



GAHC010088932022



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.P(C) No.3093/2022

Sh. Nek Mohammad,

Aged about 44 years, S/O- Sh. Gulzar
Mohammad, Village- Dharot Dhirti,
P.O.- Kakryal, District- Reasi, Jammu
& Kashmir, PIN-182320, presently
residing at Railway Colony,
Patharkandi, Silchar, District-
Karimganj, Assam

.....Petitioner

-Versus-

1. The Union of India

Represented by the Secretary to the Govt. of India,
Ministry of Home Affairs, New Delhi-110001

2. The Director General of Assam Rifles,

Shillong, Meghalaya-11,

3. The Commandant,

Assam Rifles Training Centre and School Dimapur,
Nagaland-797115

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Ms. S. Bora, Advocate

Advocate for the respondents : Ms. B. Sharma, CGC

Date of Judgment & Order: : **23.01.2024**



JUDGMENT AND ORDER (ORAL)

The petitioner before this Court was a member of Paramilitary Force, Assam Rifles. Pursuant to a selection procedure to which the petitioner had applied for, he was selected and appointed to the post of Riflemen/GD (General Duty). The petitioner joined in the Assam Rifles Training Centre and School, Dimapur, Nagaland on 12.10.2002. After due verification of all relevant documents as well as medical checkup, the petitioner was found to be fit and he was accepted to be a member of the Force. He was then deputed for Military Basic Training to "Gharwal Rifles Training Centre" Lancedown, Uttarakhand. During the final test of the basic military training, while he was undergoing Battle Physical Efficiency Test (hereinafter referred to as "BPET"), he suffered an injury leading to a fracture in his right knee. He was admitted to Military Hospital, Dehradun, Uttarakhand and thereafter referred to Base Hospital, Lucknow for further treatment. The medical term for the injury suffered by the petitioner was *Supra Condylar Fracture (RT) Femur (optd)*. After his treatment, he was sent back to Assam Rifles Training Centre & School, Dimapur. Although the petitioner reported to the Assam Rifles Training Centre, Dimapur in the month of October, 2003, he



was kept there without any medical treatment and medical checkup and only light duty was given to him.

2. While he was rendering his service, he received a letter dated 28.10.2003 from the Office of the No.1 Training Battalion, Assam Rifles Training Centre & School, whereby the petitioner was discharged from service on 31.10.2003 (A/N). It is submitted that the petitioner was discharged from service without any disability pension and sent home with his injury that he suffered on his right knee. Although various applications and representations were filed before the authorities by the petitioner, however, he was not granted his pensionary benefits. The petitioner not being conversant with the Rules and Procedure, pursued the matter through the Department by filing necessary representations. Finally his legal advisor issued a legal notice dated 26.09.2012 under Section 80 of the Code of Civil Procedure, 1908.

3. Pursuant to the legal notice, he was served with a communication dated 19.01.2013 whereby the petitioner was directed to report to the Assam Rifles Composite Hospital, Shokhuvi, Dimapur, Nagaland on 11.02.2013 at 0800 hrs before the Medical Board to carry his re-examination as per the finding of



by the earlier Medical Board. Accordingly, the petitioner reported to the Assam Rifles Composite Hospital, Shukhovi where he was medically examined by the Assam Rifles' Doctors and the Medical Board. It is submitted that the petitioner was made to sign on some papers and he was informed that his pension papers will be sent to the Assam Rifles Headquarters and he was asked to return home. Although the petitioner was awaiting for grant of pensionary benefits but there was no response from the authorities and no pensionary benefits was granted. He, thereafter, submitted another representation before the Director General, Assam Rifles and in response, he was served with a communication dated 24.09.2020 by which he was asked to submit certain documents mentioned in the said communication in triplicate. Accordingly, the petitioner submitted the required documents in triplicate in response to the said communication. Thereafter by another communication dated 16.07.2021 further documents were directed to be submitted by the concerned office pursuant to which the petitioner duly furnished those documents as well.

