
R.N.R.

Before Vinod K. Sharma, J.

PAWAN SINGH,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

C.W.P. No. 5628 of 2010

10th August, 2010

Constitution of India, 1950—Art. 226—Central Civil Services (Extra Ordinary Pension) Rules, 1939—Rl. 9—Liberalized Pensionary Awards Scheme—A constable of BSF suffering injuries in insurgency operation—Invalided out of service on account of 40% permanent disability—Invalid pension and disability lump sum compensation granted to petitioner—Claim for disability pension under revised provisions—Rl. 9 of 1939 Rules provides that an employee could either opt for lump sum compensation by giving up his right of disability pension or opt for disability pension—Petitioner opting to avail lump sum compensation—Revised rules provide grant

of disability pension and not lump sum compensation—Whether petitioner entitled to disability pension under revised rules—Held, yes—Petitioner boarded out after coming into force of revised rules—Petitioners held entitled to disability pension and liable to refund lump sum compensation availed by them—Petitions allowed, respondents directed to release disability pension to petitioners from due date.

Held, that the benefit due under the statutory regulations, could not be denied to the petitioner merely, on the basis of clarificatory letter, which goes contrary to the revised rules. There is no provision under the revised rules which bars the grant of disability pension.

(Para 33)

Further held, that the petitioner would be required to refund the lump sum compensation availed by opting under non-existing rule, so as to avail disability pension. The lump sum compensation obtained by him under Rule 9 of the Central Civil Services (Extra Ordinary Pension) Rules, 1939, which was not in force on the date when this benefit was availed by the petitioner. The compensation, therefore, is not supported by any law.

(Para 36)

Further held, that the contention of the respondents that petitioner having opted for the lump sum compensation was now debarred from claiming disability pension under the rules deserves to be rejected, as there can be no estoppel against law/statutory rules, Once, under the statutory rules, a person is entitled to pension, it cannot be denied, merely because under the wrong advice, the petitioner opted to avail benefits, which were less beneficial, than the one to which he was entitled to under the rules, specially when right to pension, has been recognized as right to property under the Constitution.

(Para 38)

Rajeev Anand, Advocate, *for the petitioner.*

Ms. Geeta Singhwal, Central Government Counsel, *for the respondents.*

VINOD K. SHARMA, J.

C.M. No. 10274 of 2010

(1) CM is allowed. Written statement is taken on record.

CWP No. 5628 of 2010

(2) This judgment shall dispose off CWP No. 5628 of 2010 titled **Pawan Singh versus Union of India and others**, CWP No. 3673 of 2008 titled No. 930061676 Ex. Constable **Jaswant Singh versus Union of India and others**, and CWP No. 5629 of 2010 titled **Satpal versus Union of India and others**, as common questions of law and facts are involved.

(3) For brevity sake, facts are being taken from CWP No. 5628 of 2010 titled **Pawan Singh versus Union of India and others**.

CWP NO. 5628 OF 2010 (O&M)

(4) The petitioner was enlisted as Constable/General Duty in Border Security Force and was allotted No. 88004803. On 22nd January, 1994, the petitioner was deputed to counter insurgency duties at Manigam area, where the party of which the petitioner was also member, was ambushed by militants and in the encounter the petitioner got five bullet injuries in his left thigh. The petitioner was evacuated to the local civil hospital, due to his serious condition was eventually referred to AIIMS, New Delhi, where he remained under treatment for 7-8 months. Certificate dated 4th July, 1994 certifying gun shot injury and 50% disability, with permanent physical impairment of the left lower limb, of the petitioner is attached as Annexure P-1 with the writ petition. In spite of suffering permanent disability, the petitioner continued to perform his duties, as per exigencies of service.

(5) Respondent-authorities on 6th January, 2006 constituted a medical board, which reported that petitioner was suffering from 'affects of gun shot injury on left with sciatic nerve injury' and was declared unfit for further service. The petitioner was placed in medical category SIHIA5(L) PIE1 with 40% permanent disability.

