



2025:DHC:9178-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3256/2021**
PAWAN KUMARPetitioner

Through: Mr. Amit Nahata and Mr. M.T. Reddy, Advs.

versus

UNION OF INDIA & ORSRespondents
Through: Mr. Naginder Benipal, SPC with
Mr. Ankit Siwach, Mr. Udit Vaghela, Mr.
Jaskaran Singh, Mr. Saarthak Sethi and Mr.
Arjun Baliyan, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA
JUDGMENT (ORAL)

% **14.10.2025**

OM PRAKASH SHUKLA, J

1. The present writ petition under Article 226 of the Constitution of India seeks a direction to the respondents to grant the petitioner disability compensation as per Golden Jubilee Seema Prahari Kalyan Kavach and Disability lumpsum compensation in lieu of disability pension along with interest for the period of delay.

2. The facts in brief are that the petitioner was serving as Head Constable in BSF and was posted on border post Jagdish. It is stated that on 09.04.2015, while discharging his duties, the petitioner's right ankle got injured. Thereafter, he was immediately taken to the Government Hospital, Ferozpur wherein he was diagnosed with a Bimalleolar fracture of the right ankle. It is stated that the petitioner underwent open reduction and internal fixation (ORIF) for the said



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fracture. It is further stated that during his leave period at his hometown, petitioner consulted Civil Hospital, Rewari, where a board of medical officers was constituted, comprising of a Civil Surgeon, Orthopaedic Surgeon and Senior Medical Officer who assessed the petitioner's disability at 11% *vide* Certificate No. 348 dated 19.04.2017.

3. Thereafter, a Court of Inquiry¹ was convened to investigate the circumstances surrounding the petitioner's injury. As per the findings of the COI, the petitioner's injury was held to be attributable to his duty. It was also directed in COI that financial assistance, as permissible under the Central Civil Services (Extraordinary Pension) Rules, 1939², be extended to the petitioner. It was further directed that a Medical Board be constituted again to ascertain the extent of disability and the petitioner's current medical category.

4. In compliance with the aforesaid directions, BSF Medical Board convened on 30.07.2018 and had placed the petitioner in low medical category with 31.83% disability. The Board recorded that the petitioner was suffering from "*Arthrodesis Rt ankle following malunited right Pott's fracture*". The Board further observed that the petitioner was fit for sedentary duties.

5. Thereafter, it is stated that the petitioner availed voluntary retirement w.e.f. 31.07.2018. Further, the petitioner had filed a claim for disability compensation in lieu of disability pension and under the Beema Yojana.

¹ "COI", hereinafter

² "CCS (EOP) Rules", hereinafter



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6. Subsequently, the petitioner's case for disability compensation was prepared and forwarded to the Frontier Headquarters, BSF, Gujarat, for appropriate orders. However, by communication dated 27.05.2019, the said authority returned the proposal, seeking an explanation for the increase in assessed disability from 11% to 31.83%. It was further directed that, prior to approval, the petitioner be examined by a Medical Board headed by the Chief Medical Officer (SG), Gujarat Frontier, along with two other doctors, and that the proposal be resubmitted with the Board's fresh findings clarifying the basis for the increase, the petitioner's current medical category, and the supporting documentation.

7. In light of the abovementioned, it is stated that the case of the petitioner was re-examined and it was opined that the petitioner's disability assessed at 31.83% could be considered for disability compensation. Hence, the proposal was re-submitted. However, the Directorate General, BSF, rejected the proposal as devoid of merit, citing sub-Rule 4 of Rule 48A of the Central Civil Services (Pension) Rules, 1972³ and Section 3(2) of the Border Security Force Act, 1968⁴, of which the latter stipulates that a person remains subject to the Act until retired, discharged, released, removed or dismissed. Since the petitioner opted for voluntary retirement w.e.f. 31.07.2018, he ceased to be subject to the BSF Act, and hence, cannot be re-instated in service nor issued with retention certificate by concerned Administrative Authority necessary for grant of Disability Compensation.

³ "CCS (Pension) Rules", hereinafter

⁴ "BSF Act", hereinafter



8. Mr. Amit Nahata, learned Counsel on behalf of the petitioner submits that as per the assessment of 31.83% disability by medical board, the petitioner is entitled for compensation quantified at Rs. 10,00,000/- (Rupees Ten Lakh Only), together with disability lumpsum compensation in lieu of disability pension.

