

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

16.

O.A. No. 113/2011

Col Rakesh Sharma, SM

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate.

For respondents: Mr. Mohan Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

07.08.2012

1. Petitioner vide this petition has prayed that the order dated 22.03.2005 may be quashed and petitioner may be given commuted value of the war injury pension as lump sum compensation in lieu of war injury pension as per his entitlement w.e.f. 01.01.1996 and he has also prayed that a sum of Rs.5,79,331/- may be paid alongwith interest and other consequential benefits.

2. The petitioner was commissioned on 09.06.1997 in the Artillery. While serving in J&K on 15.12.1995, the petitioner became victim of the militant's bullets and sustained multiple gunshot injuries. He was hospitalised on 05.12.1995 and released from Hospital on 23.06.1997 as Low Medical Category (Permanent). On 27.01.1998, the petitioner requested for claiming disability compensation under the provisions of existing rules and asked for the Medical Board to assess his disability at an early date. On his request, a Medical Board was convened on 23.03.1998 and on 28.07.1998, the Medical Board gave his recommendation that incumbent has a disability to the extent

of 80%. The petitioner was asked for the option whether he would like to have the compensation lump sum or will claim the same at the time of release from service. He opted to pay the compensation at lump sum on 25.09.1998 and the compensation was sanctioned on 10.03.1998 to the extent of 80% and thereafter the final payment was made on 10.12.1999.

3. The grievance of the petitioner is that he has been paid the compensation which was prevalent at the time when he had received the injury. It is submitted that meanwhile the Fifth Pay Commission has come into force w.e.f. 01.01.1996 and therefore, the petitioner is entitled to the rates of compensation as recommended by the Fifth Pay Commission and accepted by the Government from 01.01.1996. The respondents took a position that since the petitioner has received the injury on 05.12.1995, therefore, he would be entitled to for the compensation at the rate which was prevalent at that relevant point of time.

4. Therefore, the issue for consideration before us is whether the petitioner is entitled to compensation at the rate which was prevalent w.e.f. 01.01.1996 on the basis of the recommendations of the Fifth Pay Commission or not.

5. Learned counsel for the petitioner submitted that in fact the petitioner was suffering from 05.12.1995 when he was hospitalised and till 23.06.1997 when he was released as Low Medical Category (Permanent). Since the petitioner was a battle casualty, therefore, he was kept in service but the question is whether he should be paid the compensation lump sum or same should be paid to him at the time of his release from the Army on completion of his tenure. The petitioner realised that he need the money at the earliest, therefore, he made a request on 27.01.1998 for assessing his medical

disability which is assessed to the extent of 80%. Therefore, the crucial date in the present case shall be the date when the Medical Board has determined that how much of disability has been incurred by him.

6. At this stage, learned counsel for the respondents strenuously argued before us that the petitioner has suffered the injury on 05.12.1995, therefore, the compensation may be determined with reference to the provisions and rules which were prevalent at the time when the injury took place.

7. We have bestowed our thoughtful consideration to the rival submissions made by the learned counsel for the parties and we are of the opinion that in fact till the Medical Board decides that how much disability the incumbent has suffered, it cannot be decided whether the compensation should be paid in lump sum or he should wait till the completion of his tenure. The above option only arises when the Medical Board decides that whether the petitioner has received injury more than 20% or not. In the present case, the petitioner's disability was decided by the Medical Board for the first time on 28.07.1998. Then alone the whole process of asking the option whether he want to encash the compensation in lump sum or to wait till he completed his tenure of service. Therefore, the crucial date is when the Medical Board has said that whether he is entitled to compensation at all or not. Had it been the case that petitioner received less than 20% disability, perhaps he would not have been entitled to any disability pension. It is only more than 20% disability, which entitles a person to disability pension.

8. Therefore, in the present case, the Medical Board has finalised on 28.07.1998 that how much of disability the incumbent is entitled to on account of multiple gunshot injuries. That should be the crucial date. In the meanwhile, Fifth Pay Commission has come into force w.e.f. 01.01.1996 and the purpose

of the Pay Commission is to ameliorate the service conditions of the employees. The argument of the respondents that petitioner is entitled for disability compensation at the rates which were prevalent on 05.12.1995 at the time of injury is totally negative approach. The very purpose of the Pay Commissions is to ameliorate the service conditions of the employees and therefore, we see no reasons not to give the benefit of the Fifth Pay Commission to the petitioner, which has revised the rates of such cases from 01.01.1996.

9. In the present scheme of things, the final payment was made to the petitioner on 10.12.1999. Had the case of the petitioner was decided before coming into force of the Fifth Pay Commission, then perhaps the consideration would have been different. But this is the case in which during the period when the process of finalisation of compensation was in progress, the rates were revised. Therefore, there is no reason why the petitioner should not be given the benefit of Pay Commission which is for the benefit of the employees. Therefore, we are of the opinion that the petitioner in the present case is entitled to the disability compensation as fixed by the Fifth Pay Commission which came into force w.e.f. 01.01.1996. He is entitled to a lump sum compensation on the basis of the rates recommended and accepted by the Government as per the Fifth Pay Commission. The amount should be determined and whatever payment has already been made, be deducted and remaining deficient amount shall be released to the petitioner within a period of three months from today.

10. The petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
August 07, 2012
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