(6) On the basis of recommendations of the medical board, the petitioner was asked to put in his request for medical board pension on 7th January, 2006.

(7) The petitioner, as directed, submitted the application on the same day to the Commanding Officer. On 30th June, 2006 the petitioner was eventually invalided out of service on account of medical category referred to above and 40% permanent disability.

(8) On 15th September, 2006 the petitioner was granted invalid pension under the Central Civil Services (Pension) Rules @ Rs. 1913 (Rupees one thousand nine hundred and thirteen only) per month,—*vide* Pension Payment Order No. 240550625139, dated 15th September, 2006 (Annexure P-4).

(9) The case of the petitioner is, that on enquiry he came to know that the persons, who were similarly boarded out, due to downgrading of medical category, on account of injuries suffered in insurgency operation, were getting pension of Rs. 6,330 (Rupees six thousand three hundred and thirty only), which was almost equivalent to the last pay drawn.

(10) The petitioner made representation dated 23rd February, 2007 for grant of benefit under the rules (Annexure P-6), to the Hon'ble Home Minister, Government of India, pointing out the injustice done to the petitioner in grant of pension and deprivation of other benefits. No response was received from Government of India.

(11) Thereafter the petitioner addressed a legal notice dated 11th December, 2007 (Annexure P-7) claiming the grant of extraordinary pension. It was pointed out in the legal notice, that the petitioner had been granted lump sum compensation, instead of, more beneficial benefit of monthly extraordinary pension.

(12) This is disputed by the learned counsel for the respondents, by taking a specific stand, that in pursuance of the option given to the petitioner, he had opted to receive lump sum compensation and that there was no provision of refund of the compensation released to a person.

(13) A letter dated 7th March, 2008, addressed to counsel of the petitioner was received stating therein, that the petitioner was granted invalid pension @ Rs. 1,913 (Rupees one thousand nine hundred and thirteen only) per month with effect from 1st July, 2006,—*vide* PPO No. 240550625139, dated 8th August, 2006 as admissible under the rules.

(14) It was also pointed out in the letter, that he was not entitled to disability pension, since he had already been paid disability compensation of Rs. 2,71,799 (Rupees two lac seventy one thousand seven hundred and ninety nine only) as per his option.

(15) It was also pointed out, that the option once exercised was final and there was no provision to refund of disability compensation and sanction of disability pension instead.

(16) The petitioner again made certain representations, which have also not been responded to.

(17) The petitioner challenged the impugned order denying the extraordinary, by placing reliance on the "revised provisions regulating the disability pension and extraordinary family pension under the CCS (Extraordinary) Pension Rules and Liberalized Pensionary Awards, which were effective with effect from 1st January, 1996".

(18) The provisions relied upon by the petitioner are reproduced below for ready reference :—

"REVISED PROVISIONS EFFECTIVE FROM 1ST JANUARY, 1996, REGULATING DISABILITY PENSION AND EXTRAORDINARY FAMILY PENSION UNDER THE CCS (EXTRAORDINARY) PENSION RULES AND LIBERALIZED PENSIONARY AWARDS :—

The Fifth Central Pay Commission inter alia recommended that for determining the compensation payable for death or disability under different circumstances the case could be broadly categorized in five distinct categories as under :—

Category 'A' Death or disability due to natural causes not attributable to Government service. Examples would be chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty etc.

Category 'B' Death or disability due to causes which are accepted and attributable to or aggravated by government service. Disease contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category 'C' Death or disability due to accidents in the performance of duties. Some examples are accidents while travelling on duty in Government vehicles or public transport, a journey on duty is performed by service aircraft, mishaps at sea, electrocution while on duty etc.

