



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17.02.2025
Pronounced on: 19.05.2025

+ **W.P.(C) 6466/2019**

JAGTAR SINGH

.....Petitioner

Through: Mr. Ankur Chhibber, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Bhagwan Swarup Shukla,
CGSC with Mr. S. Kumar and
Mr. Satyam Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present writ petition, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, prays for a direction to the respondents to grant disability pension to the petitioner with effect from 30.09.2005, under Rule 3-A of the Central Civil Services (Extraordinary Pension) Rules, 1972 [hereinafter referred to as, "CCS (EOP) Rules"], along with all consequential benefits, on account of an injury sustained by the petitioner during the course of active service.

BRIEF FACTS



2. The petitioner was enrolled as a Constable (General Duty) in the Border Security Force (BSF) on 09.09.1966, having been medically assessed under SHAPE-I medical category at the time of recruitment. He was promoted to the rank of Lance Naik (L/NK) on 18.02.1973, to the rank of Naik on 01.10.1978, and subsequently to the rank of Sub-Inspector on 12.04.1993.

3. On 02.12.1993, while he was posted to Srinagar and performing cordon and search duties at Sopore (J&K), the petitioner sustained a gunshot wound at the base of his nose while confronting militants, which caused serious damage to the left eyeball and the zygomatic bone, resulting in permanent loss of vision in the left eye. He was initially provided first aid at the Unit MI Room and was subsequently transferred to the 92nd Base Hospital, Srinagar, where he underwent surgery, including the evisceration of the left eye. He remained hospitalized from 02.12.1993 to 23.12.1993. Recognizing the petitioner's act of bravery, he was awarded the Police Medal for Gallantry by the President of India on 29.07.1995.

4. Consequent to the injury, the petitioner was initially placed in the medical category "CEE (T)" for a period of three months with effect from 18.04.1994, which was subsequently extended. On 22.02.1996, he was placed in the low medical category "BEE(T)" for a further period of one year. Subsequent thereto, on 07.06.1997, the petitioner was placed in the medical category "BEE(P)" for a period of two years. This categorization was later extended for a further two years on 22.02.2000.



5. Thereafter, the petitioner was considered for promotion by the Departmental Promotion Committee (DPC) held on 17-18.01.2002 at the Frontier Headquarters, BSF, Jodhpur, albeit subject to the Government's decision on relaxation in medical standards. Despite being placed at Serial No. 149 in the Consolidated List-E of 492 Sub-Inspectors recommended for promotion, the petitioner was denied promotion owing to his medical category S1H1A1P1E3(T-48), which rendered him ineligible under the relaxed criteria prescribed for promotion with effect from 31.01.2003. Aggrieved by the said non-consideration for promotion, the petitioner preferred a representation.

6. On 01.02.2003, the petitioner appeared before the Medical Board at the BSF Frontier Hospital, Jodhpur. He was diagnosed as a case of *"Gunshot Wound to Head with Fracture Zygoma Left with Evisceration of Left Eye"* and was placed under the medical category S1H1A1P1E3 (T) for a period of 48 weeks. The Board also opined that the disability was attributable to service conditions.

7. Thereafter, *vide* communication dated 27.06.2003, the petitioner was informed that he would be eligible for promotion only upon attaining SHAPE-I medical classification or upon grant of relaxation by the competent authority. The respondents reiterated this position *vide* Order dated 01.08.2003.

8. Subsequently, on 13.02.2004, the petitioner underwent a medical examination before the Standing Medical Board at GMC Hospital, Jammu, which opined that the petitioner had a permanent disability to the extent of 30%, attributing the same to the evisceration



of the left eye and the vision of 6/9 in the right eye. Whereafter, the Commandant (Medical), BSF Hospital, Jammu, *vide* letter dated 07.05.2004, requested a reassessment of the petitioner's disability. Following this, the petitioner was re-examined on 02.06.2004, and his disability was reaffirmed at 30%.

9. A Standing Medical Board at GMC Jammu, on 17.06.2004, once again assessed the disability of the petitioner at 30%. Subsequently, on 16.09.2004, the petitioner was placed in the medical category S1H1A1P1E2(P), which was duly communicated to him on 28.10.2004.

10. Thereafter, the petitioner superannuated on 30.09.2005, while serving at the 129th Bn, Jammu. He was granted superannuation pension in accordance with the CCS (Pension) Rules, 1972, *vide* PPO No. 240550528436 dated 15.09.2005, which was subsequently revised in light of the recommendations of the 7th Central Pay Commission with effect from 01.01.2016.

