

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 04.02.2014

OA No. 580/2012

Mr. Sumit Khandelwal, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 580/2012

DATE OF ORDER: 04th February, 2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

S.P. Singhal S/o late Shri P.L. Singhal, aged about 66 years, R/o 129, Shankar Colony, Naya Khera, Ambawadi, Jaipur [retired AE (Civil)].

...Applicant
Mr. Sumit Khandelwal, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Ministry of Defence, South Block, New Delhi – 110011.
2. The Engineer in Chief, E-In-C's Branch, Integrated HQ of MOD (Army), Kashmir House, DHQ PO, New Delhi – 110011.
3. The Chief Engineer, HQ CE, Power House Road, Jaipur Zone, Jaipur.
4. The Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad – 211014.
5. The Central Records Office (Officers), C/o CE Delhi Zone, Delhi Cantt – 10.

...Respondents
Mr. Mukesh Agarwal, counsel for respondents.

ORDER

Earlier, the applicant had filed an O.A. No. 435/2009 with a prayer that the disability pension be allowed to the applicant as per the rules on the subject with effect from 01.09.2006 with all the arrears till date.

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2. This Tribunal vide order dated 18th October, 2011 permitted the applicant to make a representation within 15 days from the date of receipt of a copy of that order before the respondents for grant of 60% pension and the respondents were directed to decide the same with a reasoned and speaking order expeditiously but not later than a period of two months from the date of receipt of the representation.

3. In pursuance to the directions of this Tribunal, the applicant submitted a representation to the respondents but the same has been rejected vide order dated 17.05.2012 (Annexure A/1) by the respondents. The applicant being aggrieved by the rejection of his representation has filed this Original Application.

4. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant while working on the post of JE Civil in the office of AEBR II, met with an accident when he was going to the site work of DAD project on 07.04.1998. The said accident took place at Rajendra Chowk in the military area at about 11.45 Hrs. Immediately after the accident, the applicant was admitted in the Military Hospital from where he was referred to the SMS Hospital and after a long treatment, he was declared 60% physically disabled.

5. Learned counsel for the applicant further submitted that prior to the superannuation; the applicant forwarded his pension claim including the claim for disability pension to the respondent

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no. 4 through respondent no. 5 on 30.12.2005 (Annexure A/2).

After receiving the aforesaid claim, respondent no. 3 (CE, Jaipur Zone) sent a letter to the authorities at SMS Hospital regarding the constitution of Medical Board for assessing the percentage of disability in respect of the applicant vide his letter dated 16.02.2006 (Annexure A/3).

6. Learned counsel for the applicant also submitted that it is pertinent to mention here that after receiving the letter dated 16.02.2006, the Head of Department of the SMS Hospital intimated that since a permanent disability certificate has already been issued on 21.06.2004 (Annexure A/4) by the SMS Hospital, there is no need of constituting a medical board for the same purpose again. It is further submitted that the application dated 30.12.2005 regarding pension case of the applicant was forwarded to PCDA vide letter dated 02.03.2006.

7. Learned counsel for the applicant submitted that after receiving the remarks of the SMS authorities, the respondent no. 3 vide his letter dated 14.03.2006 (Annexure A/5) asked the respondent no. 5 to initiate the disability pension documents to respondent no. 4 and proceed in the matter as the applicant was about to superannuate on 31.08.2006. After receiving the letter dated 14.03.2006, the respondent no. 5 sought certain clarification from respondent no. 4 regarding the eligibility of the applicant for grant of disability pension.

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8. Learned counsel for the applicant further submitted that the applicant thereafter stood superannuated on 31.08.2006 but till that date no clarification was issued from the office of the respondent no. 4. Thereafter, the applicant again forwarded his case of disability pension as per clause 13 (4) I to IV of Swamy's pension compilation, in triplicate on 30.08.2006 (Annexure A/7). Thereafter, the case of the applicant was forwarded to CRO (respondent no. 5) on 29.09.2006 and the case was kept by respondent no. 5 (CRO) for certain clarification from PCDA Allahabad (respondent no. 4). In turn the respondent no. 4 returned the case of disability pension of the applicant on 25.02.2008 stating therein that claim may be forwarded in Form 'A' along with full statement of case duly signed by the Head of Office of the Unit. Thus, the documents of the applicant were kept on being sent from one office to another with different remarks but the disability pension case could not be finalized.