Category 'D' Death or disability attributable to acts of violence by terrorists, anti social elements, etc. whether in their performance of duties or otherwise. Apart from cases of death or injury sustained by personnel of the Central Police Organizations while employed in aid of the civil administration in quelling agitation, riots or revolt by demonstrations, other public servants including Police personnel, etc. bomb blasts in public places or transport indiscriminate shooting incidents in public etc. would be covered under this category.

Category 'E' Death or disability arising as a result of (a) attack by or during action against extremists anti social elements etc. and (b) enemy action in international war or border skirmishes and warlike situations, including cases which are attributable to (i) extremists acts, exploding mines etc., while on way to an operational area, (ii) kidnapping by extremists' and (iii) battle inoculation as part of training exercises with live ammunition.

2. The Fifth Pay Commission recommended various relief packages for the above categories, in modification of the existing provisions on the subject.

- (3) *The recommendations of the Commission have been under consideration of the Government for some time. Orders have already been issued regarding ex gratia payment in case of death in service,—vide this Department's O.M. No. 45/55/97-P & PW(C) dated 11th September, 1998 (Vide Appendix 5 in this compilation). In respect of disability pension/family pension the President is now pleased to decide as under :—*
- (i) *Cases covered under the Category (A) would continue to be covered under the normal existing provision of CCS (Pension) Rules.*
 - (ii) *In cases covered under Categories (B), (C), (D) & (E) the scales widow, without children or those with children, for determination of the quantum of extraordinary family pension shall stand abolished. The quantum of monthly extraordinary family pension for all categories of widows shall be*
 - (a) *Where the deceased Government servant was not holding a pensionable post 40% of basic pay subject to minimum of Rs. 1,650.*
 - (b) *Where the deceased Government servant was holding a pensionable post 60% of basic pay subject to a minimum of Rs. 2,500.*
- (2) *In case where the widow/dies or remarries, the children shall be paid family pensions at the rates mentioned at (a) or (b) above, as applicable, and the same rate shall also apply to fatherless/motherless children. In both cases, family pension shall be paid to children for the period during which they have been eligible for family pension under the CSS (Pension) Rules. Dependent parents/brothers/sisters etc. shall be paid family pension at one-half the rate applicable to widows/fatherless or motherless children.*
- (ii) *Family Pension under Categories 'D' & 'E'-(1) Family pension in cases falling under Categories 'D' & 'E' shall be determined under the existing provision of Liberalized Pensionary Awards Scheme.*

- (2) *If the Government servant is not survived by widow but is survived by child/children only, all children together shall be eligible for family pension at the rate of 60% of basic pay subject to a minimum of Rs. 2,500. Children allowance, as admissible now, shall stand abolished.*
 - (3) *When the Government servant dies a bachelor or as a widower without children dependent pension will be admissible to parent without reference to pecuniary circumstances at the rate of 75% of pay last drawn if both parents are alive and at the rate of 60% if only one of them is alive.*
- III. *Disability Pension—For cases covered under Categories 'B' and 'C'—(1) Normal Pension and gratuity admissible under the CCS (Pension) Rules, 1972 plus disability pension equal to 30% of basic pay for 100% disability.*
- (2) *For lower percentage of disability the monthly disability pension shall be proportionately lower as at present provided that where permanent disability is not less than 60% the total pension (i.e. pension or service gratuity admissible under the ordinary pension rules plus disability pension as indicated at (1) above shall not be less than 60% of basic pay, subject to a minimum of Rs. 2,500.*
- IV. *DISABILITY PENSION—FOR CASES COVERED UNDER CATEGORY 'D'—(1) Disability pension comprising a service element equal to the retiring pension and gratuity to which the employee would have been entitled to on the basis of his pay on the date of invalidation but counting service up to the date on which he would have retired in the normal course and disability element equal in amount to normal family pension subject to the condition that the aggregate of the service and disability element shall not be less than 80% of the pay last drawn, for 100% disability.*
- (2) *For lower percentage of disability, the disability element shall be proportionately lower as at present.*

