



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2024

PRONOUNCED ON : 05.02.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.23637 of 2021
& W.M.P.No.24885 of 2021

M.Munivel,
Force No:055038329, Ex CT/GD,
Son of Muniswamy,
4/153A, Madha Koil Street,
V.P.R Puram Village,
Pallipat Taluk,
Tiruvallur District - 631 302.

...

Petitioner

versus

- 1.The Union of India,
Represented by the
Under Secretary to the Government,
Resettlement & Welfare Directorate,
Police Division-II, Ministry of Home Affairs,
North Block, New Delhi - 110 001.
- 2.The Inspector General of Police / Chairman,
Departmental Rehabilitation Board,
Southern Sector,
Central Reserve Police Force (CRPF),
Road No.10-C, New MLA/MPs Colony,
Gayatri Hills, Jubilee Hills,
Hyderabad, Telangana - 500 033.



3. The Deputy Inspector General of Police,
Group Centre, Central Reserve Police Force (CRPF),
Avadi, Chennai - 600 055. ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned recommendations of the 29th Departmental Rehabilitation Board (DRB) dated 23.12.2019 headed by the second respondent and quash the same in so far as non-applicability of Disability Pension and Disability ex-gratia to the petitioner is concerned and direct the respondents to grant disability pension to the petitioner in the light of the judgment rendered in the case of *K.Narasimhamurthy Vs. Union of India and others in W.P.No.45106/2017 dated 23.01.2020* passed by the High Court of Karnataka and Disability Ex-gratia Compensation commensurate with the petitioner's 60% disability factor in the light of the Office Memorandums issued by the Ministry of Home Affairs, New Delhi in O.M.No.27011/64/2009-R&W dated 21.04.2011 and O.M.No.27011/64/2010-R&W(Part) dated 07.06.2017.

For Petitioner : Mr.P.Manoj Kumar

For Respondents : Mr.V.Ashok Kumar
Standing Counsel

ORDER

The petitioner has filed this writ petition seeking direction to call for the records relating to the impugned recommendations of the 29th Departmental Rehabilitation Board (DRB) dated 23.12.2019 headed by the 2nd respondent and quash the same in so far as the non-applicability of



disability pension and disability ex-gratia to the petitioner and direct the respondents to grant the disability pension to the petitioner.

WEB COPY

2. Heard Mr.P.Manoj Kumar, learned counsel for the petitioner, Mr.V.Ashok Kumar, learned Standing Counsel for respondents and perused the materials available on record.

3. The petitioner joined the Central Reserve Police Force (C.R.P.F.) in the year 2005 and after completion of training, he was posted at 184 Battalion stationed at Srinagar, which was subsequently shifted to West Bengal in the year 2009. While he was serving in the said Battalion, he took Casual Leave from 24.10.2011 to 15.11.2011 and came back to his native place. On 02.11.2011, when he was returning home from the market, he met with an accident and sustained injuries and fractures on his right foot.

3.1. The petitioner was medically categorised as SHAPE-3 till 2015 and he was recategorised as SHAPE-5 from 06.10.2015. During 2016, he was transferred to Avadi, Chennai and later, he was directed to appear before the 29th Departmental Rehabilitation Board (DRB) held on



23.12.2019 at Hyderabad. On examination, he was declared as permanently incapacitated for combatant duty. The Board ultimately recommended to consider his case for medical invalidation. Hence he appeared before the Board on 20.10.2010. His permanent disability was assessed at 60% and that was confirmed by the medical authorities of C.R.P.F. also.

3.2. Based on the same, the competent medical authority / 3rd respondent has issued invalidation notice dated 19.12.2020. The petitioner accepted the invalidation and he was invalidated from service with effect from 22.01.2021 *vide* the order of the 3rd respondent dated 22.01.2021. He was informed that he will be granted invalidation pension but was denied with the disability pension on the ground that the petitioner has sustained injuries during the leave period.

3.3. As per the Official Memorandums of Government of India dated 21.04.2011 and 07.06.2017, those personnel, who are disabled and boarded out from service on account of disability attributable or aggravated in service shall be paid disability ex-gratia compensation. Hence the petitioner has filed this writ petition seeking the above relief.



WEB COPY

4. Mr.P.Manoj Kumar, learned counsel for the petitioner submitted that though the petitioner suffered injuries in the year 2011, he served in the C.R.P.F. till the year 2021. His disability got aggravated due to performance of *bona fide* duty rendered in C.R.P.F. and the said disability is directly attributable and aggravated on account of hard nature of duties performed in C.R.P.F. in hard/field areas.

