

Abhai Singh Vs. Boder Security Force

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Court : Delhi

Decided On : Jul-31-2014

Judge : Kailash Gambhir

Appellant : Abhai Singh

Respondent : Boder Security Force

Advocate for Def. : Mr. Prashant Sivarajan

Advocate for Pet/Ap. : Ms. Amita Gupta

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

31. 07.2014 + WP (C) No.2059 of 2007, CM No.11506/2013 ABHAI SINGH Through:Ms. Amita Gupta, Adv. Petitioner Versus BODER SECURITY FORCE Respondent Through:Mr. Prashant Sivarajan, Adv. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE NAJMI WAZIRI KAILASH GAMBHIR, J.

(Oral) 1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to direct the respondent to grant disability pension to the petitioner in terms of Rule 3-A(1)(a) CCS (EOP) Rules. The petitioner herein was recruited as Constable in Border Security Force on 21.2.1994. One day, during the course of his duty, while he was learning to walk on ropes he fell down from a height and

hurt himself, which led to causing of pain in L2-L5 region of his spine. Hospital. He was admitted in Ahmedabad Later, he was examined by the Chief Medical Officer of Safdarjung Hospital, New Delhi on 2nd February, 2001. WP (C) No.2059 of 2007 certificate issued by Safdarjung Hospital, records that the petitioner had fallen from height leading to pain in L2-L5 region since October, 1994. Counsel submits that one day in the year 1995 while running the petitioner became unconscious and was hospitalized. The petitioner was also examined by the Medical Board of 21st Battalion, BSF and the Board categorically recorded that the petitioner was apparently alright in January, 1995. Therefore, it is admitted that at least till this date the petitioner did not suffer from any medical affliction. Hence if he became medically disabled then such disadvantage would be clearly attributable to the service. However in January, 1995 he suffered acute lower backache and was diagnosed as a case of Potts spine with PSOAS abscess at Safdarjung Hospital, New Delhi. As per the opinion of the Board, the disability of the petitioner was assessed to the extent of 20%. Based on his medical examination by the 21st Battalion, BSF, the petitioner was informed that he had been declared medically invalidated with 20% disability, therefore he shall be retired from service on this count with effect from 30 th June, 2002.

2. The petitioner also contends that on 13th May, 2003 he was asked to proceed to his parent unit for further duties and he was again examined by the Medical Board on 11.9.2004 when he was declared medically invalidated with 56% disability. Vide order dated 25.12.2004, the 21 st Battalion, BSF declared the petitioner completely and permanently incapacitated for further service in the BSF. Accordingly he was invalidated out from service with effect from 28 th February, 2005 with pensionary benefits in terms of relevant pension rules. In a nutshell, the case of the petitioner is that he is entitled to disability pension under Category B, since he had suffered the disability during the course of his employment and therefore the disability is clearly attributable to and got further aggravated during the later tenure of his service. It is also the case of the petitioner, that on the date of his recruitment he was not suffering from any such problem and therefore he could not be denied the disability pension, which was assessed by Medical Board of the BSF. Learned counsel for the petitioner relies upon para 30 of the judgment of the Supreme Court in Dharamvir Singh vs. Union of India & Ors., JT2013(12)

SC44 which reads as under:

In the present case it is undisputed that no note of any disease has been recorded at the time of appellants acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service.....

3. In the counter affidavit filed by the respondents, they have admitted that the petitioner was awarded medical category S1 H1 A1 P5 E1 with 20% disability with effect from 5.2.2002. The respondents have also admitted this fact on 15.1.1995 that after completion of his basic training, the petitioner had suffered from acute lower backache and was diagnosed as a case of Potts spine L3 L4 with PSOAS abscess at Safdarjung Hospital, New Delhi and he was awarded medical category CEE(T) with effect from 5.2.2002 to the extent of 20% medical disability. While admitting this fact, the respondents had taken a contradictory stand, by stating that the cause of his disability due to falling from the rope was denied for want of documents. This is a case of gross injustice caused to the petitioner at the hands of the respondents by denying him the disability pension, when his case was squarely covered under Category B of the office memorandum dated 12th February, 2000. We cannot be oblivious of the fact that disability of the petitioner was assessed to the extent of 20% by the Medical Board of the BSF and he was not suffering from any such disabilities at the time of his recruitment. Had it been so, the respondent would have placed on record to show that the petitioner had such kind of problems on the date of recruitment. The said disability is clearly attributable and was aggravated during the period of his service as a Constable and the petitioner had been clearly denied disability pension. However, he was invalidated on account of medical ground by order dated 22.11.2002.

4. In the above circumstances, we allow the present petition. Let the respondent grant the disability pension in terms of Rule 3-A(1)(a) CCS (EOP) Rules and the entire arrears shall be paid to the petitioner by the respondent within a period of four weeks from today along with the interest @ 9% per annum. On the failure of the respondent to release the said amount, adverse consequences shall ensue against the respondents.

5. The petition is disposed off in the above terms. KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

JULY31 2014/ak

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