4. It is submitted that inspite of all the documents having been submitted and duly accepted by the respondent authorities, his case for disability pension was not considered and his pension



was not released. It is submitted by the learned counsel for the petitioner that under the provisions of CCS (Extraordinary) Pension Rules, 1939, the petitioner is entitled to be granted disability pension as his disability has been held to be 40%.

5. The learned counsel for the petitioner submits that a Co-ordinate Bench of this Court in W.P.(C) No. 7473/2016 by order dated 13.12.2018 had granted disability pension under similar circumstances. That apart, a Division Bench of this Court in W.A. No. 332/2021 by Judgment dated 10.01.2022 had also held that for grant of disability pension, the pensionable service of 10 years is not necessary. Under such circumstances, the petitioner ought to have been granted the disability pension. It is submitted that the issues involved in W.P.(C) No. 7473/2016 and W.A. No. 332/2021 and the issues involved in the present proceedings are similar and therefore the Judgment and Orders passed in W.P.(C) No. 7473/2016 and W.A. No. 332/2021 respectively squarely cover this case. It is submitted that the writ petition should be allowed and the respondents be directed to grant disability pension.

6. Per contra, Ms. B. Sharma, learned CGC appearing for the respondents disputes the contentions raised by the petitioner. The



learned CGC refers to the affidavit filed by the respondent authorities. It is submitted that the writ petition has been filed after a lapse of more than 18 years and therefore, the petition should be dismissed on the ground of delay. It is further submitted that against the recommendations of the Medical Board, there is a provision under the Rule to prefer an appeal within a period of 30 days from the date of such recommendation by the Medical Board. No such appeal, as required, was filed by the petitioner for constituting a review Medical Board. That apart, the Medical Board opinion recommending invalidating the petitioner out of service has clearly reflected that the injury is not attributable/aggravated by service conditions. The learned counsel for the respondents disputes that the contention of the counsel for the petitioner that the petitioner was a regular member of the force. It is submitted that he was put up for training at Gharwal Rifles Training Centre" Lancedown, Uttarakhand and it is only after successful completion of the said training, the petitioner would have been considered to be a regular member of the force. Therefore, it cannot be said that the injury suffered by the petitioner leading to invalidation of his service on medical grounds was attributable to or aggravated by his service under the Assam Rifles. Since, his training period is not



considered to be a service under the Assam Rifles, he is not entitled to get pension under the CCS (Pension) Rules or the CCS (Extraordinary Pension) Rules. The learned counsel for the respondents has pressed into service the Judgment of this Court dated 16.05.2013 rendered in W.P.(C) No. 329/2012 whereby the petition was dismissed as the same was filed after a period of nearly 15 years. A Judgment of the Delhi High Court dated 19.10.2016 passed in CM No. 34282/2016 and W.P.(C) No. 8275/2016 and Judgment dated 07.02.2014 passed by the Meghalaya High Court in W.P.(C) No. 343/2013 are also pressed into service in support of her contentions that the Court ordinarily does not exercise its extraordinary jurisdiction when there is a gross delay on the part of the litigant and where belated interference will unsettle the settled matters. It is further submitted that the petitioner had merely put in one year of service and did not have the requisite service of 10 years to claim for any pension.

7. The learned counsel for the parties have been heard. Pleadings on record have been carefully perused. There is no dispute on facts that the petitioner suffered his injuries leading to his discharge from the force during the training which he had undergone. The petitioner suffered his injuries – "Supra Condylar

Fracture (RT) Femour (optd)” during that BPET. A perusal of medical opinion of the Medical Board which is available in the pleadings reflects the injuries suffered by the petitioner and that he has been recommended to be invalidated out of service by placing him in medical category in A-5 by the concerned specialist in Orthopedics.

