

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

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OA No. 596 of 2011

Balwinder Singh	Petitioner(s)
Vs		
Union of india and others	Respondent(s)

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Coram: Justice Rajesh Chandra, Judicial Member.
Air Marshal (Retd) S.C. Mukul, Administrative Member.

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For the Petitioner (s) : Mr Ravi Badyal, Advocate
 For the Respondent(s) : Mr.Ram Chander, Sr.P.C.

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JUDGMENT
08.11.2012

1. The petitioner by this petition prays for quashing of impugned orders Annexures A-1 to A-4 vide which the claim of the petitioner for grant of disability pension has been rejected and also for issuance of a direction to the respondents for grant of disability pension w.e.f. 31.01.2005 (for the second spell of service in DSC from 27.01.1995 to 21.01.2005 having total qualifying service 10 years and 5 days).

2. The factual averments in the petition are that the petitioner enrolled in the Army on 11.03.1976 and discharged on 4.4.1982 on compassionate grounds after having rendered 6 years and 25 days of service. He got re-enrolled in Defence Security Corps (DSC) on 3.6.1982 and discharged on 30.6.1992 after having rendered 10 years and 20 days qualifying service in DSC. The total qualifying service of both spells including Army and DSC was 16 years 1 month and 19 days for which he was granted service pension. While he was re-enrolled in DSC for the second spell on 27.1.1995, he exercised option to continue to draw former service pension and not to count the former aggregate service of 16 years 1 month and 19 days. He was discharged from DSC in low medical category being **primary hypertension**. The composite assessment of disability was 40% for life. The total service in the second spell in DSC from 27.1.1995 to 31.01.2005 was 10 years and 5 days. The DSC Records rejected the claim of the petitioner vide Annexure A-1.

Appeal too was rejected. Then petitioner filed CWP No. 1529 of 2007 in the High Court of Punjab and Haryana which was disposed of with a direction to the respondents to consider the claim of the petitioner for invalidating pension/gratuity. The respondents rejected the claim for invalid pension vide Annexure A-4. Thereafter petitioner filed COCP No. 827 of 2009 in the High Court for implementing the order which was got dismissed as withdrawn with liberty to file fresh OA before the Tribunal. Hence the petition.

3. The argument of the learned counsel for the petitioner is that since the petitioner was discharged in low medical category having composite 40% disability, he is entitled to get disability pension in view of the fact that he had rendered 10 years and 5 days service in the second spell in DSC which is an independent service.

4. In the written statement filed by the respondents it is averred that the petitioner had filed court cases in the past on similar grounds – for grant of disability pension in C W P No 1529/2007 in the Hon'ble High Court of Punjab & Haryana at Chandigarh which was disposed off on 25.02.2008 with directions to the respondents to consider the claim of the Applicant for Invaliding pension / Gratuity under Regulations 197 of the Pension Regulations for the Army 1961 and to grant the benefits within 3 months from the date of judgment, bringing out that during the hearing the petitioner had relinquished his claim for disability pension and pleaded for grant of Invalid pension under Rule 197. The judgment records that the individual had submitted that he was invalided out of DSC service and claimed grant of invalid pension under Regulation 197 of the Pension Regulations for the Army 1961. In pursuance of the court order the case was re-examined Army HQ and grant of invalid pension was rejected vide speaking order dated 05.03.2009 since the applicant was discharged from the DSC on completion of terms of engagement and not invalided out. The petitioner in response filed COCP No. 827 of 2009 in the High Court for implementing the order. Meanwhile the applicant filed OA No 897/2010 on 13.12.2010 before the AFT Chandigarh Bench, pleading for issuance of directions for grant of disability pension. During the hearing on 15.12.2010, with the COCP No 827 of 2009 still pending at High Court, the OA was dismissed as withdrawn on submissions of the learned counsel for the petitioner with a liberty to pursue the matter in the Hon'ble High Court. Next the

case was taken up at the Hon'ble High Court of Punjab & Haryana at Chandigarh wherein on 20.01.2011, on directions of the High Court the COCP 827/2009 was withdrawn with a liberty to approach the AFT Chandigarh Bench. Thereafter the applicant filed the instant OA 596/2011 on 03.05.2011 for grant of disability pension. The respondents bring out that the applicant is misusing the legal process since while dismissing the OA 897/2010 on 15th December 2010, as having been withdrawn, this Tribunal had not given any liberty to the applicant to approach this Tribunal again with the same pleadings.

