



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: January 30, 2024

+ W.P.(C) 1243/2024 & CM APPL. 5211/2024

(66) CONST/GD MANOJ CHAND

..... Petitioner

Through: Mr. Durgesh Kumar Sharma, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Balendu Shekhar, CGSC with
Mr. Prashant Rawat, G.P. and
Mr. Krishna Chaitanya, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This is a petition filed by the petitioner with the following prayers:-

“(i) To issue a writ of mandamus or any suitable writ in the interest of justice thereby letter dated 25 Nov 2023 issued by respondents be quashed and set aside as Annexure P-1 (Impugned order) in the interest of Justice.

(ii) To issue a writ of mandamus or any other writ in the interest of justice thereby directing the respondents to grant the disability pension for the disability Prolapsed herniated or extruded intervertebral disc(PIVD) L4,L5 to the applicant with effect from date of retirement i.e 30 Nov



2012 with interest@ 12% PA till final payment is made in the interest of justice.

(iii) To Any other order (s) as this Hon'ble Court may deem fit and proper in the interest of justice and fairness."

2. It is the case of the petitioner that he was enrolled in the ITBP on April 15, 1991, and was discharged from service on December 01, 2012, i.e., after completion of 21 years, 07 months and 16 days of service in the rank of Constable in the Low Medical Category A3(Permanent). It is his case and so contended by Mr. Durgesh Kumar Sharma learned counsel appearing on behalf of the petitioner that at the time of release from service, the petitioner was posted at 23 BN and found to be suffering from Prolapsed herniated or extruded intervertebral disc (PIVD) L4, L5, for life, because of the injury suffered by him during Judo Course in January, 1997 to April, 1997 at Panchukla, Haryana. It is his submission that after the Judo Course, he was posted at 6 BN ITBP at Patiala and as such, his condition started deteriorating day by day due to stress, strain, and working condition and also because of the type of duty assigned to him, more particularly he was detailed to perform the duty with Light Machine Gun (LMG) along with BP jacket for a prolong period without taking any rest. It is also his case that the Specialist Doctor at Srinagar downgraded his medical category by six months. Thereafter, he was referred to the hospital in Delhi. A reference is made of an advise of a Specialist Doctor. Thereafter, a surgery/operation was done by the Neurosurgeon/ Specialist and again the medical category of petitioner was downgraded



for six months and the petitioner was posted at different places despite which he continued to perform his duties. In substance, it is the case of the petitioner that he having been discharged with Low Medical Category A3 (Permanent), he is entitled to the disability component of the pension for which the present petition has been filed. In support of his submission, Mr. Sharma has drawn our attention to the legal notice issued through an Advocate and response thereof of the respondents and also the medical prescriptions available with him along with the discharge book and health card.

3. On the other hand, the case of the respondents as contended by Mr. Balendu Shekhar, learned CGSC is that the petitioner was discharged from service on the request of the petitioner himself, who submitted a notice for voluntary retirement on December 01, 2012, after completion of 21 years, 7 months and 16 days of service. He was accordingly issued a pension payment order on April 30, 2013. It is his submission that the petitioner had successfully qualified Judo Course on January 06, 1997 to March 09, 1997, with grading "BZ". He also state that the petitioner was not injured for him to suffer disability. A reference is also made to the postings undertaken by the petitioner at different places which includes posting in EHA / HA / SA that too after the year 1997. It is his submission that as per the instructions of the Director General of August 24, 2007, and also of MHA of July 31, 2007 read with Central Para Military Forces Instructions for Medical Examination and Classification of Personnel, it is clear that only personnel categorized as medically unfit under certain heads are only granted the disability pension. In the case of the petitioner, as he was



under Low Medical Category A3 (Permanent), his case did not fall under the categories eligible for such pension.

4. Having noted the broad submissions made by the counsel for the parties, we find that the alleged injury suffered during Judo Course on which much reliance has been placed by Mr. Sharma was in the year 1997. More than 26 years have gone by. The petitioner had sought the voluntary retirement in 2012, that is after 15 years of the course. He had not sought discharge on the ground of disability for him to get disability pension. During these 15 years, the petitioner was posted in EHA / HA / SA without any difficulty and demur. Though Mr. Sharma has drawn our attention to certain medical prescriptions but those are also of the years 2009, 2010 and 2011 i.e., much after the so called injury suffered by the petitioner during the Judo Course, as such no reliance can be placed upon them. It is also the plea of Mr. Sharma that the petitioner has filed an application seeking production of all the medical records of the petitioner by the respondents to prove / show the effect of injuries on him is also not appealing, as the petitioner has not placed any document of the course, showing he had suffered injury. It is the case of the petitioner himself that he at the relevant time, was suffering from PIVD L4, L5. The said condition is not covered under the instructions dated August 24, 2007 issued by the Directorate of ITBP and also the Ministry of Home Affairs dated July 31, 2007 (at page 26 of the paper book which is also part of the reply sent by the respondents to the legal notice issued on behalf of the petitioner through his Advocate), which state that an employee has to be in Shape Five to be boarded out resulting in the grant of disability pension.



5. That apart, the fact that the petitioner had taken voluntary retirement in the year 2012, and pursuant thereto, the petitioner has been granted pension and he is being paid pension regularly every month, it is too late in the year 2024 for the petitioner to seek the prayers as sought in the writ petition.

6. We do not see any reason to entertain the present petition. The same being without any merit is dismissed. Pending application is also disposed of. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 30, 2024/ds