

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 100 of 2000

Decided on : September 28, 2006

Bhisham Singh

.....Petitioner.

VERSUS

Union of India and another

.....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the petitioner : Mr. O.P. Thakur, Advocate, with Ms. Salochana Kaundal, Advocate.

For the Respondents : Mr. Ashwani Pathak, Central Government Counsel.

Surjit Singh, Judge (Oral)

Petitioner was recruited as Constable in Indo Tibetan Border Police, an Organization headed by respondent No.2, on 4.5.1970. In the year 1971, he sustained an injury to his left eye, which though did not cause any visionary damage immediately, resulted in sudden loss of vision in December, 1980. The petitioner was treated at a Hospital of respondent No.2, for about three weeks. He could not regain the lost vision. On 17.3.1983, it was recorded in the service record of the petitioner that the loss of vision (physical disability) was caused due to the risk of service and the injury was sustained by him while discharging government duty. On 6.12.1983, his medical check-up was done. It was found that he was physically disabled and was placed in category BEE (P). He was declared unfit for duties requiring binocular vision. Consequently, he was asked to

Whether the reporters of the local papers may be allowed to see the Judgment?

...2...

discharge non-combatant general duty (ministerial jobs). In the year 1996, he was again examined by a Medical Board, constituted by the respondents. The Board though did not find any further deterioration in the medical condition of the petitioner, the specialist member of the Board observed that he was not fit for the post of Constable, even in general duty cadre. This observation was made on 27.8.1996. Apprehending that he might be removed from service, the petitioner applied for one year extension in service and on completion of extended period sought voluntary retirement on and with effect from 3.5.1998, by which date he was going to complete 28 years of service so that by addition of five years qualifying service, under the provisions of Civil Service Pension Rules, he could get full pension. His request was forwarded by the DIG on 12.3.1997 to the Higher Authorities. On 31.3.1997, when the petitioner was on leave, he was required telegraphically to report at the Head Quarters of 9th Battalion. On 17.4.1997, discharge notice dated 3.4.1997 was served upon him. He made a representation on 20.4.1997, through proper channel. He made a request that he be kept in service upto 3.5.1998, by which date he would be completing 28 years of actual service and from that date he be retired voluntarily, because by this process he was to get benefit of 5 years qualifying service, under Rule 48-A of the Civil Services Pension Rules and thus he could get full pension. On 10.5.1997, the petitioner approached the respondents to constitute a fresh Medical Board for the purpose of reconsideration of the decision to discharge him. Without considering his request for his fresh medical check-up, he was discharged on 15.5.1997, vide Annexure P-12, and was allowed invalid pension, under Rule 38 of the CCS

...3...

(Pension) Rules. The petitioner was granted service pension, as also extraordinary disability pension. The petitioner alleges that his discharge was bad, because when in the year 1983 his medical check-up was done and it was found that he was fit to do non-combatant general duty job of Constable, how could he have been held to be unfit by the Medical Board that conducted his check-up in 1996, when there had not been any further deterioration in his medical condition, i.e. loss of vision of left eye. He has, therefore, prayed that the order of discharge, Annexure P-12, be quashed and respondents be mandated to treat him as continuing in service upto 14.11.1998 and from that date to grant him voluntary retirement, with all benefits, under Rule 48-B of the CCS (Pension) Rules, 1972, or in the alternative the respondents be directed to treat him as having voluntarily retired on 15.5.1997 instead of having been discharged on medical grounds on the said date and all the benefits of voluntary retirement, under Rule 48-B, CCS (Pension) Rules, be extended.

2. Respondents in their reply do not deny that the petitioner had sustained injury in the year 1971 while performing duties and as a consequence of that injury he lost vision of left eye. They also do not deny that his medical check-up was conducted in the year 1983 and despite having been placed under category BEE (P) was found fit for general duty retained in service. It is also not denied that there has not been any further deterioration in the medical condition of the petitioner. Their plea is that in year 1996 he was referred to a Specialist, who found that he was not fit for the post of Constable even in GD Cadre.

...4...

3. I have heard the learned counsel for the parties and gone through the record.

4. Admittedly no deterioration in the state of health of the petitioner since the medical check-up of 1983 was noticed when he was examined in the year 1996. Now when on the basis of 1983 medical check-up, the petitioner was found fit for general duty and his state of health was found to be the same, when he was examined in August, 1996 by the Medical Board, it is not understood how the Board (that conducted the medical check-up of the petitioner in the year 1996) found him unfit even for general duty. The medical category of the petitioner was found to be the same, i.e. BEE (P), during the course of the medical check-up conducted in 1996, which was found and certified during the course of the medical check-up conducted in the year 1983. Thus, the opinion/recommendation of the Medical Board, which examined the petitioner in the year 1983 and which opinion/recommendation is contained in Annexure P-2 is bad on the face of it. Since the order of discharge is passed on the opinion contained in Annexure P-1, the same is also held to be bad.

5. As a sequel to the above discussion, writ petition is allowed, impugned discharge order dated 15.5.1997 (Annexure P-12) is quashed and the following directions are issued to the respondents:

1. The petitioner be treated to have continued in service upto the date when he would have completed 28 years of service, i.e. 3.5.1998, and be paid salary and all other allowances etc. from 16.5.1997 to the said date.
2. On and with effect from the day next following the date on which the petitioner would have completed

...5...

28 years of service, i.e. 4.5.1998, he be treated to have voluntarily retired under the relevant provisions of Civil Services Pension Rules, 1972 and given the benefits of Rule 48-B and pension and retiral benefits be paid to him accordingly, from such date.

3. Arrears of salary, in accordance with direction No.1, and arrears of retiral benefits, in terms of direction No.2, be paid to the petitioner within three months with simple interest at the rate of 9% per annum.

September 28, 2006(sd)

(Surjit Singh), J.