8. From a perusal of the opinion of the Medical Board, it is seen that in the check list filled up, it is indicated that the disabilities did not exist before entering service. Further, the report reveals that the petitioner suffered injury, namely “Supra Condylar Fracture (RT) Femour (optd)” was on 16.03.2003 during the BPET. There is no medical opinion seen that the disability was attributable to the individual for his own negligence of misconduct. It is seen from the medical report that the disability has been described as under:

<i>Disability as numbered in Question I part II</i>	<i>Percentage of disablement</i>	<i>Probable during of this degree of Disablement</i>	<i>Composite assessment (all disabilities)</i>
<i>Supra Condylar Fracture (Rt) Femur (OPTD)</i>	<i>40%</i>	<i>Life long</i>	<i>40%</i>

In view of the injuries suffered as extracted above, petitioner was placed under medical category A-5 and was consequently invalidated out of service by the Medical Board.

9. Coming to the Rules under the Central Civil Services (Extraordinary Pension) Rules, it is seen that under Rule 2, it is provided that these Rules shall apply to all persons paid from Civil Estimates, other than those to whom the Workmen's Compensation Act, 1923 applies, whether their appointment is permanent or temporary on the scale of pay or fixed pay or piece-work rates who are under the rule making control of the President of India.

10. *Accident* has been defined under Rule 3 as under:

"(1) *"accident" means-*

(i) a sudden and unavoidable mishap; or

(ii) a mishap due to an act of devotion to duty in an emergency arising otherwise than by violence out of and in the course of service"

11. Injuries are defined under Rule 3(3) as mentioned in Schedule-I appended to the rule.

12. That apart, there is an Office Memorandum dated 12.02.2019 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension wherein it is clarified that invalid pension can be granted under Rule 38 of the CCS Pension Rules, 1972. By the said OM,

it is clarified that the Rules provide that the Government Servant who retires from service on account of any bodily or mental infirmity which permanently incapacitates him from service before completing the qualifying service of 10 years may be granted invalid pension in accordance to Sub Rule 2 of Rule 49 subject to the condition that the Government servant was examined by appropriate medical authority either before his appointment or after his appointment and was declared fit by that authority and that he fulfils all other conditions mentioned in these Rules for grant of invalid pension.

13. Under Rule 38 of the CCS Pension Rules, if the Government servant acquires a disability where provision of Section 20 of the Rights of Persons with Disability Act 2016 are applicable, they shall be governed by the provisions of the said section.

Under Sub Rule 2 of Rule 38 of the CCS Pension Rules, if the Government servant is not covered under Section 20 of the Rights of Persons with Disability Act 2016, and he retires from service on account of any bodily or mental infirmity which permanently incapacitates him for service, he may be granted invalid pension in accordance with Rule 49.

Proviso to Sub Rule 2 of Rule 38 stipulates that any Government Servants who retires from service on account of bodily or mental infirmity which permanently incapacitates him for the service before



completing qualifying service of 10 years, such person may also be granted invalid pension in accordance with Sub Rule 2 of Rule 49 subject to the condition that he has been examined by appropriate medical authority before his appointment or after his appointment and declared fit by the said medical authority and further that he fulfils all other conditions mentioned in the Rule for grant of invalid pension.

Sub Rule 3 of Rule 38 provides that where the Government Servant is covered under Sub Rule 2 and applies for invalid pension then he shall be required to submit a medical certificate of incapacity from the authorised competent medical authority. The form of medical certificate to be granted by the Medical Authority is prescribed in Form 23 of the said Rules. Rule 32 and 38 of the CCS Pension Rules are extracted below:

"32. Verification of qualifying service after [eighteen years] years service, [and] [five years] before retirement

(1) On a Government servant completing [eighteen years] of service [and] on his being left with five years of service before the date of retirement, whichever is earlier, the Head of Office in consultation with the Accounts Officer shall, in accordance with the rules for the time being in force, verify the service rendered by such a Government servant, determine the qualifying service and communicate to him, in [Form 24](#), the period of qualifying service so determined. substituted vide

[(1A) For the purposes of verification of service, the Head of Office shall follow the procedure provided in clause (a) of rule 59.]

(2) Notwithstanding anything contained in sub-rule (1), where a Government servant is transferred to another department from a temporary department or on account of the closure of the department he had been previously serving or because the post he held had been

declared surplus, the verification of his service may be done whenever such event occurs.