- V. *Disability Pension—For cases covered under Category 'E'-(1) Disability Pension, comprising a service element equal to the retiring pension and gratuity to which the employee would have been entitled to on the basis of his pay on the date of invalidation but counting service up to the date on which he would have retired in normal course and disability element equal in amount to the pay last drawn subject to the condition that the aggregate of the service and disability elements shall not exceed the pay last drawn, for 100% disability.*
- (2) *For lower percentage of disability, the disability element shall be proportionately lower as at present.*
4. *Other terms and conditions in the CCS (EOP) Rules and Liberalized Pensionary Awards Scheme which are not specifically modified by these orders shall continue to remain operative.*
5. *The Fifth Pay Commission also suggested certain procedural changes. These have also been considered by the Government. The president is not pleased to decide as under :—*
- (i) *The extent of disability or functional incapacity shall be determined in the following manner for purpose of computing the disability element forming part of benefits :*

Percentage of disability assessed by Medical Board	Percentage to be reckoned for computation of disability element
Less than 50	50
Between 50 and 75	75
Between 76 and 100	100

- (ii) *The findings of the Medical Board on the extent of disability would be treated as final and binding unless the employee himself seeks a review by preferring an*

appeal to an Authority immediately superior to the one who had constituted the Board. In case the appeal is accepted and a review Medical Board is constituted, the findings of the Board would be binding on all parties.

The extent of disability as determined and accepted would be treated as final and the employee would not be required to appear before Medical Board periodically for the purpose of obtaining a certificate that the disability continues to persist.

- (iii) *Different department and officer shall have the powers to grant disability/family pension covered under the Government orders and instructions issued on the subject. They shall exercise these powers, wherever necessary in consultation with the Financial Advisers. Only in cases not covered strictly in terms of the Government guidelines and instructions reference, to Department of Pension and Pensioner's Welfare shall be made.*
6. *These orders will be effective from 1st January, 1996. The past case of pre-1996 pensioners/family pensioners will be revised under this Dept's O. M. No. 45/86/97-P & PW (A)-Part-II, dated 27th October, 1997. Such consolidated pension, shall however be subject to the provisions of the Dept's O. M. No. 45/10/98-P & PW (A), dated 17th December, 1998.*
7. *This issues with the concurrence of the Ministry of Finance, Department of Expenditure vide their U.O. No. 20/E.V/2000, dated 6th January, 2000.*
8. *In so far as employees of IA& AD are concerned, these orders have been issued after consultation with the C&AG of India.*
- Gl. Dept. of P & PW., OM., No. 45/22/97-P & PW(C), dated the 3rd February, 2000.

(19) The learned counsel for the petitioner contended that the petitioner falls in Category 'D' as per the revised provisions, under which the petitioner is entitled to disability pension under Category 'D', which reads as under :

"IV. DISABILITY PENSION-FOR CASES COVERED UNDER CATEGORY 'D'-(I) Disability pension comprising a service element equal to the retiring pension and gratuity to which the employee would have been entitled to on the basis of his pay on the date of which he would have retired in the normal course and disability element equal in amount to normal family pension subject to the condition that the aggregate of the service and disability element shall not be less than 80% of the pay last drawn for 100% disability."

(20) The contention of the learned counsel for the petitioner further was, that before coming in force the revised provisions regulating the disability pension and extraordinary family pension under the CCS (Extraordinary) Pension Rules and Liberalized Pensionary Awards. The disability pension and other benefits was governed by Rule 9 of the Central Civil Services (Extra Ordinary Pension) Rules, 1939, which reads as under :—

"9. When disablement of a Government servant is conceded as (1) due to Government service in terms of Rule 3-A, he shall be awarded disability pension in terms of sub-rule (2) or (3) or lump sum compensation in terms of sub-rule (4) of this Rule in accordance with the percentage of disability (suffered by him) as certified by the Medical Authority concerned.