9. Learned counsel for the applicant argued that the applicant was forced to file an original application for grant of disability pension, which came to be registered as OA No. 435/2009 and the same came to be disposed of vide order dated 18.10.2011 with the direction to the respondents to consider the representation for grant of 60% disability pension, by passing a reasoned and speaking order expeditiously but not later than a period of two months from the date of receipt of the representation. In compliance of the aforesaid direction, the respondent no. 4 passed an order dated 17.05.2012 thereby



rejecting the case of the applicant for grant of disability pension on the ground that the applicant could not documentarily prove that the accident has occurred while the applicant was on duty.

10. Learned counsel for the applicant further submitted that the respondents have failed to take notice of the fact that the applicant was granted special disability leave for a period of 120 days with effect from 11.04.1998 to 08.08.1998 as the day i.e. 07.04.1998 on which the accident took place was a working day followed by three consecutive holidays on 08th, 09th and 10th on account of Idu'l Juha, Mahavir Jayanti and Good Friday, respectively. Hence, the applicant was treated on duty as he was granted the leave with effect from 11th April, 1998. According to the CCS (Leave) Rules, 'the special disability leave is admissible to all employees, who are disabled by any injury or illness incurred in the performance of his duties.' Hence, the respondents have themselves treated the accident to have occurred on duty while granting the disability leave but when it came for grant of disability pension, they have denied this aspect and the respondents stated that the applicant could not documentarily prove that the accident occurred while the applicant was on duty.

11. Learned counsel for the applicant also stated that the applicant has been allowed the Transport Allowance at double the normal rate treating him as suffering from 60% disability.

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12. Learned counsel for the applicant further submitted that the respondents have time and again raised the objection that the applicant has not submitted certain documents such as: -

- "(a) Court of Inquiry / Board of Officers to assess the facts of the accident.
- (b) FIR lodged in the police station.
- (c) Central Military Police Report of the accident.
- (d) Copy of accident report.
- (e) Medical treatment documents from SMS Hospital."

In regard to the above, it is submitted that the Court of Inquiry was a process to be followed by the respondents themselves for which the applicant cannot be held liable. Secondly, the respondents demanded the FIR and CMP report in the year 2009 for the first time and when the applicant endeavored to obtain the same, it was brought to his knowledge that the records of FIRs is kept only for a period of ten years and the records of CMP is kept for a period of five years and since the aforesaid period has expired, the documents have been weeded out. Moreover, rest all documents have been submitted by the applicant along with his application for disability pension. Thus, the respondents cannot deny the benefits of disability pension to the applicant for the acts which were beyond his control; hence, the impugned order deserves to be set aside.

13. Learned counsel for the applicant argued that it is a normal practice in the accident cases that the injured is treated in the SMS Hospital only after a report is lodged in the Civil Police

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Station and when applicant's Scooter No. RPI 7561 was deposited by Central Military Police in Yadgaar i.e. Civil Police HQ, the same procedure was adopted in the case of the applicant also. Further the respondents have themselves not processed the claim within time and after about ten years or so they demanded certain documents which were weeded out. Hence, the delay was on the part of the respondents and they have never intended to grant the disability pension to the applicant and on one pretext or the other they have always tried to delay the matter. Further now the applicant cannot be made to suffer for the lapse on the part of the respondents and, thus, the impugned orders deserves to be set aside in the larger interest of justice.

14. Learned counsel for the applicant also submitted a copy of the Form 'D', which deals with the report on Accidental and Self-inflicted Injuries. In column no. 5, the Head of Office has certified the injury / disability / occurred in peace area and is attributable to government service. This also shows that the accident took place while the applicant was on duty. Therefore, he prayed that the impugned order dated 17.05.2012 (Annexure A/1) may be quashed and set aside and the respondents be directed to grant disability pension to the applicant with effect from 01.09.2006 with all the arrears till date along with interest.

15. On the other hand, learned counsel for the respondents submitted that in compliance of the order dated 18.10.2011

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passed by this Bench of the Tribunal in OA No. 435/2009, the respondents have duly considered the representation submitted by the applicant and it has been rejected by a speaking and reasoned order dated 17.05.2012 (Annexure A/1).

