

FORM NO. 4

**(See Rule 11 (1))
IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH**

ORDER SHEET

10.

**O.A. No. 85 of 2012
With M.A. No. 124 of 2012**

Hony. Subedar Major Daulat Ram

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. K. Ramesh, Advocate.

For respondents: Ms. Jagriti Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

| Notes of the Registry | Orders of the Tribunal |
|------------------------------|---|
| 02.08.2012 | Order passed vide separate order sheet, is placed on record. Petition is allowed in part with no order as to costs. |

**A.K. MATHUR
(Chairperson)**

**S.S. DHILLON
(Member)**

**New Delhi
August 02, 2012
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IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

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O.A. No. 85 of 2012
With M.A. No. 124 of 2012

Hony. Subedar Major Daulat Ram**Petitioner**

Versus

Union of India & Ors.**Respondents**

For petitioner: Mr. K. Ramesh, Advocate.

For respondents: Ms. Jagriti Singh, Advocate.

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HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
02.08.2012

1. Petitioner by this petition has prayed that directions may be issued to the Respondents to grant disability pension @ 50% FROM 31ST August 1997 i.e. date of discharge from service till date with penal interest of 9% in the light of Govt. of India, Ministry of Defence letter dated 31ST January 2001. He has also prayed that a further directions may be given that in the attendant circumstances of the case, Rs.5 lakhs may be granted to the Petitioner for medical negligence of leaving a tip and head of drilling machine with its screws on the operated right arm till recovery of the same by a subsequent surgical operation in a civil hospital in Chandigarh.

2. Petitioner was enrolled in the Indian Army on 26th August 1969 and he met with an accident on 22nd June 1997 when the rear tyre of scooter suddenly burst and that accident took place near HQ Delhi area and he was admitted to Base Hospital on 22nd June 1997. After thorough investigations by the doctors in the Base Hospital, it was found that the Petitioner had

sustained compound fracture lower and humerus of his right arm and he was admitted to the said hospital for further treatment. On completion of 13 days of treatment at the Base Hospital, the Petitioner was examined by the Senior Advisor Surgery and Orthopaedic Surgeon of the Base Hospital who operated upon him on 5th July 1997. Petitioner was not cured after the surgery and he used to have pain. Later on, it came to light that the operating doctor had left the broken head of the drill machine in his right arm resulting into non-union of the said bone and continuous discharge of pus. Petitioner was examined by the Medical Board on 19th August 1997 and the Medical Board has said that this injury is aggravated by the military service and assessed the disability to the extent of 30% for five years. As per the original record which is placed before us by the learned counsel for the Respondents, it appears that his case was recommended for the disability pension on 31st August 1997 on completion of his tenure and his papers were sent for the disability pension but it was declined by the PCDA (A). Thereafter he filed a writ petition before the Hon'ble Delhi High Court and the Division Bench of the High Court passed the following order:

“Consequently, the impugned order is set aside. The respondents are directed to consider the case of the petitioner and grant to the petitioner the disability pension after subjecting him to a Medical Board in accordance with the Rules.”

Then he was again sent before a Medical Board and the Medical Board held on 2nd April 2007. He was again examined by the doctors though the doctors said that the disability is neither attributable to nor aggravated by the military service and is not covered by the Entitlement Rules, 1982. However, in

pursuance of the judgment of the Hon'ble Delhi High Court on 30th November 2007 the President has already accorded a sanction for implementation of the abovesaid judgment and issued disability for 20% with effect from 2nd April 2007 for life. We are not going to probe the matter as the sanction of the President has already been issued. Therefore, the only limited question before us now is whether the disability pension should be given to him from the date of the order dated 30th November 2007 or from the date of discharge. Since the judgment has set aside the earlier order by which the petitioner was denied the disability pension and the Hon'ble Delhi High Court has already held that the Petitioner is entitled to disability pension referring to the decision of Hon'ble Supreme Court in the case of **Madan Singh Shekhawat v. Union of India & Ors. AIR 1999 SC 3378** therefore we are not going to question whether the disability pension was granted rightly or wrongly. Learned counsel for the Respondents has invited our attention to a decision of the Full Bench of Hon'ble Delhi High Court in the case of **Ex. Nk. Dilbag v. Union of India & Ors. (W.P. (C) No. 6959 of 2004 (decided on 22nd August 2008)** in which **Madan Singh Shekhawat** (supra) has been discussed and dilated and the Full Bench has held that the incumbent should show what is the causal relationship between the accident and the military service. In case, incumbent meets with an accident and it has nothing to do with the military service then he shall not be entitled to disability pension. Be that as it may, this is a judgment delivered by the Full Bench of the Hon'ble Delhi High Court and implemented by the Government. We do not want to go into these questions. The question remains is whether the Petitioner should be granted disability pension from the date of release or from the date of second Medical Board. We have gone through the record. In earlier Medical Board the disability has

been found aggravated by military service and has been assessed 30% disability. Now the Government has already given him 20% disability. Therefore, we are not going to further question and we accept that the Government has already released him disability pension only to the extent of 20% but it has to be only from the date of release of the Petitioner and it cannot be related from the date of issue of the order i.e. 30th November 2007 as the Petitioner at the time of release on 31st August 1997 was said to have received an injury which was declared by first Medical Board to be aggravated by the military service. Therefore, his disability pension has to be related from the date of the release of the pension to the Petitioner. Accordingly, the disability of the Petitioner shall be treated as 20% from the date of release from service i.e. 31st August 1997. Accordingly, we direct the arrears of pension may be worked out and same may be paid with 12% interest to the Petitioner. Now next question is with regard to rounding up and that of the negligence on the part of the doctor is concerned. We are not going to touch that part for a simple reason that so far as rounding up is concerned we have already taken a different view in the matter and we have been told that the matter is pending in Hon'ble Supreme Court. Therefore, at present we are not going to allow him rounding up from 20% to 50%.

3. So far as medical negligence is concerned, the Petitioner has neither produced necessary material nor can it be inferred that civil hospital doctor found some serious lapses on the part of the military doctor. This is a matter to be agitated at the appropriate forum as both the parties have to lead the evidence to show whether the military doctor who operated at Base Hospital was really at fault or not. It cannot be determined in these proceedings.

Therefore, we are not going to grant him any compensation on so-called negligence on the part of the military doctor.

4. Consequently, we allow this petition in part as indicated above. The disability pension shall be released to the Petitioner from 31st August 1997 and all the arrears will be worked out and paid to him with 12% interest. No costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
August 02, 2012
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