

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No.6102 of 2013

Bijay Kumar Dubey

..... Petitioner

Versus

1. Union of India through the Secretary, Department of Home Affairs, New Delhi
 2. The Director General of Border Security Force, New Delhi
 3. The Commandant, 82 Battallion, Border Security Force, West Bengal
 4. The Deputy Commandant, Border Security Force, New Delhi
- Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Deepak Kumar Prasad, Adv.
For the Respondents : Ms. Nitu Sinha, Adv.

07/10.09.2020 Heard learned counsel for the parties through V.C.

2. The instant application has been preferred by the petitioner for quashing of the order dated 09.9.2010, whereby the respondents refused to grant invalid pension/disability pension and prayer has also been made for a direction upon the respondent authority to pay the same.

3. The brief facts required for adjudication of the instant case, as stated in the writ application, are that the petitioner was appointed as G.D. Constable on 24/12/2003 having its registration No. 03401451. He was working with all sincerity and diligence and there is no charge against the petitioner for disciplinary action at any point of time. The petitioner while serving on duty under the respondent at TC & S BSF-Hazaribagh, applied for earn leave of 40 days to go his native place situated at Lohardaga and the concerned authority duly granted earn leave for 40 days. Thereafter, while the petitioner was going to Board a bus from Hazaribagh town through motorcycle to avail the earn leave on 16.6.2007, met with an accident, near post office chowk, of Hazaribagh.

4. Learned counsel for the petitioner submits that there is no railway rout from Meru, Hazaribagh to Lohardaga and only bus facility is available from Hazaribagh to Lohardaga or one will have to travel through private bus, taxi etc. from Hazaribagh to Ranchi Road then Board a train for Ranchi and there after again Board a train for Lohardaga, however in any case one has to travel from Meru Camp, Hazaribagh to nearest Railway station that is at Ranchi Road for the purpose of travelling from Hazaribagh to Lohardaga. As such, travelling by private bus, taxi etc. by road is only convenient conveyance. He further contended that he has taken a specific

plea in his representation, which is annexed as annexure 5 series, wherein he has stated that since there was no direct train route from Hazaribagh; his place of posting to his native place by train, as such, he was forced to go by his personal Motor cycle and the respondent authority should consider this aspect of the matter and pass a fresh order after reconsidering the case of the petitioner.

5. Ms. Nitu Sinha, learned counsel for the Union of India submits that the impugned order is a well-reasoned order and the petitioner is not entitled for the relief as prayed for. She further submits that the case of the petitioner is not covered under CCS (EOP) Rules for grant of disability compensation/disability pension nor for grant of invalid pension under CCS (Pension) Rules, 1972 as the individual has not completed the minimum qualifying service of 10 years as per Rule 49(2)(b) of CCS (Pension) Rules as such, he is not entitled for any pension. Moreover, as the petitioner met with the accident when he was travelling by his own motorcycle while going on 40 days earned leave, therefore as per para 4(b)(iv) of Guidelines to Rule 3-A(2) of CCS (EOP) Rules for conceding attributability of disablement or death to government service, neither he travelled at Government expenses nor any railway warrant was issued to him from duty station to his leave station due to which the injury sustained by individual is not attributable to Government service. However, service gratuity has been released in favour of above individual as per Rule 49(1) of CCS (pension) Rules as he has retired before completing qualifying service of ten years.

6. Having heard learned counsel for the petitioner and after going through the averments made in the pleadings, it appears that the contention raised by the petitioner that since there was no train route between his place of posting to his native place and he was forced to go by his personal vehicle appears to be a genuine ground. It further transpires that the said ground was taken by the petitioner while representing before the respondent authority, however, the same has not been considered at all. In this view of the matter, the impugned order as contained in Annexure 4 is quashed with a direction to the petitioner to file a fresh representation before Respondent No.3 within a period of two months from today.

If any such representation is filed, Respondent No.3 shall reconsider the case and pass a fresh order in accordance with law, rules, regulations and policy decisions of the Government.

7. With this observation and directions, this application is disposed of.

(Deepak Roshan, J.)

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