

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.19529 of 2013
Date of decision:28.10.2014**

Amarjit Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.H.S.Ghuman, Advocate for the petitioner.

Mr.Athar Ahmed, Advocate for Union of India.

RAMESHWAR SINGH MALIK, J. (Oral)

A disabled ex-soldier who has become a blind man because of a disease attributable to and aggravated by the para military service, is fighting for his invalid pension and that too for the last more than 39 years, which shows the total insensitivity and arbitrary approach of the respondent authorities.

Feeling aggrieved against the alleged inaction on the part of respondent authorities, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus. Petitioner is also seeking a writ in the nature of certiorari for quashing the impugned communication dated 29.4.2013 (Annexure P-8).

Notice of motion was issued and pursuant thereto, separate written statements were filed on behalf of the respondents. Petitioner filed his rejoinder.

Learned counsel for the petitioner submits that the petitioner was medically boarded out from the military service as Constable on 27.2.1975, due to acute eye infection and blindness on account of suffering from Trachoma III and IV with Corneal Opacities. He further submits that once this material fact was not in dispute, respondent authorities were under legal obligation to grant invalid pension to the petitioner. About the entitlement of the petitioner in this regard, learned counsel for the petitioner submits that Rule 38 of the Central Civil Services Rules, 1971 (for short 'Rules of 1971') comes to the rescue of the petitioner. To support his contentions, he places reliance on two judgments in **Abdul Majid Shah v. Union of India and others 2008(2) JKJ 240** and **Ex. Const. Badan Singh v. Union of India and another 2002 VIII AD Delhi 553**. He concluded by submitting that the present writ petition may be allowed and the respondents may be directed to grant invalid pension to the petitioner as he has become 100% disable because of the above-said disability, suffered during service.

On other hand, learned counsel for the respondents submits that the case of the petitioner was not covered under Rule 38 of the Rules of 1971. He further submits that case of the petitioner would be covered under Rule 49 of the Rules of 1971. He would next contend that since petitioner was not having 10 years service to his credit, which was the minimum qualifying service for pension, he was not entitled for the relief being claimed. So far as service gratuity was concerned, the same had already been paid to the petitioner. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered

opinion that in the given fact situation of the case in hand, instant writ petition deserves to be allowed with costs. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that the petitioner was boarded out from service on medical grounds on 27.2.1975, due to acute eye infection and blindness on account of suffering from Trachoma III and IV with Corneal Opacities. Petitioner had 7 ½ years of satisfactory service to his credit before he suffered the abovesaid disability. Petitioner claims to have become 100% blind and disabled in view of the medical certificate (Annexure P-3), whereas respondents admitted the petitioner to be 70% disable, in view of the averments taken in para 8 of the written statement. Be that as it may, the contention raised by the learned counsel for the respondents that case of the petitioner would be covered under Rule 49 and not under Rule 38 of the Rules of 1971 has been duly considered and found to be wholly misconceived, hence rejected.

Rule 38(1) of the Rules of 1971, which is the only relevant Rule in the present case, reads as under:-

"38. Invalid pension

(1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service."

Rule 49 of the Rules of 1971 does not apply in the present case. However, Rule 49(1), which is relied upon by learned counsel for the respondents, is also reproduced as under:-

"49. Amount of pension :

(1) In the case of Government servant retiring in accordance

with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six months' period of qualifying service.”

A combined reading of Rules 38 (1) and 49 (1) of the Rules of 1971 would show that Rule 49 (1) would operate only in the case of normal pension, whereas Rule 38 (1) specifically deals with invalid pension. In the present case, action of the respondent authorities has been found to be arbitrary on the face of it for the reason that a soldier, who suffered 100% disability because of the serious infection in his eyes and he has become totally blind, has been treated by the respondents in a very casual and irresponsible manner. He has been fighting for his due for the last more than 39 long years, as he retired on 27.2.1975.

Pension was not the bounty of the State but right of the petitioner. Right to get pension gives a continuing cause of action to the petitioner. In this view of the matter, the claim put forth by the petitioner cannot be said to be suffering from any delay and laches, particularly because of the reason that petitioner has become 100% disabled, being a blind person.

Further, the issue involved herein is no more *res integra*. **Abdul Majid Shah's** case (supra) was also based on similar set of facts. Relevant observations made by the High Court of Jammu and Kashmir in paras 3 to 7 and 9 read as under:-

“3. In their reply affidavit, the respondents while challenging maintainability of writ petition have sought to resist petitioner's claim of invalid pension on the ground that he didn't have the qualifying service of ten years to his credit

which in terms of relevant rules disentitled him from receiving such pension.

4. *During course of submissions while petitioner's counsel has reiterated the contents of his writ petition to canvass petitioner's title to invalid pension, the respondents counsel in addition to what has been said above also argued that petitioner was not entitled to such pension particularly because the petition was belated by decades.*

5. *With agreement of appearing counsel the writ petition is admitted to hearing and taken up for disposal.*

6. *I have heard learned counsel and considered the matter. The petitioner's service along with his title to pension in given circumstances is governed by Central (CS) Rules, 1971 which deals with subject of pension under Rules 38 and 49 thereof which for the sake of convenience may be reproduced hereinbelow :*

"38. Invalid Pension:-(I) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

Xxx xxx xxx xxx
xxx xxx xxx

7. *On cumulative reading of both the rules it transpires that while Rule 49 governing grant of pension to normal retired personnel prescribes the qualifying age as ten years, it does not specifically extend its application to the cases where the incumbent has been boarded out on medical grounds as the petitioner admittedly has been, which situation is more aptly covered under Rule 38 wherein no qualifying service for entitlement of the pension to the retired personnel has been prescribed ostensibly because prescribing qualifying service for title of invalid pension would render the provision regarding invalid pension redundant because in the event of having qualifying service as contained in Rule 49, there would*

be no need of having separate provision like Rule 38 to cover the cases of invalid pension for the personnel boarded out on medical grounds. In that view, therefore, the petitioner's case appears to be covered by Rule 38 and not 49, rendering the tenure of his service irrelevant.....”

