

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6536 of 2017

Ram Naresh Singh S/o Nirshan Singh, Resident of Village- Basantpur, P.O.- Vishnupur Baghangari, P.S.- Sakra, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. The Director General, Border Security Force, Block No. 10, 5th Floor, CGO Complex, Lodi Road, New Delhi.
3. The Commandant, 70 Battalion, Border Security Force, at Ajnala District- Amritsar.
4. The Deputy Commandant/ Adjutant for Commandant, 70 Battalion, Border Security Force, at Ajnala District: Amritsar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Singh, Adv.
For the UOI : Mr. Awadhesh Kumar Pandey, Adv.
Mr. Ravinder Kumar Sharma, Adv.

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date : 31-08-2021

Heard learned counsel for the petitioner and learned counsel for the Union of India through video conference.

2. The present writ petition has been filed for the following reliefs as formulated by the petitioner-

“(A) For issuance of an appropriate writ in the nature of Certiorari to set aside/quash the letter as contained in Memo No. 13285-86 dated 19/08/2015 and Memo no 2357 dated 13/02/2016, by the Deputy Commandant/Adjunct for Commandant 70 battalion (Responden No.4) whereby and where under an explanation has been asked to petitioner that his disability is neither directly attributed to the Gov. Service nor



aggravated due to the service which is mandatory requirement under the clauses defined in rule-3A of CCS(EOP) Rule-1939 hence he is not eligible for grant of disability pension as under the provisions of CCS (EOP).

(B) For the issuance of writ in the nature of mandamus or any other appropriate writ/writs order/orders direction/directions commanding the respondents to give and grant the pension and pensionary benefits to the petitioner along with all consequential benefits of service i.e. compassionate appointment of his son on the ground of his medical disability as it happen during service.

(C) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner shall be found entitled under the facts and circumstances of the case.”

3. The short facts of the case according to the petitioner are that he was appointed as G.D. constable at Balurghat, West Bengal on 16.03.1970, but soon thereafter he became ill and was referred to hospital on 28.12.1973. He remained admitted in the hospital until he was discharged on 16.06.1974. A sanction order dated 20.03.1978 was issued showing the date of invalidation as 10.10.1977 and sanction was accorded to grant of Rs. 50/- per month as financial assistance out of B.S.F. Contributory Ben Fund



with effect from 01.11.1977 for the period of 10 years. By the impugned order dated 12.08.2015, it was informed that the petitioner was medically boarded out on 16.03.1978, but disability pension could not be released owing to non-completion of 10 years of service, and the matter was in process of higher Headquarters for seeking clarification/decision for entitlement. By the further impugned letter dated 13.02.2016, it was informed that the petitioner was not eligible for grant of disability pension as requirement under Rule 3A of CCS(EOP) Rules, 1939 was not satisfied as the disability was neither attributable to government service nor aggravated due to the service.

4. Learned counsel for the petitioner submits that the petitioner was never served with any order of being medically boarded out on 16.03.1978. It is only in the year 2015 that he was informed for the first time by letter dated 12.08.2015 (Annexure-1) that the matter of his disability pension was pending before the higher authority, and thereafter by the impugned letter dated 13.02.2016 that he was not eligible for the same.

5. Learned counsel for the respondents appears and opposes the writ petition, submitting that the writ petition has been filed in the year 2017 after a delay of more than three decades. He invites reference to the aforesaid sanction letter dated 20.03.1978



(Annexure-3) granting Rs. 50/- per month as financial assistance out of B.S.F. Contributory Ben Fund for a period of ten years. It is stated that such financial assistance is paid when a person would not be eligible for disability pension as he would not complete 10 years of service. It is submitted that the petitioner was well aware of all relevant facts and that he did not render service after being boarded out on 16.03.1978. The impugned letters as issued are merely informatory in nature and cannot be treated as affording a fresh cause of action.

6. In reply, learned counsel for the petitioner submits that Rule 18(3) of the Border Security Force Rules, 1969 contemplates that the Central Government shall communicate the findings of the Medical Board to the officer, upon which a representation may be made by the officer within fifteen days of such communication. It is stated that no such communication was made to the petitioner. It is further submitted that grant of Rs. 50/- by way of financial assistance would not disentitle the petitioner from his right to disability pension.

7. Having heard the parties and on consideration of materials on record, this Court is not inclined to interfere in the matter. It is not in dispute that the petitioner was sanctioned a grant of Rs. 50/- per month by way of financial assistance out of the



B.S.F. Contributory Ben Fund for a period of 10 years which he has accepted without demur. The said letter dated 20.03.1978 shows the date of invalidation as 10.10.1977 based on which the financial assistance was granted. It is also not the case of the petitioner that he had rendered service thereafter. This Court therefore finds it difficult to accept the petitioner's plea that he was not aware that he had been boarded out in the year 1978. This is borne out from his representation dated 08.12.2013 (Annexure-4) wherein he has specifically stated that "*The Department gave me retirement medically unfitted*". As regards the report of the Medical Board not having been made available, it must be held that the petitioner has not acted with due diligence. He obviously was well aware that he had been medically examined by the Medical Board but took no step in that regard nor filed any representation for over three decades since 1978, rather he chose to accept the financial assistance and not join duty.

8. The writ petition is thus devoid of merit and stands dismissed.

(Vikash Jain, J)

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CAV DATE	NA
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