(2) If the Government servant is boarded out of Government service on account of his disablement, the quantum of disability pension for cent per cent disability shall be as specified in SCHEDULE II hereto annexed. The quantum of disability pension for lower percentage of disability shall be, "proportionately lower". (The minima and maxima, given in SCHEDULE II, are applicable only for arriving at

the monthly disability pension for cent per cent disability and are not applicable in respect of percentage of disability lower than cent per cent).

(3) *If the Government servant is boarded out of Government service on account of such disablement, and further if, the percentage of his permanent disability as certified by the Medical Authority is not less than 60% his monthly disability pension shall be related to the family pension admissible to the widow (in case he had died instead of being disabled) in the manner laid down in O.M. No. 23 (15)-E.V(A)-Pt.IV, dated the 20th January, 1978 indicated below—*

(a) *If the employee held a permanent pensionable post and is invalided/boarded out from service, as a result of disability attributable to service, after rendering ten years service, he shall be given, apart from the normal invalid pension under the CCS (Pension) Rules, 1972, the amount of disability pension as is admissible under the CCS (EOP) Rules, subject to the condition that the sum total of the invalid pension plus the disability pension shall not be less than the widow's (family) pension under the CCS (EOP) Rules ; and*

(b) *If the employee eligible for disability pension under the CCS (EOP) Rules is invalided/boarded out from service before putting in ten years service, he does not get any invalid pension but gets only service gratuity under the CCS (Pension) Rules, 1972. Apart from such gratuity, he shall be given such amount of disability pension as is admissible under the EOP Rules subject to the condition that the sum-total of the pension equivalent of such gratuity under the CCS (Pension) Rules, 1972, plus the disability pension as is admissible under the CCS (EOP) Rules, shall not be less than the widow's (family) pension under the CCS (EOP) Rules.*

(4) *If the Government servant is retained in service in spite of such disablement, he shall be paid a compensation in lump sum (in lieu of the disability pension) on the basis of disability pension admissible to him in accordance with the provisions of sub-rule (2) of this Rule, by arriving at the capitalized value of such disability pension with reference to the Commutation Table, in force from time to time.* ”

(21) The Rule 9 of the Central Civil Service (*Extra Ordinary Pension*) Rules, 1939, stands repealed after coming into force of the revised provisions regulating the disability pension and extraordinary pension, referred to above, and is deleted from the Rules.

(22) The learned counsel for the petitioner contended that the petitioner was boarded out, after coming into force the revised rules, therefore, he was entitled to benefits under the revised rules. The order *vide* which his claim was rejected, being contrary to the rules, could not be sustained.

(23) The learned counsel for the petitioner further contended that Rule 9 of the Central Civil Services (*Extra Ordinary Pension*) Rules, 1939, referred to above, and letter dated 30th January, 2003 cannot be sustained in law for the reason that Rule 9 of the Central Civil Services (*Extra Ordinary Pension*) Rules, 1939 stands repealed, and that the letter dated 30th January, 2003 is in the nature of clarificatory letter, therefore, cannot override the provisions of the rule. Anything said in the clarificatory letter which is contrary to rule is to be ignored, as by way of clarification letter rules cannot be modified or changed.

(24) Learned counsel for the respondents on the other hand strongly opposed the grant of disability pension in terms of the revised provisions effective with effect from 1st January, 1996, on the ground that Rule 9 of the Central Civil Services (*Extra Ordinary Pension*) Rules, 1939 was still operative. It is clear from the letter dated 30th April, 2010 issued by the Government of India to the Commandant 81Bn BSF. The petitioner, therefore, is not entitled to grant of pension, as he received lump sum compensation, while still in service.

(25) Letter on which reliance has been placed, reads as under :—

“Please refer to your letter No. Estt/WP-3673/81, Bn/3434-38, dated 30th April, 2010 on the subject cited above regarding clarification about deletion of rule 9 of CCS (Pension) Rules after implementation of 5th Central Pay Commission.

