

MADAN PRASAD SINHA @ SANATAN BABA

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v.

UNION OF INDIA & ORS.

(Civil Appeal No. 11485 of 2018)

APRIL 08, 2019

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**[DR. DHANANJAYA Y. CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Armed Forces: Disability pension – Grant of – Appellant enrolled as Radio Mechanic in 1971 – Ten years later, appellant discharged from military service on account of being placed in a low medical category – Appellant sought grant of war injury pension, however, denied by the tribunal – In the year 2014, appellant granted disability pension, for the period thereafter – Appellant seeking disability pension between 1996 and 2014 – On appeal, held: Chart assessing disability indicates that the extent of disability was determined at 20% for ten years with effect from 23 March 1994 – However, PCDA (P) Allahabad re-assessed the disability at less than 20% on 8 May 1995, as such the appellant did not receive disability pension with effect from 24 March 1995 – With effect from 30 January 2014, the Military Hospital assessed the disability of the appellant at 20% on a permanent basis for life and the appellant has received disability pension thereafter – In view thereof, the denial of disability pension to the appellant for the period between 24 March 1995 and 30 January 2014 was misconceived – Appellant to be grant arrears on account of disability pension in accordance with the applicable rates prevalent at the relevant time between 24 March 1995 and 30 January 2014.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11485 of 2018.

From the Judgment and Order dated 13.07.2018 of the Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 19 of 2017 with M.A. No. 764 of 2018/final order dated 17.09.2018 in M.A. No. 1521 in O.A. No. 19 of 2017 with M.A. No. 764 of 2018.

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J. S. Attri, Sr. Adv., Narender Singh, Rameshwar Prasad Goyal, Chandra Nand Jha. Advs. for the Appellant.

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A R. Balasubramanian, Sr. Adv., Prashant Singh, B. K. Satija, Ms. Alka Agrawal, Tanvir Nayar, A. K. Sharma, Advs. for the Respondent.

The following Order of the Court was passed :

O R D E R

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1. The only issue which arises for determination in the present appeal is with regard to the grant of disability pension to the appellant.

2. The appellant was enrolled in the Corps of Signals of the Indian Army as a Radio Mechanic on 18 February 1971.

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3. On 18 August 1981, he was discharged from military service under Army Rule 13(3) on account of being placed in a low medical category.

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4. The case of the appellant is that he suffered from a Chronic Duodenal Ulcer as a result of his participation in Operation Cactus Lilly in 1971.

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5. The appellant moved the Armed Forces Tribunal¹ for the grant of war injury pension. The Tribunal declined to accede to the plea for the grant of war injury pension on the ground that it was payable only in respect of participation in operations or in the active line of duty. In the present case, it was the view of the Tribunal that the nature of the disability was not attributable to any such participation in action. This view of the Tribunal is correct.

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6. On 26 November 2018, the following order was passed by this Court:

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“Delay condoned.

Application seeking leave to appeal is allowed.

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The submission which has been urged on behalf of the petitioner is that his claim for the grant of disability pension for the period between 1996 and 2014 has not been considered since it was in 2014 that he was granted the disability pension for the period thereafter. Issue notice confined to this question returnable within four weeks.

H ¹“Tribunal”

Liberty to serve the additional copy on the Central Agency. A

Application for exemption from filing certified copy of the impugned judgment is allowed.”

7. Notice was confined to the issue as to whether the appellant should be granted disability pension between 1996 and 2014. B

8. In the counter affidavit which has been filed on behalf of the respondents, a chart has been submitted, making a reference to the Re-Survey Medical Boards which had assessed the extent of disability so as to facilitate a decision on the claim for the grant of disability pension.

9. The chart indicates that initially the extent of disability was determined at 40% for two years with effect from 14 July 1985. Subsequently, the disability was assessed at 20% for two years with effect from 17 July 1987; at 30% for five years with effect from 17 July 1990; and at 20% for ten years with effect from 23 March 1994. However, it appears that the PCDA(P), Allahabad re-assessed the disability at less than 20% on 8 May 1995. As a result of this, the appellant did not receive disability pension with effect from 24 March 1995. C D

10. With effect from 30 January 2014, the disability of the appellant was assessed at 20% on a permanent basis for life by the Military Hospital, Danapur Cantt. The above narration of facts would indicate that the position as it stands pursuant to the assessment done by the Military Hospital with effect from 30 January 2014 is that the appellant suffers from 20% disability which is assessed for life. He has received disability pension thereafter. E

11. In this background, we are of the view that the denial of disability pension to the appellant for the period between 24 March 1995 and 30 January 2014 was misconceived. The disability element has already been rounded off in pursuance of the previous order passed by the Armed Forces Tribunal. F

12. We accordingly, allow the appeal and direct that the appellant shall be granted arrears on account of disability pension in accordance with the applicable rates prevalent at the relevant time between 24 March 1995 and 30 January 2014. G

13. The computation shall be carried out and arrears shall be paid

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A over to the appellant within a period of three months from the date of receipt of this order.

14. The civil appeal is accordingly, allowed. No costs.

15. Pending application(s), if any, shall stand disposed of.

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Nidhi Jain

Appeal allowed.