



2024:DHC:7492-DB



\$~33

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

Date of decision: 27.09.2024

+ W.P.(C) 13677/2024
TANAY DAS

.....Petitioner

Through: Mr.Abhay Kumar, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Nawal Kishore Jha, SPC for
UOI with Mr.Mahamaya
Chatterjee, GP.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India, praying for the following reliefs:

"i. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to award the petitioner the benefits of disability cover under "Golden Jubilee Seema Prahari Kalyan Kawach" wherein compensation for disability between 76% to 100% is Rs. 20 along with 12% interest from the date of the disability considered by the BSF Medical Board.

ii. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to award the petitioner the benefits of disability cover (i.e., total compensation of Rs. 50 lacs) flowing from

Signature Not Verified

Digitally Signed
By: SUNIL
Signing Date: 03.10.2024
20:07:43

W.P.(C) 13677/2024

Page 1 of 7



2024:DHC:7492-DB



Para Military Salary Package (PMSP) account by the SBI, along with 12% interest from the date the date of the disability considered by the BSF Medical Board.”

2. Admittedly, the petitioner has already availed of his remedies before the High Court of Calcutta in the form of a Writ Petition being, WPA 3847/2024, praying for the following reliefs:

“a. An order be passed by issuing a writ in the nature of Mandamus by directing the respondents no. 3, 4 and 5 as to why the financial assistance as per existing GJSPKK and paramilitary package salary in case of a member who found 100% disablement by the Medical Board shall not be released along with other retiral benefits.

b. An order be passed to relive the petitioner from service as he was adjusted within category B as per Rues 9 which has been aggravated by Government Service with consequential benefits”

3. The said writ petition was disposed of by the High Court of Calcutta by its Order dated 25.04.2024 with the following observations and directions:

“1. The Commandant, 118 Bn, BSF is present in Court. This Court expresses satisfaction at his explanation given. This Court also notices that the said Commandant is extremely cooperative and is taking steps to ensure that the petitioner is able to get the relief that he seeks. The BSF authorities are, however bound by certain Rules.

2. This Court has agreed at the request of the Commandant to give four weeks time to the BSF, to process the petitioner's application for premature retirement on medical grounds. For the aforesaid purpose, the petitioner shall



cooperate and visit the medical facilities for reassessment of his medical condition as per the applicable Rules preferably in course of the day.

3. *The Commandant has also indicated that they had sent a vehicle from their side and are willing to send another vehicle today to pick up the petitioner to avoid inconvenience for the purpose of attending the Medical Board.*

4. *It is expected that the medical opinion on the petitioner's condition is forwarded to the I.G., Medical of the BSF with urgency and expedition. The I.G., Medical shall with the same urgency take a decision on the petitioner's application for premature retirement on medical grounds and forward the same back to the Commandant, 118 Bn., BSF at Calcutta to enable him to take decision in the matter.*

5. *This Court has been apprised that retirement on the medical grounds is a precondition for the other benefits to be made available to the petitioner. The CAPSP is disbursed upon satisfaction of the conditions of scheme. It is in the nature of an accidental insurance and the same may be decided by the concerned department of the State Bank of India, on the basis of the recommendation of the respondents.*

6. *It is expected that the petitioner as well as the respondent authorities take all necessary steps towards expeditious resolution of the pending issues so that the petitioner can pursue his treatment for the other ailments, namely, neurological and oncological.*

7. *The personal presence of the Commandant, 118 Bn, BSF is appreciated and dispensed with.*

8. *With the aforesaid observations, the writ petition is disposed of."*

4. Pursuant to the directions, the Office of the Commandant, 118 Battalion, Border Security Force (BSF) at Kolkata passed an



2024:DHC:7492-DB



Order dated 10.06.2024, declaring the petitioner to be unfit for retention in the BSF for further service, and directing his retirement from service with effect from 10.06.2024 on the ground of physical unfitness under the provisions of Rule 25 of the BSF Rules, 1969 with all applicable pensionary benefits as admissible under Rule 39 of the Central Civil Services (Pension) Rules, 2021, as the petitioner was reported by the Medical Board and the Review Medical Board to be suffering from "POLYCYTHEMIA VERA with bilateral optic nerve atrophy causing Bilateral vision loss & Right fracture Tibia, Right Knee ACL tear & Sensory Ganglionopathy with sensory ataxia with Hypertension with Obesity" with 100% permanent disability which was stated to be not attributable to the government duty.