(3) The verification done under sub-rules (1) and (2) shall be treated as final and shall not be reopened except when necessitated by a subsequent change in the rules and orders governing the conditions under which the service qualifies for pension.

38. Invalid pension

(1) The case of a Government Servant acquiring a disability, where the provision of Section 47 of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) are applicable, shall be governed by the provisions of the said section:

Provided that such employee shall produce a disability certificate from the Competent Authority as prescribed under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996, as amended from time to time.

(2) If a Government Servant, in case where the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) are not applicable, retires from the service on account of any bodily or mental infirmity which permanently incapacities him from the service he may be granted invalid pension or service gratuity in accordance with Rule 49, depending upon the length of his qualifying service on the date of retirement.

(3) Where a Government servant, referred to in sub-rule (2), applies for an invalid pension, he shall be required to submit a Medical Certificate of incapacity from the following Medical Authority, namely:-

(a) a Medical Board in the case of a Gazetted Government servant and of a non-Gazetted Government servant whose pay, as defined in Rule 9 (21) of the Fundamental Rules, exceeds fifty-four thousand rupees per mensem:

(b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases,

(4) The form of the Medical Certificate to be granted by the Medical Authority specified in sub-rule (3) shall be as in Form 23.

(5) Where the Medical Authority referred to in sub-rule (3) has declared a Government servant mentioned in sub-rule (2) fit for further service of less laborious character than that which he had been doing, he shall, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension or service gratuity, as the case may be, under Rule 49. "

14. A perusal of the Rule 32 of the CCS Pension Rules as well as the CCS (Extraordinary Pension) Rules reveals that Rule 38 is meant for an invalid pension whereas CCS (Extraordinary Pension) Rules relate to disability pension. The Government of India Office Memorandum dated 27.10.1997 has clarified that the element of disability pension and invalid pension may be treated as distinct pensions. Invalid pension may continue to be regulated as per CCS (Pension) Rules subject to certain minimum amount and the Extraordinary Disability pension be continued to be treated as a separate element and these should be fixed as per the degree of disability.

15. On the attending facts and circumstances of the present proceedings, it is seen that the petitioner suffered injuries at the BPET as a result of which he suffered a fracture on his right knee and he was invalidated out of his service and discharged as he was placed under medical category of A-5. The Medical Board constituted by the Assam Rifles authorities have held that the petitioner is not fit to be retained in service.

16. A careful perusal of the Rules as discussed above reveals that for claiming pension under the CCS (Extraordinary) Pension Rules, the disability suffered by the petitioner on account of which he was unable to render further service has been elaborately prescribed under

Schedule-I appended to the Rules. The Schedule-I contains a list of injuries which may be suffered by any Government Servant resulting in permanent, total or partial disablement. The table also indicates the percentage of loss of the earning capacity vis-à-vis the injuries suffered. Schedule-I-A, lists the deceases which can be contracted by service.

17. A careful perusal of the lists reflects that the injuries suffered by the petitioner are not shown to be an injury listed under Schedule-I or Schedule-I-A appended to the Rules. It is clear from a bare perusal of the Rules that the entitlement of extraordinary pension under these Rules require an injury to have been suffered by the Government servant and an injury which is specified in the Schedule-I or Schedule-I-A. Whereas under Rule 28 of the Invalid Pension Rules, no such schedule is found. The only pre-conditions reflected under the invalid pension under Rule 38 is that the Government servant must be examined by appropriate medical authority either before his appointment or after his appointment to the Government service and be declared fit by such medical authority for Government service. And further that he fulfils all other conditions mentioned under this Rule.

18. Under the CCS Pension Rules, there is a qualifying service which is required to be completed in order to receive pensionary benefits under the CCS Rules. However, the Office Memorandum as well as the Judgments of this Court in W.P.(C) No. 7473/2016 and W.A. No.