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9. *Before proceeding ahead, it would be appropriate to quote a judgment of this Court in "**Mani Ram v. Union of India and others**", wherein while allowing the petition, in Para 7 of the judgment, it has been observed as follows :*

"it is not the case of the respondents that the petitioner was suffering from Leprosy at the time of his entry into service. He served the Army right from 1947 to 1954. Therefore, it is presumed that the disease was detected during the service and is attributable to the Army Service. As far as the disability is concerned, the petitioner was boarded out with 100% disability. Under these circumstances, this petition is allowed with the direction to the respondents to determine and pay the disability pension to the petitioner right from the date of his discharge on medical grounds. Since according to the respondents' own stand the disability pension given to the petitioner for the period from 24-8-1954 to 10-5-1955 has been recovered from him, the petitioner is entitled to the disability pension right from the date of his discharge from the Army service on medical grounds".

Similarly, in **Ex-Head Constable Badan Singh's** case (supra), identical issue fell for consideration of Delhi High Court. After detailed discussion, it was concluded in para 10, as under:-

“The present case also calls for some judicial engineering of the Rules and Regulations which are inherently and intrinsically beneficial in nature and content, thus calling

for a wide interpretation and application. Rule 38 of the pension Rules does not prohibit the grant of invalid pension if the bodily or mental infirmity which permanently incapacitates the person concerned results from the nature of duties officially performed. It is contended by Mr. Duggal that in granting such pension the petitioner would in fact be bestowed a premium for his sexual deviation or recklessness. Assuming that the petitioner acquired AIDS through extra marital sexual intercourse, it could hardly be presumed that he intended to contract this fatal and stigmatic health disorder, leading immediately to ostracism, so as to become eligible for premature pension. He must surely be regretting his action even if he is responsible for his infection. I am unable to subscribe to the view that he would be happy to reap the benefit of an invalid pension. Given the choice, the petitioner, or any other person in his place, would prefer to work rather than suffer from AIDS. One of the essential functions and duties of the Government and any other Authority directly sourced from Government funds, is to extend medical benefits and support to the suffering. The grant of invalid pension is not a paise more than this basic obligation. In the present case we can steer clear from the controversy as to whether the infirmity or incapacity was attributable to or aggravated by service since Rule 38 of the pension Rules unlike Rule 48 of the Regulations does not contemplate this causation.”

A bare reading of the above-said both the judgments would show that the case of the petitioner is squarely covered by both these judgments in **Abdul Majid Shah's** case (supra) and **Ex-Head Constable Badan Singh's** case (supra). Learned counsel for the respondents could not distinguish the present case from abovesaid two judgments, either on facts or in law. In fact, this is yet another glaring example of arbitrariness on the part of respondent authorities, while treating an ex-soldier in this manner.

Again, under somewhat similar circumstances, the Hon'ble Supreme Court in the case of **Savitri Devi Mehta and others v. Union of India and others, 2005(10) SCC 325** made strong observations in para 2 of the judgment and relevant part thereof reads as under:-

“.....This question, however, need not be gone into any further since on a writ petition filed by deceased's wife and children, a learned Single Judge directed that he was entitled to disability pension and consequently his family was entitled to special family pension. The learned Single Judge, in view of long lapse of 30 years during which no relief was given to the deceased and intimation about the re-examination by the Medical Board came after about one year after his demise, awarded a lump sum payment of Rs.3,00,000/- (three lacs only) as compensation in favour of his wife besides the amount on account of disability pension and special family pension with interest at the rate of 18%. The decision of learned Single Judge was challenged by the Government by preferring an intra-Court appeal in the High Court. Insofar as the grant of disability pension is concerned, the learned Division Bench held that the matter had been elaborately discussed from various aspects, the statutory provision for grant of disability pension were critically analysed and no case had been made out to take a view different from that of learned Single Judge. Thus, the grant of disability pension and special family pension with interest at the rate of 18% by learned Single Judge was upheld in appeal as well. That part of the order has attained finality.”

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that action of the respondents was wholly arbitrary which cannot be sustained. Thus, instant writ petition deserves to be allowed

with costs which are quantified at Rs.50,000/-.

Consequently, petitioner is declared entitled to receive the invalid pension. Respondents are directed to do the needful within a period of two months from the date of receipt of a certified copy of this order. Petitioner shall also be entitled for the arrears of invalid pension alongwith interest @ 9% from the date the amount became due till the date of actual payment. If the amount on account of arrears of invalid pension alongwith interest @ 9% is not released in favour of the petitioner within a period of two months, he shall be entitled for interest @ 12% per annum.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands allowed with costs.

28.10.2014
mks

(RAMESHWAR SINGH MALIK)
JUDGE