

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.3086 OF 2012

BALBIR SINGH

APPELLANT (S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT (S)

O R D E R

This appeal arises out of a judgment and order dated 14th December, 2010 passed by the Armed Forces Tribunal, Chandigarh, Regional Bench, at Chandimandir whereby the Tribunal has while allowing T.A. No.674 of 2010 directed that arrears of service element of the pension payable to the appellant shall be limited to three years only starting from 15.07.2006.

The appellant was enrolled as a Clerk JD-II in the Indian Army on 25.10.1966. He appears to have contracted Pulmonary Tuberculosis while in service and was on that ground invalided out with a permanent disability assessed at 100%. Both service and disability pension were however granted to him.

After his discharge from the Army, he was re-surveyed medically and his disability found to have gradually decreased to less than 20%. This reduced disability was taken as a ground for stoppage of not only the disability

pension but even the service element of the pension payable to the appellant. Aggrieved, the appellant appears to have filed Writ Petition No.1810 of 2008 before the High Court which was disposed off on 11.12.2008 with a direction to the respondents to decide his representation/legal notice. In compliance with the said direction the respondents appear to have examined the matter and held that since the disability had been assessed at less than 20% with effect from 15.01.1985, the disability pension had to be discontinued. The matter was eventually brought up by the appellant before the Armed Forces Tribunal, Chandigarh, in T.A.No.674 of 2010. The Tribunal has in terms of its order dated 14.12.2010 disposed off the matter holding that while disability pension could be discontinued on account of the extent of disability falling below 20%, the service element of the pension payable to the appellant could not be stopped. Having said so, the Tribunal has restored the service element of the pension payable to the appellant but restricted the payment of arrears to three years only commencing from 15.07.2006 onwards. The present appeal as noticed earlier calls in question the said part of the order passed by the Tribunal.

We have heard learned counsel for the parties at some length.

It is not in dispute that the appellant was

discharged from service/invalidated out of service on account of 100% permanent disability suffered by him during the course of service. It is also not in dispute that the said disability was held to be attributable to military service. That the disability was subsequently reduced to fall below 20% is also common ground. Inasmuch as the authorities stopped the disability pension, they committed no wrong. Stoppage of the disability pension did not however mean that the service element of the pension could also be stopped. That is evident from the provisions of Regulation 186 which reads as follows:

"186 (1) An individual who is invalidated out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension."

(emphasis supplied)

The Tribunal was therefore justified in restoring the service element of the pension in favour of the appellant. The question however is whether the arrears could have been restricted to three years only. The Tribunal in our view need not have done so. That is because the appellant

had a right to receive service element of the pension in light of Regulation 186 (supra), which right was valuable and ought to have been protected. The fact that the appellant had approached the Tribunal for redress belatedly was in the peculiar circumstances of the case no reason for the Tribunal to reduce the payment of arrears to three years only.

We accordingly allow this appeal and modify the order passed by the Tribunal with the direction that the appellant shall be paid service element of the pension with effect from the date the said payment was stopped by the respondents. We however grant to the respondents three months time to calculate and release the arrears in favour of the appellant. In case the needful is not done within the time stipulated, the arrears payable to the appellant shall start earning interest at the rate of 9% from the date the period of three months expires till actual payment of the amount.

No costs.

.....CJI.
(T.S. THAKUR)

.....J.
(R. BANUMATHI)

.....J.
(UDAY UMESH LALIT)

NEW DELHI,
APRIL 8, 2016.

ITEM NO.27

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.3086/2012

BALBIR SINGH

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(with appln. (s) for condonation of delay in filing appeal and office report)

Date : 08/04/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s)

Mr. Shishpal, Adv.
Mr. M.P. Midha, Adv.
Mr. Balbir Singh Gupta, Adv.

For Respondent(s)

Mr. Mr. Mukul Gupta, Sr. Adv.
Ms. Kiran Bhardwaj, Adv.
Mr. Roji Joseph, Adv.
Ms. Anjali Chauhan, Adv.
Mr. B.V. Balaram Das, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The civil appeal is allowed in terms of the signed order.

(Ashok Raj Singh)

Court Master

(Signed Order is placed in the file)

(Veena Khera)

Court Master