16. Learned counsel for the respondents further submitted that the applicant could not documentarily prove that the accident has occurred while he was on government duty, which is primary condition as laid down in CCS (EOP) Rules, Para 3(A)(1)(a)(i) and, therefore, he is not eligible for disability pension. Thus, the order dated 17.05.2012 is legal and the applicant has no ground to challenge the same.

17. Learned counsel for the respondents also submitted that the applicant met with an accident on 07th April, 1998. As per medical certificate issued by Govt. of Rajasthan, Medical & Health Department, dated 21st January, 2004, 60% disability was shown. The applicant has submitted his own statement that he was going to the site of work of DAD project on 07th April, 1998 but said statement cannot be corroborated with other sources since no Court of Inquiry / Board of Officers, FIR report of the accident is available.

18. Learned counsel for the respondents further submitted that however the applicant was granted double transport allowance and also the special disability leave.

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19. Learned counsel for the respondents argued that after the directions of this Tribunal in OA No. 435/2009, the office of respondent no. 3 resubmitted the documents for grant of disability pension in respect of the applicant vide letter dated 30th April, 2012 along with Form 'A' stating at para 8 "60% (due to accident on duty)" countersigned by HOO of respondent no. 3 and in Form 'D' upholding para 4 (a) (II) duly countersigned by HOO of respondent no. 3. However, the same was returned by the office of respondent no. 4 vide letter dated 11th June, 2012. The office of respondent no. 4 holds that the disability certificate issued by a hospital to Government servant, further the sanction of double TPT allowance is the welfare measure of the Govt. to its employees and it has no relation with the disability CCS (EOP) Rules, Para 3 (A) (I) (a) (i).

20. Learned counsel for the respondents further submitted that the case of the applicant for grant of disability pension was earlier submitted to respondent no. 4 on 29th September, 2006. However, it was returned by the office of respondent no. 4 stating that the claim may be forwarded in Form 'A' along with full statement of the case duly signed by the HOO of the Unit. He also drew my attention to Rule 3-A of Central Civil Services (Extraordinary Pension), Rules, which provides the circumstances under which the disability pension can be sanctioned. He argued that since the case of the applicant does not fall under Rule 3-A of Central Civil Services (Extraordinary Pension), Rules, therefore, he could not be sanctioned disability

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pension. Therefore, the Original Application has no merit and it should be dismissed with costs.

21. Heard learned counsel for the parties and perused the documents available on record.

22. When the case came up for hearing on 28th January, 2014, learned counsel for the respondents was directed by this Tribunal to show whether the applicant was on duty on the date of accident or was he on leave? He was also directed to clarify whether it was the working day on which the accident took place or it was a holiday? On 29th January, 2014, learned counsel for the respondents submitted that the date of accident i.e. 07.04.1998 was a working day but he could not verify whether the applicant was on leave on that date or not? He further submitted that as per the their reply in para 4.1 since no Court of Inquiry / Board of Officers, FIR report of the accident is available, therefore, it cannot be corroborated whether the applicant was on duty or not.

23. Learned counsel for the respondents was further directed by this Tribunal vide order dated 29.01.2014 to produce the rules regarding the constitution of the Court of Inquiry / Board of Officers and its functioning. He was also directed to clarify that in case of accident of an employee, who constitutes the Court of Inquiry / Board of Officers. On the same date i.e. 29.01.2014, the applicant, who was present in person, submitted that his

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duty hours were from 09.00 AM to 05.00 PM and he was going from office to the project site at the time of accident. In compliance of the directions issued by the Tribunal, the learned counsel for the respondents produced a copy of the instructions regarding the Court of Inquiry and Evidence for the perusal of the Tribunal.

24. From the perusal of the records and from the arguments of the learned counsel for both the parties, it is not disputed that the applicant met with an accident on 07.04.1998 at around 11.45 AM. He was taken to the Military Hospital after the accident and from where he was referred to the SMS Hospital. After the treatment at SMS Hospital, the applicant was issued a certificate regarding 60% disability. Therefore, the brief question before the Tribunal is 'whether at the time of accident, the applicant was on duty or not?

25. It is not disputed between the parties that 07.04.1998 was a working day. The applicant who was present in person on 29.01.2014 submitted before the Court that his duty hours were from 09.00 AM to 05.00 PM and at the time of accident, he was going from office to the project site.