11. Aggrieved by the non-grant of disability element of the pension and ex-gratia, despite the permanent disability being medically assessed at 30% and as attributable to service, the petitioner has preferred the present writ petition.

SUBMISSION ON BEHALF OF THE PARTIES

12. Mr. Ankur Chhibber, the learned counsel for the petitioner submitted that the petitioner cleared the medical examination and was declared medically fit at the time of enrollment, having been placed in SHAPE-I medical category. The disability occurred while the



petitioner was engaged in active duty, and the same has been acknowledged by the Medical Board as being attributable to service. Relying on Rule 3-A of the CCS (EOP) Rules, he submitted that a disability attributable to service, entitles the individual to a disability pension. Therefore, the petitioner is eligible for the grant of the disability element of the pension.

13. The learned counsel further submitted that the respondents have failed to appreciate that a remedy pertaining to a claim for pension may be invoked even belatedly, and if invoked, would have to be decided on merits. Therefore, delay is no barrier in making a claim of disability pension. The petitioner's claim, therefore, cannot be rejected on the grounds of delay and laches.

14. Mr. Chhibber submitted that the case of the petitioner falls under the Category 'B' of the classification as per the CCS (EOP) Rules, as the disability of the petitioner has been found attributable to the conditions of service, and, therefore, he is entitled to the benefits under the applicable pensionary rules.

15. The learned counsel for the petitioner, in support of his claim, has placed reliance on the following judgment:

- *Dharamvir Singh v. Union of India & Ors.*, 2013(7) SCC 316.
- *Union of India v. Bali Ram*, 2014 SCC OnLine HP 5316.
- *Sukhvinder Singh v. Union of India*, (2014) 14 SCC 364.
- *Union of India vs Tarsem Singh*, 2008(8) SCC 648.



- ***Ex Sep Chain Singh thr Lr. Dhaneshwari Devi v. Union of India &Ors.***, Civil Appeal Diary No. 30073/2017.

16. Mr. Bhagwan Swarup Shukla, the learned counsel for the respondents, while seeking dismissal of the petition, submitted that the present petition suffers from delay and laches, as the petitioner did not raise his claim for disability pension within the time frame of five years as prescribed in Rule 6 of the CCS (EOP) Rules, 1972. Since the petitioner has approached this Court nearly 14 years after his superannuation on 30.09.2005, the petition is liable to be dismissed. He submitted that the superannuation pension, as admissible under the CCS (Pension Rules), has already been sanctioned in favour of the petitioner.

17. Moreover, he submitted that the case of the petitioner would fall under Category 'E' instead of Category 'B' of the categorization as per Schedule II of the CCS (EOP) Rules, however, since the petitioner was not boarded out from service due to his disability and he proceeded on superannuation on 30.09.2005 upon reaching the age of superannuation, the disability pension was not admissible to him under the provisions of Rule 9 of the CCS (EOP) Rules.

18. Mr. Chhibber, in order to rebut the aforesaid submissions on behalf of the respondents, submitted that the respondents cannot claim that the petitioner is not eligible for disability pension merely because he has superannuated and was not invalidated out of service. He submits that it was due to the lackadaisical approach of the respondents, as even though they were aware of the disability of the



petitioner and that he was unable to perform his duty, kept prolonging his invalidation from the service. Thus, the petitioner cannot be made to suffer due to prompt action not being taken by the respondents for boarding him out from the service.

ANALYSIS AND FINDINGS

19. Having heard the learned counsels for the parties and perused the record, at the outset, we begin by noting that the respondents came to the conclusion that the petitioner was suffering from a permanent disability to the extent of 30% only on 13.02.2004, that is, one year before his superannuation. The effect of the disability suffered by the petitioner, also manifested itself when he was denied promotion to the post of Inspector in the year 2003. Therefore, to insist that the petitioner should have applied for grant of ex-gratia amount within five years of the date of injury would be unreasonable restriction on the legitimate claim of the petitioner. It must be remembered that there is no dispute that the petitioner has suffered 30% disability due to the gun shot injury suffered by him in the line of duty. In fact, once there was no dispute of the petitioner having suffered injury/disability due to the gunshot injury in the line of duty, the respondents on their own should have release the ex-gratia amount to the petitioner immediately rather than waiting for a formal application from the petitioner.

20. As far as the submission of the respondents that the petitioner had approached this Court after a delay of 14 years from the date of his superannuation, it is apposite to refer to the decision of the Supreme Court in the case of *Union of India and Ors. v. Tarsem*



Singh (supra), wherein, the Supreme Court considered the principles of the ‘continuing wrong’ and ‘recurring wrong’ in the service matters, and held as under: -

“10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition.... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.”