2. *In this context, **it is intimated that after implementation of 5th Central Pay Commission rule 9 of CCS (EOP) Rules has not been printed. After implementation of 5th Central Pay Commission effected from 1st January, 1996 the CCS (EOP) Rules has been modified with some existing provision on the subject vide DOP&PW O.M. No. 45/22/97-P. & P.W. (C), dated 3rd February, 2000.** Other terms and conditions which have not been included in the CCS (EOP) Rules and Liberalized Pensionary Awards Scheme which is not specifically modified by these orders shall continue to remain operative.*
3. **In view of above, rule 9 of CCS (EOP) Rules is still operative.**
4. Besides, in this case, it is also reiterated that if the person has already in receipt of disability compensation which is lump sum amount of disability element and boarded out with same disability at later stage will not be entitled for disability pension under CCS (EOP) Rules. Since Disability pension consisting Disability Element (which has already taken) plus Service Elements. He is only entitled for Service elements. **However, if no agree with reasons mentioned above then case must be taken up to your end with ruling authority i.e. GOI, Ministry of Personnel Public Grievances and Pensions, DOP & PW for further clarification.**”

(26) The letter itself shows that it is not a final decision but opinion of person issuing this letter.

(27) Learned counsel for the respondents also placed reliance on letter dated 30th January, 2003, *vide* which the Government of India issued a clarificatory letter, pointing out therein as under :---

"Hence we are giving example describing special disability benefits to an official having 30 years of service, drawing basic pay Rs. 4030, was injured on 13th August, 2000 due to IED blasted by the militant and declared 40% disability by a medical board. In this case he is entitled for following disability benefits :

(a) **IF RETAINED IN SERVICE**:--- In this case he will get lump sum compensation + normal service pension as under :---

CALCULATION OF COMPENSATION

1.	<i>Date of birth</i>	..	1/7/46
2.	<i>Date of injury</i>	..	13/8/2000
3.	<i>Date of Medical Board</i>	..	17/4/2001
4.	<i>Assessment of disability</i>	..	40%
5.	<i>Basic Pay on the date of injury</i>	..	Rs. 4030 -
6.	<i>Age next birth day</i>	..	55yrs. on .. 1/7/2001
7.	<i>Commutation factor</i>	..	Rs. 11.73
8.	<i>Disability pension for 100% disability</i>		
			$\frac{-4030 \times 30}{100} = 1209$
9.	<i>Disability pension for 40%</i>		
			$\frac{1209 \times 40}{100} = 483.6$
10.	<i>Capitalized value</i>	..	$483.60 \times 12 \times 11.73 = 68072$

As such he will get compensation amounting to Rs. 68072 + normal service pension due to him on the date of retirement. Personnel who have been paid compensation once, will not be admissible for disability pension, in case boarded out later on due to the same disability.

(b) **INVALIDATION.** - *In this case he will get disability pension equal to last pay drawn as calculated below : -*

1.	<i>Qualifying service</i>	<i>..33 years (in all cases comes under category (D&E)</i>
2.	<i>Basic pay on the date of retirement</i>	<i>.. Rs. 4030</i>
3.	<i>Service Elements.</i>	<i>.. Rs. 2015</i>
4.	<i>Disability Element for 40%</i>	<i>.. Rs. 4030 for 100% disability</i>
	<i>to be counted as 50% in terms of para 5 of DP & PW O.M. dated 3/2/2000</i>	<i>.. (ii) Rs. 2015 for 50% disability</i>
5.	<i>Disability pension</i>	<i>.. SE+DE i.e. 2015+ 2015=4030 P.M.</i>

(28) The contention of the learned counsel for the respondents, therefore, was that the petitioner was not entitled to any disability pension, as the pension due to the petitioner, already stood paid.

(29) On consideration, I find force in the contentions raised by the learned counsel for the petitioner. The rules have been framed for the employees who are invalided, out of service on account of disability during service. These instructions being beneficial instructions, have to be interpreted to advance the object, and give benefit to the beneficiaries under the rules and not to give a narrow interpretation, to deny the benefits.

