwards. The order passed by the Deputy Commissioner of Police dated January 14, 2023 as well as the Tribunal have given due weightage to the



fact that the ACR records of the petitioner for the relevant years reflected the health of the petitioner to be 'excellent' or 'good' and the 'disability', if any, was never brought on record.

14. Petitioner has further relied upon the 'certificate of disability' obtained from Dr.RML Hospital on July 12, 2010 which reflects the cause of 'disability' to be **'Cervical Canal Stenosis with Myelopathy'** and the petitioner is stated to be physically disabled having 75% permanent (physical impairment) in relation to his both lower limbs. It may be observed that 'Cervical Canal Stenosis' is a condition in which the spinal canal is too small for spinal cord and nerve roots. Consequently, due to narrowing, pressure is put on the spinal cord and the nerves that travel through spine to muscles, which may cause damage to spinal cord and condition is called 'Myelopathy'. **The same may occur with symptoms or without symptoms and the most common cause of this condition is age related wear and tear changes in the spine that are related to arthritis, which may be a natural process.** On the face of record, no medical certificate has been produced to support or link that the ailment suffered by the petitioner is 'attributable' to bull hit injury in the year 1984 during the discharge of duties or the injury/disease got 'aggravated' due to service conditions, as claimed by the petitioner.

The claim for E.O.P. for the first time was raised by the petitioner several years after superannuation. Merely the grant of special conveyance allowance before the retirement does not further the case that the disability was attributable to injury caused during course of duty or aggravated due to



service conditions. The authority relied upon by the petitioner in support of the contentions for grant of E.O.P. before the Tribunal is distinguishable.

15. Even the OM No.45/22/97-P&PW(C) dated February 03, 2000 relied by petitioner, does not further his case. Vide aforesaid OM, the Fifth Central Pay Commission *inter alia* recommended that for determining the compensation payable for death or disability under different circumstances, the case could be broadly categorized in five distinct categories as under:

- “Category ‘A’ *Death or disability due to natural causes not attributable to Government service. Examples would be chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty, etc.*
- Category ‘B’ *Death or disability due to causes which are accepted as attributable to or aggravated by Government service. Diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples.*
- Category ‘C’ *Death or disability due to accidents in the performance of duties. Some examples are accidents while travelling on duty in government vehicles or public transport, a journey on duty is performed by service aircraft, mishaps at sea, electrocution while on duty, etc.*
- Category ‘D’ *Death or disability attributable to acts of violence by terrorists, anti-social elements, etc. whether in their performance of duties or otherwise. Apart from cases of death or injury sustained by personnel of the Central Police Organizations while employed in aid of the civil administration in quelling agitation, riots or revolt by demonstrators, other public servants including police personnel, etc. bomb blasts in public places or transport indiscriminate shooting incidents in public, etc. would be covered under this category.*
- Category ‘E’ *Death or disability arising as a result of (a) attack by or during action against extremists, anti-social element, etc. and (b) enemy action in international war or border skirmishes and warlike situations, including cases which are attributable to (i) extremists*



acts, exploding mines etc. while on way to an operational area; (ii) kidnapping by extremists; and (iii) battle inoculation as part of training exercises with live ammunition.”

Further, clause 3 of aforesaid OM, provided that the cases covered under Category ‘A’ would continue to be covered under the normal existing provisions of CCS (Pension) Rules, while the cases covered under Category ‘B, C, D & E’, the scales of normal pension/disability pension would be as prescribed thereunder. We are of the considered opinion that the case of the petitioner falls under Category ‘A’ which deals with death or disability due to natural causes not attributable to government service and, as such, the same would be governed by/covered under the normal existing provisions of CCS (Pension) Rules. The same cannot be considered to fall for grant of disability pension under CCS (EOP) Rules, 1939 as claimed by petitioner.

For the foregoing reasons, we do not find any merit in the petition. The writ petition is accordingly dismissed. No orders as to costs.

ANOOP KUMAR MENDIRATTA, J.

V. KAMESWAR RAO, J.

NOVEMBER 01, 2023/v/sd