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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 21.09.2023

+ **W.P.(C) 4864/2018**

SH. RAMESH FONIA EX-AC

..... Petitioner

Versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Arun Srivastava and Mr. B. Lakshmi Pallav,
Advocates.

For the Respondents:

Ms. Amrita Prakash, CGSC with Mr. Vishal Ashwani
Mehta, Advocates for respondents No.1 and 2.
Mr. S.K. Pandey, Advocate for respondent No.3.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks a direction to the respondents to pay the amount of *Seema Prahri Beema Yojna* under which the petitioner was covered.



2. Petitioner joined the service in the BSF as Assistant Commandant on 15.11.1997 and served till 30.09.2009, when he was invalidated out of service on account of sustaining injuries.

3. Petitioner sustained injury to the anterior cruciate ligament, left knee during basic training on 25.06.1998 and suffered another injury on 14.08.2006, while playing Volley Ball with the company troops. Cumulatively, the petitioner was assessed as having 59% disability and was accordingly boarded out on medical grounds.

4. Initially, respondents held that the injury sustained by the petitioner was not attributable to service and accordingly, disability pension and coverage under the *Seema Prahri Beema Yojna* was denied to the petitioner.

5. Petitioner approached this Court by filing a writ petition being W.P. (C) 8107/2011, seeking grant of disability benefits.

6. Said petition was allowed on 18.11.2013 and it was held that the denial of disability benefits was incorrect and petitioner was entitled to grant of disability benefits.

7. After the judgment of this Court dated 18.11.2013, disability pension of the petitioner was assessed and is being paid to the petitioner.

8. Petitioner thereafter made a claim for grant of the disability benefit under the *Seema Prahri Beema Yojna*. Case of the petitioner was forwarded by respondents No.1 and 2 to the insurance company, however, the insurance company i.e., respondent No.3 has declined to accept the



claim on two counts. Firstly, it is contended by the insurance company that disability of 59% is cumulative of injury to both knees and petitioner has sustained injury to the left knee in 1998, when the scheme was covered by some other insurance company and only the injury to the right knee was during the period when it was covered by the insurance policy with respondent No.3. It is contended that separate assessment was required to assess the disability sustained by the petitioner which would be covered by the policy of respondent No.3. This, it is submitted, is without prejudice to the contention of the respondent No.3 that the claim forwarded by respondents No.1 and 2 was belated. It is contended that as per the agreement with the BSF, all claims for injuries had to be made within a period of three months, however, the subject claim was made after a delay of nearly eight years and as such being belated, the insurance company was absolved of its liability.

9. Per contra, learned counsel appearing for BSF submits that initially the BSF was of the view that petitioner was not entitled to pensionary benefits including coverage under the *Seema Prahri Beema Yojna*, however, in terms of the judgment of this Court dated 18.11.2013 the case of petitioner for disability pension was processed and pension was sanctioned and is being paid. Individual assessment of the injury to each knee was assessed and the claim for forwarded to the insurance company and as such they are liable to pay the compensation amount.

10. Be that as it may, it is not in dispute that petitioner was covered under the *Seema Prahri Beema Yojna* and was even paying subscription for



the same. The entitlement of the petitioner under the said *Beema Yojna* is not disputed by respondents No.1 and 2. Even respondent no.3 does not state that the entitlement of the petitioner is not covered under the scheme, however, the only contention is with regard to apportionment of the disability percentage between the two knees and the period within which the claim should have been lodged.

11. Since it is not in dispute that petitioner is covered by the aforesaid *Beema Yojna* and is entitled to compensation under the scheme, there is no ground for denying the said benefit to the petitioner. The only issue is with regard to the respondent who is liable to pay the said amount.

12. Since petitioner is entitled to the amount, we are of the view that the respondent/BSF should pay the amount in the first instance to discharge the liability to the petitioner and then take its appropriate remedies, if available, against respondent No.3 in an appropriate forum. We are fortified by the said view in terms of the judgment of a coordinate Bench dated 11.12.2014 in W.P. (C) 2506/2012 titled *Mool Singh Vs. Union of India & Ors.*, wherein in similar circumstances, this Court had directed the department to pay the amount with liberty to pursue their claim separately with the insurance company.

13. In view of the above, this petition is allowed. Respondents No.1 and 2 are directed to pay the compensation amount, which the petitioner would have been entitled to under the said *Yojna*, in the first instance alongwith interest @ 8% per annum from the date when the same was liable to be paid. Said amount be calculated and paid to the petitioner within a period



of 12 weeks from today. This would be without prejudice to the right of the respondents 1 and 2 to pursue their remedies against respondent No.3 and also without prejudice to the rights of respondent No.3 to defend the same in accordance with law.

14. *Dasti* under signature of the Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

SEPTEMBER 21, 2023

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