26. It is also not disputed by the respondents that the applicant was sanctioned special disability leave. I have carefully gone through the Rule 44 of Central Civil Services, Leave Rules, which is quoted below: -

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"44. Special disability leave for injury intentionally inflicted

(1) The authority competent to grant leave may grant special disability leave to a Government servant (whether permanent or temporary) who is disabled by injury intentionally inflicted or caused in, or in consequence of the due performance of his official duties or in consequence of his official position.

(2) Such leave shall not be granted unless the disability manifested itself within three months of the occurrence to which it is attributed and the person disabled acted with due promptitude in bringing it to notice:

Provided that the authority competent to grant leave may, if it is satisfied as to the cause of the disability, permit leave to be granted in cases where the disability manifested itself more than three months after the occurrence of its cause.

(3) The period of leave granted shall be such as is certified by an Authorized Medical Attendant and shall in no case exceed 24 months.

(4) Special disability leave may be combined with leave of any other kind.

....."

Bare perusal of Rule 44 (1) (supra) shows that the special disability leave is sanctioned to a Government servant who is disabled by injury intentionally inflicted or caused in, or in consequence of the due performance of his official duties or in consequence of his official position. Therefore, it can be concluded that if the applicant was sanctioned special disability leave by the competent authority then he must have taken into account the provisions of this rule. Rule 44 (3) (supra) also provides that the period of leave granted shall be such as is certified by an Authorized Medical Attendant. Therefore, in this case also the Authorized Medical Attendant must have certified

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that it was a fit case for special disability leave being sanctioned to the applicant.

27. Moreover, the respondents have not rebutted the claim of the applicant that at the time of accident, he was going from office to the project site and that his duty hours were from 09.00 AM to 05.00 PM. It is not disputed by the respondents that the accident took place on 07.04.1998 at around 11.45 AM. It means, the accident took place during the duty hours of the applicant.

28. In a case of serious accident, it is not expected from the person, who meets with an accident, to go to the police station and to lodge FIR. At that time, he is taken to the hospital for treatment. It is the duty of the person who accompanied the applicant to the hospital or some employee of the respondent-department to lodge FIR. In the case of accident, the medical treatment is given only after FIR is lodged; therefore, asking for a copy of FIR after more than 10 years of the accident, is irrelevant.

29. A perusal of Annexure A/3, which is a letter dated 16th February, 2006 issued from the office of the Chief Engineer Jaipur Zone, Power House Road, Banipark, Jaipur to Superintendent, Sawai Man Singh Hospital, Jaipur also shows that the applicant was on duty when he met with an accident on 07th April, 1998. The relevant portion of the letter dated 16th February, 2006 (Annexure A/3) is quoted below: -

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"MES-168232 Shri S P Singhal, AE (Civil) of this office was **met with an accident on duty on 07 Apr 1998** causes permanently handicapped and unable to perform like a normal person."

30. Learned counsel for the respondents led emphasis on the fact that the statement of the applicant that he was going to the site of work on 07.04.1998 could not be corroborated with other source since no Court of Inquiry / Board of Officers is available. Learned counsel for the respondents produced the instructions with regard to the Court of Inquiry and Evidence. Para 1 and 7 of the said instructions are quoted below: -

"Introduction

1. A Court of Inquiry, departmental or staff, is actually a fact finding board. The necessity of such court arises in the following cases: -
 - (a) Losses of stores, cash or documents and serious damages to Govt. property or human lives.
 - (b) Departmental and technical irregularities.
 - (c) Complicated disciplinary cases."

Procedure

7. When a case requiring an inquiry comes to light, the immediate officer (e.g., GE) makes a report to his next superior authority (e.g., CWE). The latter, after sifting the information available decides the necessity or otherwise of a C of I. If he (e.g., CWE) considers that a reference to his superior authority (e.g., CE) is necessary, he does so."

