

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/02/2004

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

W.P.No.12088 of 2000

S. Jayaraj,
S/o. K. Chithan,
Mallinkuttai Post,
Omalur Taluk,
Salem District,
Tamil Nadu.Petitioner

-Vs-

1. The Union of India,
rep. by its Secretary to Govt.,
Ministry of Defence,
New Delhi.

2. The Director General
Border Security Force,
CGO Complex,
Lodi Road,
New Delhi 110 003.

3. The Commandant,
19th Battalion,
Border Security Force,
C/o.56 APO

4. Accounts Officer,
HQ, DG, BSF,
Pay and accounts Division,
PN-3, Madangir,
New Delhi - 62.Respondents

Writ Petition, under Article 226 of the Constitution of India, for
issuance of a Writ of Mandamus, as stated therein.

For Petitioner :: Mr. Ramesh Venkatachalapathy

For Respondents:: Mr. T. Kumar for
Mr. J. Madhanagopal Rao

:O R D E R

Concededly, the petitioner was recruited as Constable in Border Security Force on 08.02.1981. After the basic recruitment training at Bangalore, he was posted at 19 Battalion during March 1982. However, during deployment of the said unit, the petitioner was posted in high altitude area. Due to continuous exposure in the snow, he developed frostbite. Then, initially he was referred to 153 GH for treatment and ultimately to ALC Pune.

2. The Medical Board in their proceedings certified that the petitioner suffered 100% disability. The Commandant, 19 Battalion, by proceedings dated 08.07.1997 ordered retirement of the petitioner under Rule 25(3) of Border Security Force Rules, 1969 with effect from 08.07.1997 a.n., with 100% disability pension as recommended by the Medical Board and other retirement benefits as admissible. Alleging that 100% disability pension has not been settled, the petitioner has made a representation dated 05.11.1998 to the Director General of Border Security Force, New Delhi. Thereafter, by proceedings dated 03.12.1998, the Deputy Commandant, 19 Battalion informed the petitioner that his case for grant of 100% disability pension as per the rules was under progress.

3. Complaining that even thereafter he was not been settled with the 100% disability pensionary benefits, the petitioner has filed this writ petition for issuance of a Writ of Mandamus, to direct the respondents to sanction and pay 100% permanent disability pension and other consequential service benefits with effect from the date of his retirement.

4. I have heard learned counsel for the petitioner and also the respondents.

5. When there is no dispute about the facts that the petitioner was appointed as a Constable in Border Security Force on 08.02.1981, after the basic recruitment training at Bangalore, he was posted at 19 Battalion during March 1982 and posted in high altitude, where he developed frostbite, he was referred to Medical Board and the Medical Board found 100% disability, on the basis of which he was permitted to retire on 08.07.1997, acknowledging that he is entitled to 100% disability pensionary benefits, as recommended by the Medical Board and informed by the Deputy Commandant that his claim for 100% disability pension as per the rules was under progress, I do not find any justification for the lapses on the part of the respondents in settling the 100 % disability pensionary benefits to the petitioner in time. That apart, even though it is stated that the petitioner was paid his regular pension, when it is not in dispute that the petitioner is entitled for 100% disability pension as communicated to him in the very order of retirement dated 08.07.1997 itself, there is no convincing reason on the part of the respondents for the delay in settling the 100% disability pensionary benefits to the petitioner.

6. In a similar case of undue delay in settling the pensionary benefits of army man, the Apex Court in RAM PAL SINGH ..VS.. UNION OF INDIA AND OTHERS (1984 I S.C.C. 32), having held that the appellant would certainly be entitled to interest and some compensation for the harassment as also the costs of litigation, awarded Rs.50,000/- to the appellant to be paid by an

"Account Payee" cheque within a period of four weeks.

7. The decision of the Apex Court, referred to above is squarely applicable to the case on hand. Hence, I am inclined to direct the respondents to settle 100% disability pension to the petitioner from the date of his retirement viz., 08.07.1997 with interest at the rate of 12% per annum and a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) towards compensation and costs, which shall also be paid to the petitioner by way of a "Demand Draft" within a period of two weeks from today.

8. The writ petition is ordered accordingly. No costs.

9. Post the writ petition on 08.03.2004 for reporting compliance.

Dpn/-

To:

1. The Union of India,
rep. by its Secretary to Govt.,
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