4.1. In such circumstances, the petitioner is eligible to get ex-gratia pension proportionate to his disability percentage. Since invalid pension sought to be paid is meagre compared to his salary already drawn, his family is put to great hardship due to financial issue. The petitioner has submitted a representation on 17.03.2021 to treat him on par with another employee by name K.Narasimhamurthy for whom an order has been passed by the High Court of Karnataka in W.P.No.45106 of 2017 dated 23.01.2020 by giving direction to pay him the disability pension.

5. Mr.V.Ashok Kumar, learned Standing Counsel for the respondents submitted that in pursuant to the notice served upon the petitioner for invalidation, he did not prefer any appeal or give any representation disagreeing the opinion of the Medical Board. As per the



provision contained in the Government of India Decision No.1(5) 2(b) of CCS (Pension) Rules [CCS (Medical Examination)] Rules and para 7.1(iv), Chapter 7 of C.R.P.F. Medical Manual, the petitioner had agreed with the proceedings of invalidation from service. Hence he is eligible for invalidation pension as per the Rules.

5.1. The petitioner took Casual Leave for 15 days to go to his native place w.e.f. 24.10.2011 to 15.11.2011 where he met with an accident. Hence the petitioner is not eligible for Extraordinary Pension under Extraordinary Pension Rules and ex-gratia.

5.2. The case of the petitioner is not similar to the case of K.Narasimhamurthy which was referred by the petitioner. K.Narasimhamurthy had applied for one day Casual Leave on 22.04.1996 with permission on 21.04.1996. While he was travelling from Chennai to Bangalore, he met with an accident and the same was considered as an accident occurred during duty. In the instant case, the petitioner sustained injuries during an accident, while he was on leave at his home town and not on active duty. Hence it does not come under the purview of public



expenses and the accident involved was on personal commitments. Hence the petitioner is not eligible for extraordinary pension under Extraordinary Pension Rules and ex-gratia.

6. The petitioner met with an accident when he came to his native place by availing 15 days Casual Leave. The injuries suffered by the petitioner had led to his disability. Despite the petitioner is being given with invalidation pension, he has claimed that he is entitled to get the extraordinary pension by placing reliance on the extraordinary pension granted to another employee by name K.Narasimhamurthy, who has got an order to that effect by filing a Writ Petition in W.P.No.45106 of 2017 before the High Court of Karnataka, Bangalore. But the case of K.Narasimhamurthy was distinguished on facts by the respondents by stating that K.Narasimhamurthy met with an accident while he was returning to join duty and hence it has to be construed that the accident had occurred while he was on duty.

7. In *Sukhwant Singh Vs. Union of India the Secretary, Ministry of Defence and Others* reported in (2012) 12 SCC 228, the Hon'ble Supreme Court



has reiterated that to get the disability pension, the disability ought to have been sustained during the course of an accident, which has a reasonable and casual connection to duty. In other words, even though the personnel is not strictly on duty, the accident can be attributable to service on fulfilling certain conditions and there should be a reasonable and causal connection between the injuries resulting in the disability and the military service. So what has to be shown for getting the disability pension is a reasonable nexus between the act, omission or commission resulted in the disability and the duty.

8. In *Sukhwant Singh Vs. Union of India the Secretary, Ministry of Defence and Others* reported in (2012) 12 SCC 228, the legal position has been summed up as under:-

“To sum up in our view the following principles should be the guiding factors for deciding the question of attributability or aggravation, where the disability or fatality occurs during the time the individual is on authorized leave of any kind:

(a) The mere fact of a person being on ‘duty’ or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and



WEB COPY



military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.

(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is



WEB COPY



expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service.”



9. So the said proposition has been followed in various subsequent judgments of the Hon'ble Supreme Court and cited in the orders of this Court. A notion of duty is presumed when a personnel travels from his native place for resuming duty. Since the intention of the personnel was to join duty and the travel undertaken by an individual was also for the purpose of joining duty, his travel is considered as an extension of duty. Various other claims that have been made by the army personnel for claiming disability pension even though the accident had occurred without having any nexus to duty, were rejected.

10. Had the disability causing invalidation were not attributable or aggravated by service, it cannot be claimed as the disability caused on duty. In the case in hand, Mr.P.Manoj Kumar, learned counsel for the petitioner submitted that the petitioner continued to work even after the injuries sustained by him and hence his condition got aggravated and so his disability should be treated as something arose out of '*duty*'.