5. Further the Release Medical Board held on 14.08.2004 diagnosed him as a case of (a) **PRIMARY HYPERTENSION ICD 1.10.0** and (b) **PRIMARY HYPER THYROIDISM ICD E 05.0, Z-09**. The Medical Board also assessed the degree of first disability at 30% and second at 15 to 19% (i.e. below 20%). Both the disabilities were assessed as Life Long and composite assessment of all disabilities was assessed 40% for long and final. The Release Medical Board also opined both the disabilities neither attributable to nor aggravated by military service and connected with military service. Both the disabilities were diagnosed as constitutional disorders not connected with service. The disability pension claim was rejected by PCDA(P) Allahabad vide letter dated 5.8.2005 by stating that the disability is neither attributable to nor aggravated by military service and is constitutional in nature. Since the petitioner was neither invalided out of his second DSC service nor his disabilities were attributable to or aggravated by Military Service, he is not eligible for grant of disability pension under the rules. The decision of PCDA(P) Allahabad was fully in consonance with the expert medical opinion rendered by the RMB and fully as per the judicial concept laid down by the Hon'ble Supreme Court in various judgments wherein it has been held that the expert medical opinion rendered by the medical board which has physically examined the individual should hold primacy and should be respected and given due weight, value and credence.

6. We have heard the learned counsel for the parties.

7. Scrutiny of records brings out that C W P No 1529/2007 in the Hon'ble High Court of Punjab & Haryana at Chandigarh, pleading grant of Disability

Pension, was disposed off on 25.02.2008. The relevant portion of the judgment of High Court is as under:-

“The pensioner now claims invalidating pension in terms of Regulations 197 of the Pension Regulations only in the present petition.

A perusal of Regulation 197 of the Pension Regulation would show that an individual who is invalided out of service on account of disability which is neither attributable to nor aggravated by service, invalid pension/gratuity shall be admissible to him. Since the petitioner has rendered more than 10 years of qualifying service in the 3rd spell, but the pensioner has not been granted invalidating pension, therefore, we dispose of the present writ petition with a direction to the respondents to consider the claim of the petitioner for invalidating pension / gratuity under Regulation 197 of the Pension Regulations, 1961, and grant necessary benefits within 3 months from today.”

It is clear from the above that during the hearing the petitioner had relinquished his claim for disability pension and pleaded for grant of Invalid Pension under Rule 197.

8. Vide Speaking Order dated 05.03.2009, the case for grant of invalid pension was rejected by the Army HQ as the petitioner was discharged on completion of terms of engagement of 10 years in DSC and was not eligible for further extension due being in lower medical category. As a consequence the COCP No. 827 of 2009 was filed by petitioner in the High Court for non-grant of invalid pension as per the court order.

9. Before the outcome of the COCP 827/2009, the petitioner filed a fresh petition at the AFT Chandigarh as OA No 897/2010 on 13.12.2010 pleading for issuance of directions for grant of disability pension. This was dismissed by order dated 15.12.2010 of the AFT Chandigarh as withdrawn on submissions of the learned counsel for the petitioner with a liberty to pursue the matter in the Hon'ble High Court. On pleadings of the petitioner, on 20.01.2011, the High Court directed withdrawal of COCP 827/2009 with a liberty to approach the AFT Chandigarh Bench.

10. It is evident from the facts note above that the petitioner is agitating the issue of granting disability pension despite the fact that in the CWP 1524/07 decided on 25.02.2008, the petitioner had not pressed his claim for disability pension and confined it to invalid pension only. When his claim for invalid pension was dismissed by the Army HQ vide order dated 05.03.2009 he filed OA No 897/10 on 13.12.10 claiming disability pension. Subsequently the OA was withdrawn on 15.12.10 as the petitioner was willing to pursue the contempt proceedings initiated by him against the respondents for not complying with the order dated 25.02.2008.

11. The petitioner did not pursue the contempt proceeding and got it dismissed. However he again filed the present OA claiming disability pension.

12. The claim for disability pension having been relinquished in CWP No 1529/07 in the High Court, the same cannot be allowed to be re-agitated in the subsequent OAs. The petitioner in OA No 897/10 could have pressed his claim for invalid pension, but he got that OA dismissed on 15.12.2010 as withdrawn. A perusal of the order dated 15.12.2010 reveals that no liberty was given to the petitioner to file another OA raising the same controversy.

13 In view of the above, it is clear that the present petition on the same cause of action is not maintainable when no liberty was given in OA 897/10 for filing fresh petition on the same cause of action.

14 The petition is accordingly dismissed.

(Justice Rajesh Chandra)

(Air Marshal (Retd) S.C. Mukul)

08.11.2012

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