(30) If the contention of the learned counsel for the respondents is accepted, that Rule 9 of the Central Civil Services (Extra Ordinary Pension) Rules, 1939 is still in force, then it has to be read with the revised rules. Under Rule 9 of the Central Civil Services (Extra Ordinary Pension) Rules, 1939, reproduced above, an employee could either opt for lump sum compensation by giving up his right of disability pension on being boarded out on a later date, or in the alternative opt for disability pension.

(31) In spite of Rule 9 of the Central Civil Services (Extra Ordinary Pension) Rules, 1939 being in force, while framing the revised rules, the authorities thought it appropriate to grant disability pension to the employees who are boarded out of service for the injuries having been suffered during their service.

(32) In its wisdom, the Government also categorised different categories of persons and fixed the entitlement.

(33) The benefit due under the statutory regulations, could not be denied to the petitioner merely, on the basis of clarificatory letter, which goes contrary to the revised rules. There is no provision under the revised rules which bars the grant of disability pension.

(34) The contention of the learned counsel for the respondents cannot be accepted, that Rule 9 of the Central Civil Services (Extra Ordinary Pension) Rules, 1939, was still in force, as when a new rule in substitution of the earlier rule, is framed, the the rule which was in force would stand deleted, in case it is contrary to earlier rules. It is for this reason that Rule 9 has been deleted from Rule Book after coming into force of revised rules. Two contrary provisions cannot be allowed to stand in the statutory rules at the same time.

(35) If the interpretation given by the respondents is accepted, then the petitioner will be entitled to the lump sum compensation, as well as disability pension, as revised rules will be taken in addition to existing rules. In the revised rules, provision has been made for grant of disability pension and not lump sum compensation. This cannot be the intention of rule making agency.

(36) Therefore, the petitioner would be required to refund the lump sum compensation availed by opting under non-existing rule, so as to avail disability pension. The lump sum compensation obtained by him under Rule 9 of the Central Civil Services (Extra Ordinary Pension) Rules,

1939, which was not in force on the date, when this benefit was availed by the petitioner. The compensation, therefore, is not supported by any law.

(37) It was also the contention of the learned counsel for the respondents, that petitioner having opted for the lump sum compensation was now debarred from claiming disability pension under the rules.

(38) This contention again deserves to be noticed to be rejected, as there can be no estoppel against law/statutory rules. Once, under the statutory rules, a person is entitled to pension, it cannot be denied, merely because under the wrong advice, the petitioner opted to avail benefits, which were less beneficial, than the one to which he was entitled to under the rules, specially when right to pension, has been recognized as right to property under the Constitution.

(39) It is not in dispute, that Pawan Singh, petitioner in this writ petition is in Category 'D'.

(40) Shri Satpal petitioner in CWP No. 5629 of 2010 has been wrongly shown in Category 'C', he is also required to be placed in Category 'D', as injury was suffered by him while he was coming back from insurgency operation to his Unit. The injury suffered, therefore, is to be taken to have been caused during insurgency operation, even though injury suffered by him was due to truck having been overturned while coming back from insurgency operation. Petitioner in CWP No. 5629 of 2010 would also be covered in Category 'D' under the revised rules.

(41) Whereas petitioner in CWP No. 3673 of 2008, Shri Jaswant Singh suffered injury in a rail accident, therefore, he is rightly placed in Category 'C'.

(42) For the reasons stated, the writ petitions are allowed, the impugned order, denying disability pension to the petitioners, is quashed. The respondents are directed to release disability pension to the petitioners, from the due date by treating them in respective categories referred to above, within three months of the receipt of certified copy of this order. However, it will be open to the respondents to adjust out of the pension dues payable to the petitioners, the amount paid as lump sum compensation, as per option exercised by the petitioner, along with interest @ 6% per annum to be calculated from the date of payment till today.

(43) No costs.