11. Injuries sustained due to any accident will no doubt aggravate any one's disability. The cause for aggravation is only because of the



injuries suffered due to the accident but not the duty. The entitlement claimed by the petitioner cannot be traced from the duty undertaken by the petitioner subsequent to the accident, but from the fact whether the accident itself had occurred on duty. Even if an accident had a remote connection to duty, a liberal interpretation can be given for the purpose of disability pension.

12. The O.M.No.27011/64/2009-R-W dated 21.04.2011 would clarify that the Central Para Military Forces (CPMF) now Central Armed Police Forces (CAPF) personnel, who sustained injuries and become disabled or incapacitated on account of causes accepted or attributable or aggravated by the Government services, are eligible for certain specific benefits under the Central Civil Service (Extraordinary Pension) Rules.

13. In the instant case, the petitioner sustained injuries during an accident while he was on leave at his home town and he was not on duty. In the case of K.Narasimhamurthy, he was travelling to the work place from his native for the purpose of joining duty. Since it established a remote connection between the accident and duty, K.Narasimhamurthy was found



to be eligible to get the disability pension. But in the case in hand, there is no direct or remote connection between the accident and duty.

WEB COPY

14. Mr.V.Ashok Kumar, learned Standing Counsel for the respondents has cited several instances where accidents had occurred due to some other reasons or when the personnel was not on duty were not considered as disability caused due to or arose out of duty. In the case of *Union of India & others Vs. 3989606 P, Ex-Naik Vijay Kumar [2015 (10) SCC 460]*, the Hon'ble Supreme Court by citing various incidents had held that if the nexus between the duty and the injury suffered by the personnel is not established, he is not entitled to get the disability pension.

15. The next argument made by Mr.P.Manoj Kumar, learned counsel for the petitioner was that the Board has recommended about the petitioner's disability and hence there cannot be any doubt on his disability. As held by the Hon'ble Supreme Court in *Union of India & others Vs. 3989606 P, Ex-Naik Vijay Kumar 2015 (10) SCC 460*, the assessment of the Board is only recommendatory in nature and it is subject to the acceptance by the pension



sanctioning authority. Hence the opinion given by the Medical Board by itself cannot confer any right on the petitioner to claim disability pension.

WEB COPY

16. As stated already, the aggravated health condition of the petitioner should be attributable to the cause of his injuries and resulted nexus between the injury and the duty. Since the same was not established by the petitioner and the accident had occurred when the petitioner was at his native place during his leave period, the petitioner cannot claim that he is entitled to get the disability pension.

17. Invalidation notice given to the petitioner with effect from 21.02.2012 was also accepted by him. Since the petitioner sustained injuries due to the accident that had occurred while he was on leave and at the time while he was returning home from the market, at any stretch of imagination it cannot be construed as an injury related to duty. The accident had occurred in the year 2011 and thereafter also, the petitioner was on certain duties. Since the origin itself was only due to any accident or incident that had occurred during the course of duty or related to duty, the petitioner



cannot claim that in the year 2021, his disability got aggravated due to the duties performed by him in C.R.P.F.

WEB COPY

18. The petitioner's case will not fall under the purview of the rules governing disability pension, even if a liberal interpretation is given to the term "*on duty*". Since there is no connectivity to the injuries suffered by the petitioner and '*duty*', the petition lacks merit.

In the result, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.02.2024

Speaking order

Index : Yes

Neutral Citation : Yes

sri



To

- 1.The Union of India,
Represented by the
Under Secretary to the Government,
Resettlement & Welfare Directorate,
Police Division-II, Ministry of Home Affairs,
North Block, New Delhi - 110 001.
- 2.The Inspector General of Police / Chairman,
Departmental Rehabilitation Board,
Southern Sector,
Central Reserve Police Force (CRPF),
Road No.10-C, New MLA/MPs Colony,
Gayatri Hills, Jubilee Hills,
Hyderabad, Telangana - 500 033.
- 3.The Deputy Inspector General of Police,
Group Centre, Central Reserve Police Force (CRPF),
Avadi, Chennai - 600 055.



WEB COPY

W.P.No.23637 of 2021
& W.M.P.No.24885 of 2021



R.N.MANJULA, J.

sri

Pre-Delivery Order made in
W.P.No.23637 of 2021
& W.M.P.No.24885 of 2021

05.02.2024