9. Further, the learned Counsel submits that the denial of disability compensation to the petitioner is vague, unjust and contrary to the settled principles of law and reliance in this regard was placed on ***Lt. Col. R.K. Rai v Union of India & Ors.***⁵, wherein it was recognized that an officer who seeks voluntary retirement on or after 01.01.2006 and whose disability is of 20% or more, attributable to and aggravated by military service are entitled to disability pension. Moreover, the benefits of disability pension are also extendable to individuals who retired prior to 2006, provided, they fulfil the following conditions as mentioned in the aforesaid judgement:

“(a) Their disability was accepted as attributable to or aggravated by military service

(b) They had foregone lump sum compensation in lieu of that disability.

(c) The concerned Armed Forces Personnel should still be suffering from the same disability which should be assessed at 20% or more on the date of effect of this letter.”

10. Lastly, the learned Counsel for the petitioner contends that the petitioner was injured on 09.04.2015, however, no actionable steps were taken by the respondents for nearly 3 years, and the Medical Board

⁵ (2018) 3 SCC 670



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was constituted only on 30.07.2018 i.e., a day prior to the petitioner's voluntary retirement on 31.07.2018. It is also contended that the petitioner sought voluntary retirement on medical grounds owing to pressure of duty performance consequent to his disability because if the petitioner would not have sought voluntary retirement his service would have been terminated. Moreover, it is submitted that at the time of considering voluntary retirement of the petitioner no alternative employment or offer to shift him to a suitable post was made to him which is violative of Section 20 of Rights of Persons with Disabilities Act, 2016.

11. Per Contra, Mr. Naginder Benipal, learned SPC, submits that the petitioner's claim for lumpsum compensation in lieu of disability pension was duly examined at the Headquarter, Directorate General, BSF and was lawfully rejected for the reason that Sub-rule 4 of Rule 48A of CCS (Pension) Rules, 1972 clearly provides that a government servant who has sought to retire under the said rule and has given the requisite notice to the appointing authority is precluded from withdrawing such notice, except with the specific approval of that authority, provided the request for withdrawal is made before the intended date of retirement. Relying upon the said Rule, it is contended that as once voluntary retirement took effect, the petitioner could not revive or alter his service status for claiming benefits that require retention in service. Moreover, under Section 3(2) of the BSF Act, every individual subject to the said Act shall remain so until retired, discharged, released, removed or dismissed from the force in accordance with the provisions of this Act and Rules.



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12. Further, the learned SPC submits that the claim under Golden Jubilee Seema Prahari Kalyani Kavach amounting to Rs. 5,00,000/- (Rupees Five Lakh Only) has been remitted to the petitioner and that the pension of the petitioner was passed *vide* PPO No. 021841808642 dated 01.08.2018.

13. We have heard learned Counsel for both parties and given our thoughtful consideration to the material placed before us.

14. Admittedly, the provision under which the petitioner is entitled to disability compensation is Rule 9(3) of the CCS (EOP) Rules. This rule applies only where the respondent has retained the petitioner in service despite disablement, which is reproduced hereinafter:

“9. Disablement due to Government service. –

(1) When disablement of a Government service is conceded as due to Government service in terms of Rule 3-A, he shall be awarded disability pension in terms of sub-rule (2) or lump sum compensation in terms of sub-rule (3) of this rule in accordance with the percentage of disability (suffered by him) as certified by the Medical Authority concerned.

(2) If the Government servant is boarded out of Government service on account of his disablement, the quantum of disability pension for cent per cent disability shall be as specified in Schedule II hereto annexed and the quantum of disability pension for lower percentage of disability shall be, "proportionately lower" in accordance with the provision provided in Rule 8.

*(3) If the Government servant is retained in service in spite of **such disablement**, he shall be paid a compensation in lump sum (in lieu of the disability pension) on the basis of disability pension admissible to him in accordance with the provisions of sub-rule (2) of this rule, by arriving at the capitalized value of such disability pension with reference to the Commutation Table, in force from time to time”*

(emphasis supplied)



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15. The word “such disablement” as used in Rule 9(3) takes us back to Rule 9(1). Rule 9(1) envisages disablement as is conceded in terms of Rule 3A. Rule 3A envisages disablement as being accepted as due to government service provided that it is certified that it is due to a wound injury and disease which is attributable to government service.

16. Admittedly, disablement of over 20% is required for entitlement to disability compensation. The certification that the petitioner had suffered from disability to the extent of 31.83% was issued by the medical board on 30.07.2018. However, with effect from the very next day, i.e. 31.07.2018, the petitioner stood voluntarily retired from the services of the respondent.

17. As such, the case cannot be said to be one in which the respondent *retained the petitioner in service* despite his having been certified as suffering from disability entitling him to disability compensation.

18. Rule 9(3) is, therefore, not applicable. The petitioner, therefore, cannot be said to be entitled to disability compensation.

19. The writ petition is accordingly dismissed.

OM PRAKASH SHUKLA, J

C.HARI SHANKAR, J

OCTOBER 14, 2025/AT/rjd