5. As the benefits under the 'Golden Jubilee Seema Prahari Kalyan Kawach' and the Central Armed Police Salary Package were not released to the petitioner, he filed an application before the High Court of Calcutta, alleging contempt of the Order dated 25.04.2024. The same was disposed of by the High Court of Calcutta by its Order dated 30.08.2024, observing as under:

"1. The BSF authority has filed a report by way of affidavit.

2. Shri S.S. Dabas, DIG (Welfare), FHQ BSF, Shri R.K. Tripathi, Commandant, 118 BN BSF are present virtually in Court and Shri Saurabh Jaiswal, Senior Vice President and Head Legal Claims, TATA AIG General Insurance Company is also present in Court.

3. The report indicates that the petitioner has been retired on unfitness for service and



2024:DHC:7492-DB



pension papers were presented for his signature.

4. *Counsel for the petitioner submits that in terms of the applicable rules of the Central Government which the BSF is bound by his client is entitled to disability pension in accordance with the CCS (Extraordinary) Pension Rules already mentioned in the order dated 26th July, 2024.*

5. *Mr. Rajesh Singh, learned counsel for the TATA AIG submits that the policy covers injuries and accidents sustained in course of discharge of duties and does not cover pre-existing diseases. The petitioner admittedly had developed his ailments which led to his blindness since the year 2020.*

6. *This Court notes that the alleged contemnners have in compliance with this Court's order taken a decision on the petitioner's case. Any challenge to the decision of either the TATA AIG or the BSF, is now required to be raised in an independent proceeding.*

7. *The observations made in the orders passed in the contempt application, shall not prevent the petitioner from raising his claim as indicated above in any independent proceeding either the BSF or the TATA AIG.*

8. *With the aforesaid observations, CPAN 1052 of 2024 shall stand disposed of.*

9. *Rule, if any, shall stand discharged.*

10. *The personal presence of the alleged contemnners is dispensed with.*

11. *It is made clear that the petitioner may accept the offer of retirement on the ground of medical unfitness, without prejudice to his rights and contentions to challenge the same in any independent proceeding as already reserved to him above. Let any pending salary and dues of the petitioner be released to him forthwith.*

12. *There shall be no order as to costs."*

6. Availing of the liberty granted by the above order, the petitioner



2024:DHC:7492-DB



has filed the present petition claiming the benefits under the 'Golden Jubilee Seema Prahari Kalyan Kawach' and the Central Armed Police Salary Package

7. The learned counsel for the respondents, who appears on advance notice, submits that the petitioner, having already availed of his remedies before the High Court of Calcutta in the form of the writ petition and later by filing a contempt petition, cannot, now invoke the jurisdiction of this Court. He submits that even otherwise, the entire cause of action has arisen within the jurisdiction of the High Court of Calcutta.
8. The learned counsel for the petitioner was enquired if there is any order that has been passed in Delhi which would confer jurisdiction to entertain the present petition before this Court.
9. The learned counsel for the petitioner submits that as the respondents are situated in Delhi, this Court would have the jurisdiction.
10. We are of the opinion that since the petitioner has availed of his remedies before the High Court of Calcutta, it would not be proper for us to entertain this petition which seeks interpretation of and implementation of the orders passed by the High Court of Calcutta. The petitioner, having invoked the jurisdiction of a Court, must seek his remedies before that same Court.
11. Even otherwise, we have not been shown any reason for the petitioner to have invoked the jurisdiction of this Court instead of approaching the High Court of Calcutta. The Medical Board was constituted in Kolkata and even the impugned orders were passed



2024:DHC:7492-DB



at Kolkata.

12. Accordingly, the present petition is dismissed, leaving it open to the petitioner to avail his remedies in accordance with law before the appropriate Court.

NAVIN CHAWLA, J

SHALINDER KAUR, J

SEPTEMBER 27, 2024
RN/SJ

[Click here to check corrigendum, if any](#)