From the perusal of para 7 (supra), it is clear that it is the duty of the immediate officer to make a report to his next superior authority. Thus, it was the responsibility of the respondent-department to constitute such a Court of Inquiry or Board of Officers, if required. The applicant could not have

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constituted such a Court of Inquiry or Board of Officers on his own motion. The report of the accident of the applicant should have been sent by the concerned officers of the respondent-department to the higher authorities to intimate them of the occurrence. If the respondents have not constituted any such Court of Inquiry / Board of Officers then it cannot be treated against the interest of the applicant at this stage. Therefore, to reject the prayer of the applicant for disability pension on the ground that there has been no Court of Inquiry / Board of Officers, has no force.

31. Learned counsel for the respondents drew my attention to Rule 3-A (1) of Central Civil Services (Extraordinary Pension) Rules, which is quoted below: -

"3-A(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."

A bare reading of the said provision makes it clear that the disablement shall be accepted as due to Government service

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provided that it is certified that it is due to wound, injury or disease which is attributable to Government service.

32. Clarification given under Rule 3-A of Central Civil Services (Extraordinary Pension) Rules is reproduced below: -

"Clarification. – It will be seen from the new (revised) Forms 'C', 'D' and 'E' that these forms of medical certificates have been so designed that they would indicate whether the entitlement criteria laid down in new Rule 3-A have been satisfied or not, and therefore, normally, no other separate certificates in that behalf may be necessary."

This provision also shows that once respective certificates have been signed by the competent authorities, normally no other separate certificate would be necessary. In this case, all the necessary certificates have been filled up and signed by the concerned authorities. Therefore, the claim of the applicant for disability pension could not have been rejected on the ground that the applicant could not documentarily prove that the accident has occurred while he was on Government duty, which is the primarily condition as laid down in CCS (EOP) Rules Para 3(A)(1)(a)(i).

33. The office of respondent no. 3 is located at Jaipur where the accident took place and the applicant was working under the respondent no. 3 at the time of the accident. According to the reply of the respondents, it is clear that the case of the applicant for grant of disability pension was recommended vide letter dated 29th September, 2006 and letter dated 30th April, 2012 by the respondent no. 3. Therefore, I am of the opinion that the

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provisions of Rule 3-A(1)(a)(i) of Central Civil Services (Extraordinary Pension) have been fulfilled in this case.

34. Learned counsel for the applicant has also produced Form 'D', which is with regard to report on Accidental and Self-inflicted Injuries. In column no. 5 of this Form 'D', Head of Office, who is a Brigadier, has certified that the injury / disability / occurred in peace area and is attributable to Government service. Thus, the requirement of the provisions of 3-A(1)(a)(i) of Central Civil Services (Extraordinary Pension) Rules have been fulfilled. This document has not been rebutted by the respondents either in the written reply or during the course of the arguments. Moreover, the respondents in their written reply has submitted that the respondent no. 3 had submitted the documents for grant of disability pension in respect of the applicant vide letter dated 30th April, 2012 along with Form 'A' stating at para 8 "60% (Due to accident on duty)" countersigned by HOO of respondent no. 3 and in Form 'D' upholding para 4 (a) (II) duly countersigned by HOO of respondent no. 3. However, it was not accepted by the office of respondent no. 4. But the respondents have not given any specific reason 'why the recommendations of the respondent no. 3 were turned down by the respondent no. 4.

35. On the basis of the above discussions, I am of the opinion that the applicant met with an accident on 07.04.1998 during the performance of his official duties. The applicant was sanctioned special disability leave by the respondents. The respondents have also sanctioned the Transport Allowance at

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double the normal rate treating him as suffering from 60% disability. The respondent no. 3 has recommended the case of the applicant twice for sanction of disability pension. His case was initially forwarded on 29th September, 2006, which was returned by the office of respondent 4 with some objections. It was again forwarded by the respondent no. 3 on 30th April 2012 to the office of respondent no. 4, which was again turned down by the respondent no. 4. This shows that even the office of respondent no. 3 was satisfied that the case of the applicant is a fit case for grant of disability pension, however, the office of the respondent no. 4 has turned down the request of the applicant without any cogent reason. Therefore, I hold that the applicant is entitled for grant of disability pension with effect from 01.09.2006 with all arrears till date.

36. Accordingly, the impugned order dated 17.05.2012 (Annexure A/1) is quashed and set aside. The respondents are directed to grant the disability pension to the applicant with effect from 01.09.2006 with all arrears till date expeditiously but in any case within a period of three months from the date of receipt of a copy of this order.

37. Consequently, the Original Application is allowed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER