

2024:PHHC:156670-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-14736-2024
Reserved on: 18.11.2024
Pronounced on: 27.11.2024

UNION OF INDIA AND ORS.Petitioners

Versus

EX GNR (DMT) PRITAM SINGH AND ANR.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Dharm Chand Mittal, Advocate
for the petitioners/UOI.

Mr. Y.P.Singla, Advocate
for respondent No. 1.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners herein-
Union of India, prays for the setting aside of the order dated 24.09.2019
(Annexure P-6), as passed by the learned Armed Forces Tribunal
concerned.

Factual Background

2. Respondent No. 1 was enrolled in the Artillery Regiment
on 04.12.1985. While he was posted at different places, he was on five
occasions found guilty of offences under the Army Act, thus resulting in

2024:PHHC:156670-DB



on 01.01.2002 holding that his services are no longer required owing to his being an inefficient/undesirable soldier under Item III (v) of Table Annexed to Rule 13 (3) of the Army Rule, 1954.

3. At the time of discharge from Army Service, respondent No. 1 was placed in low medical category "S1 H1 A1 P3 E1 (Perm.)" owing to disease "WOLFF PARKINSON WHITE SYNDROME' w.e.f. 30.12.2001 and his disability was found to the extent of 20 % besides the same was declared as **aggravated due to stress/strain of service.** However, the disability pension was denied to respondent No. 1, thus on the ground that he was not invalided/out from service owing to medical disability, but he was discharged from service keeping in view his indiscipline during the course of his employment, as he has earned more than four red entries based on the punishments inflicted upon him.

4. The afore declining order was affirmed respectively by the First Appellate Authority and by the Second Appellate Authority respectively vide order dated 02.11.2005 and order dated 03.05.2019.

5. Thereafter, respondent No. 1 filed O.A., before the Tribunal concerned, whereby he cast a challenge to the afore rejection order. The said O.A., was disposed of vide order dated 24.09.2019 (Annexure P-6). The operative part of the said order is extracted hereinafter.

"In the circumstance, we dispose of this Original Application with a direction to the respondents to process applicant's claim for disability pension in terms of the aforesaid judgements and if required by invoking the

2024:PHHC:156670-DB



provisions of Ministry of Defence letter No 16(a)/2009-D(Pen/Pol) dated 10.11.2010 in case the disability was not assessed as permanent and for life, and release it together with benefits as per the above pronouncements to the applicant, subject to verification, as expeditiously as possible but not later than four months from the date of receipt of certified copy of this order by learned Government counsel/ OIC Legal Cell. While doing so respondents shall also keep in mind the judgement of the Hon'ble Supreme Court rendered in Civil Appeal No 418 of 2012 Union of India and Orthers Vs. Ram Avtar decided on 10.12.2014. ”

6. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioners.

7. The learned counsel for the petitioners while referring to the Notes to Appendix 'C' to Integrated HQ of MoD letter No.B/40122/MP (P)/AG/PS-5 dated 20 July 2006, submits that since respondent No. 1 was discharged, on administrative grounds after earning 4 or more red ink entries, therefore, in view of the supra instructions/policy, he is not eligible for grant of disability pension.

8. Further, since the order directing the discharge of the respondent No. 1, on administrative grounds, arose from his recurring displays of indiscipline, wherebys, he becomes declared as undesirable.

Moreover, when the supra neither became assailed by respondent No. 1,

2024:PHHC:156670-DB



nor became set aside. Resultantly, when the supra attained finality, therebys, respondent No. 1 is estopped from claiming disability pension.

Inferences of this Court.

9. Even though the supra extracted operative part of the impugned verdict, is merely a direction upon the petitioners herein-respondents therein, to process but in terms of the judgments referred therein, thus the disability pension case of respondent No. 1. However, yet the judgments referred therein, on application whereof, rather the disability pension case of the present respondent No. 1, was required to be processed, but are not applicable to the respondent's claim for endowment qua him qua the benefit of disability pension.

10. The reason for so concluding arises, from a perusal of the hereinafter extracted provisions, as become embodied in the Standard Operating Procedure (Notes to Appendix C to Integrated HQ of MoD letter No.B/40122/MP (P)/AG/PS-5 dated 20 July 2006), relating to the procedure for grant of disability pension, especially, when the said provisions create exceptions, even to the grant of disability pension to those soldiers, who even evidently become, so encumbered with the disability, which is also stated to be aggravated by military service or also becomes stated to become attributable to the rendition of military service.

Notes

1. xxxxx

2. *The following categories of ex-Army personnel are not eligible for grant of disability pension and, therefore, claims in respect of such*

2024:PHHC:156670-DB



personnel should not be processed at all, even if they may otherwise be fulfilling the twin eligibility conditions for the same as brought out in the foregoing paragraphs:-

(a) xxxx

(b) xxxx

(c) ***PBOR who are discharged prematurely at their own request or on administrative ground after earning 4 or more red ink entries.***

11. The trite applicable to the instant case, thus the supra provisions relating to the respondent not becoming entitled, to the bestowing qua him qua the benefit of disability pension, irrespective of the disability arising from rendition of military service, become embodied in the hereinabove underlined clause (c) of the Notes to Appendix C of Integrated HQ of MoD letter No.B/40122/MP (P)/AG/PS-5 dated 20 July 2006, wherein, it is stated that in case the soldier, is prematurely discharged, on administrative grounds, thus after earning four or more red ink entries, thereby, he becomes barred to seek the endowments qua him vis-a-vis disability pension.

12. Now, given the evident fact that conclusive effective 5 red ink entries were recorded in the service records of respondent No. 1, besides when also effective conclusive penalties, became imposed upon the present respondent. Consequently, when in terms of the above underlined clause, as carried in the supra extracted SOP, he thus became barred to become a valid recipient of disability pension.

13. Resultantly, the operative part of the order passed by the Tribunal, whereby, there is a direction upon the respondents therein, to process the disability pension case of respondent No. 1, thus is in blatant transgression to the supra provisions embodied in SOPs

2024:PHHC:156670-DB



14. In aftermath, with observation(s) aforesaid, this Court finding merit in the writ petition,, is constrained to allow the same.
15. The impugned order dated 24.09.2019 (Annexure P-6), as passed by the Tribunal concerned, is quashed and set aside.
16. Since the main case itself has been decided, thus, all the pending application(s), if any, are also disposed of as such.

(SURESHWAR THAKUR)
JUDGE

27.11.2024
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

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