332/2021 it is clearly held that the qualifying service will not be a bar in considering the cases of the petitioner for grant of invalid pension. The Co-ordinate Bench relates to grant of pension under CCS (extraordinary) Pension Rules. In the facts of that case, the Co-ordinate Bench of this Court vide order dated 13.12.2018 passed in W.P.(C) No. 7473/2016 arrived at a finding that the injury suffered by the petitioner therein was an injury which is covered under Schedule-I-A of the CCS (Extraordinary) Pension Rules and therefore accordingly directed the respondents therein to pass orders for grant of disability pension under CCS (Extraordinary) Pension Rules. However, in the facts of the present proceedings as discussed above, the injury suffered by the petitioner is not found to be listed as one of the injuries as mentioned under Schedule-I or Schedule-I-A of the Rule 3(3) and 3(4) respectively of the CCS (Extraordinary) Pension Rules. Accordingly, the petitioner cannot claim disability pension under the CCS (Extraordinary) Pension Rules as the injury suffered by the petitioner is not found listed in Schedule-I or Schedule-I-A appended to the said Rules.

19. The question of grant of invalid pension under CCS Pension Rules has been dealt with by a Division Bench of this Court rendered in by W.A. No. 332/2021 vide Judgment and Order dated 10.01.2022. This Court had upheld that injury sustained during training is an injury attributable to his service condition and that there is absolutely no reason for



denying the disability pension to such a person. The Judgment of the Co-ordinate Bench was accordingly upheld and the writ appeal preferred by the Union was dismissed and the respondents were directed to release the pensionary benefits. It was further held by the Division Bench of this Court that for grant of invalid pension, requirement of 10 years is not a condition precedent. The circumstances in the present case are similar to those the W.A. No. 332/2021. Since the Division Bench has held that for an injury suffered during training the personnel will be entitled to Invalid Pension and for grant of such pension qualifying service of ten (10) years is not necessary for grant of Invalid Pension if the Personnel is otherwise eligible. Under such circumstances, it has to be held that the claim of the writ petitioner for grant of invalid pension under Rule 38 of CCS Pension Rules has to be upheld.

20. Pension has been held to be not a bounty by the Apex Court and is held to be lawful entitlement to a Government servant for the services rendered. Under such circumstances, where the entitlement of the petitioner was denied by the respondent authorities for no fault of the petitioner, no delay or laches can be attributed to the petitioner as he was employed only as a Rifleman/GD. The respondent authorities were duty bound to release the entitlement of the petitioner under the relevant Rules. The petitioner was invalidated out of service as per the recommendation of the Medical Board and which fact is not in dispute.



The injuries sustained by the petitioner was during the training period is not in dispute. The denial of Invalid Pension by the respondents will have to be treated to be a "Continuing Wrong" notwithstanding the long period of time after which the petitioner first raised his claim by issuance of Section 80 Notice through his legal advisor. It is a service related claim based on a continuing wrong. Entertaining such a claim at this stage will not amount to re-opening any settled issues involving any third party rights.

21. Under such circumstances, denial of the claim of the petitioner for invalid pension for no fault of the petitioner cannot be used as a ground to non-suit the petitioner towards his lawful claim and entitlement of invalid pension as provided for under the CCS (Pension) Rules. However, it must be held that grant of arrear of pension shall be restricted to a period of only three (3) years prior to filing of this writ petition.

22. In that context, the submissions of the respondents that the writ petition should be dismissed on the ground of delay and laches cannot be accepted and has to be overruled. Consequently, the Judgments relied upon by the respondents in support of their contentions also does not come to the aid of the respondents in the facts of the present proceedings.



23. In view of all the discussions above, the writ petition stands allowed.

The petitioner's claim for invalid pension is required to be examined by the respondent authorities forthwith and necessary order releasing the invalid pension payable to the petitioner be issued by the authorities as expeditiously as possible within the outer limit of 60 (sixty) days from the date of receipt of a certified copy of this order.

24. With the above observation, the writ petition stands allowed and disposed of. No order as to cost.

JUDGE

Comparing Assistant

Order downloaded on 18-05-2024 05:55:25 PM