7. To summarize, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”



21. Reference may also be made to the decision of the Supreme Court in the case of ***Ex-Sep Chain Singh v. UOI and Ors. (supra)***, wherein it was held as under: -

“...we are of the opinion that the aforesaid approach of the Tribunal is clearly erroneous. It was a matter of pension, that too disability pension, which was claimed by the appellant and in a case like this it would be a continuous cause of action simply because of the reason that if pension is due and payable to the appellant, the appellant would be entitled to receive the same every month.”

22. From the above-mentioned decisions, it emerges that given the recognition of such claims as involving a continuing cause of action, and that the administrative action in question does not adversely affect the rights of third parties, a delayed claim for disability pension/ex-gratia payment for a disability suffered cannot be rejected solely on the ground of limitation..

23. Now, we may proceed to examine the submissions made by the parties on the merits of the case.

24. The key issue that arises for determination is whether the petitioner, who was not invalidated out of service on account of disability but retired on superannuation upon attaining the age of retirement on 30.09.2005, would nonetheless be entitled to disability pension in terms of the provisions contained the CCS (EOP) Rules.

25. First, it is necessary to note that the petitioner’s claim is under Rule 3-A of the CCS (EOP) Rules, 1939, which reads as under:

“3-A. Disablement/Death.



(1) (a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which -

(i) is attributable to Government service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by -

(i) a wound, injury or disease which was attributable to Government service or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

(2) There shall be a causal connection between -

(a) disablement and Government service; and

(b) death and Government service, for attributability or "aggravation to be conceded.

Guidelines in this regard are given in the Appendix, which shall be treated as part and parcel of these Rules."

26. Rule 9 of the CSS (EOP) Rules deals with the payment of disability pension to those government servants who acquired such disability during service. The Rule reads as under:

"9. (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 lumpsum 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 lumpsum (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:

Provided that the broad banding as provided in the sub-rule (3) of Rule 8 shall not be applicable in such cases."

27. As per sub-rule (3) of Rule 9, when an individual is retained in serviced despite the disability suffered, he shall be paid compensation in a lump sum in lieu of the disability pension. Disability pension is ordinarily payable to an individual who, due to a disability incurred during service, is rendered incapable of discharging his duties and is consequently boarded out from the service on that account. However, in case the individual is retained in service despite such disability, he would not be entitled to disability pension, as he remains entitled to all the benefits of a serving employee, including salary, etc. It is for this reason that sub-rule (3) of Rule 9, entitles him to the grant of compensation in lump sum.

28. In the present case, it is undisputed that the petitioner has suffered a permanent disability assessed at 30%, which is attributable to service. The petitioner retained from service and was not invalidated or boarded out of service because of his disability.



Therefore, it is immaterial whether the case of the petitioner would fall under Category 'E' or 'B' of Schedule II of the CCS (EOP) Rules.

29. Insofar as the submission of the petitioner that the respondents deliberately prolonged the process of his invalidation from service is concerned, we do not find any merit in the same. In this regard, it is noted that the petitioner met with the injury on 02.12.1993, and his disability was assessed for the first time on 16.04.1994. During the 12 years until his superannuation, and even for 14 years thereafter, he did not make any representation to the respondents claiming that he was unable to perform his duties due to his medical condition. On the contrary, he accepted a promotion to the rank of Subedar with effect from 11.11.2004, along with the associated salary benefits.

30. Accordingly, the petitioner meets the eligibility criteria for the injury to be considered as a disablement under Rule 3-A of the CCS (EOP) Rules and, thus, becomes eligible for the grant of disability pension under Rule 9 of the CCS (EOP) Rules.

31. In the conspectus of the facts and circumstances, the petitioner is entitled to compensation in lumpsum (in lieu of the disability pension) under Rule 9(3) of the CCS (EOP) Rules, from the date when the decision was taken by the respondents to retain the petitioner in service despite his disability.

32. Consequently, the petition is allowed in the aforesaid terms. The respondents are hereby directed to assess the amount of compensation in accordance with Sub-rule (3) of the Rule 9 of the CCS (EOP) Rules and release the same within a period of three



months from today. The petitioner shall also be entitled to interest at the rate of 6% from the date of accrual till the date of payment on the amount of compensation, so assessed.

33. The present petition stands disposed of with the above directions.

SHALINDER KAUR, J

NAVIN CHAWLA, J

MAY 19, 2025/SK