

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

TA No.176/2009

[WP(C) no.8069/07 of Delhi High Court]

Brig K.K. Khajuria (Retd.)

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh.C.P. Singh, Advocate

For respondents: Ms.Jyoti Singh, Advocate with Capt Alifa Akbar

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON
HON'BLE LT. GEN. M.L. NAIDU, MEMBER**

**ORDER
04.12.2009**

1. Petitioner by this writ petition has prayed that respondents may be directed to pay the disability pension to the plaintiff at rate of 50% of the rate of disability pension with interest @12% from the date of his retirement.

2. Brief facts relevant for disposal of present petition are that petitioner was commissioned in the Indian Army on 11.12.1962 and was posted in Infantry, 1 Battalion Jammu &

Kashmir Riles. He led his troops as Company Commander in 1965 and 1971 wars. He served in most difficult geographical areas in war/counter insurgency operations. In 1971 war in Bangladesh, while leading his troops in attack over enemy's position he suffered massive gunshot wounds in both thighs. He was evacuated as seriously wounded priority 1 casualty from the battle ground and remained hospitalized for long duration. After recovery, he was placed in low medical category and kept serving the Army. He was given many decorations and he detailed his service in 1965 war operation as well as 1971 war operation in Bangladesh. Thereafter, he continued to remain in service. He was assessed as battle casualty to the extent of 40% disability. However, due to certain personal reasons, he sought voluntary retirement and was voluntarily retired from service with effect from 01.11.1993. He was given all other service benefits but he was not given 40% disability pension which was received by him as war injury. Therefore, petitioner filed the present petition before the Hon'ble Delhi High Court with aforesaid prayer which after formation of Armed Forces Tribunal has been transferred to this Tribunal for disposal.

3. The petitioner has moved an application for amendment in his prayer because in prayer he has not mentioned that he should be given disability pension of war victim. Therefore, he moved the amendment application for amendment in the prayer for abundant caution. The amendment application is allowed. The fact remains that incumbent has served the Indian Army for full term of engagement and he was recruited in 1962 and sought voluntary retirement in 1993. He had put 31 years of service where as minimum period of engagement for granting service pension is 20 years but in the present case the incumbent was denied 40% of disability pension because he has sought voluntary retirement on account of his family circumstances.

4. Learned counsel for respondents has strongly opposed for grant of disability pension arising out of war casualty and made reference to the Regulation 50 of Pension Regulations Army. Learned counsel submits that because of the Regulation 50 incumbent cannot be given benefit of 40% disability which has been accepted by the medical authorities by the certificate issued on 06.01.2005.

5. We have bestowed our best of consideration. In order to appreciate the controversy we reproduce the relevant Regulations of Pension Regulation of Army bearing on the subject i.e. Regulation 50, Regulation 53 and Regulation 179 reads as under:-

50. An officer who retires voluntarily shall not be eligible for any award on account of any disability.

Provided that officer who is due for retirement on completion of tenure or on completion of service limits or on completion of the terms of engagement or on attaining the prescribed age of retirement and who seeks pre-mature retirement for the purpose of getting higher commutation value of pension, shall remain eligible for disability element".

53[(1). An officer retired on completion of tenure or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from disability attributable to or aggravated by military services and recorded by service Medical Authorities, shall be deemed to have been invalidated out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more, and service element if the degree of disability is less than 20 percent. The retiring pension/retiring gratuity, if already sanctioned and paid shall be adjusted against the disability pension/service element as the case may be.

(2). The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of rank held on the date on which the wound/injury was sustained or in case of disease on the date of first removal from the duty on account of that disease.

Note: *In the case of an officer discharged on fulfilling the terms of his retirement, his unwillingness to continue in service beyond the period of his engagement should not effect his title to the disability element under the provision of the above regulation.]*

179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective

of their period of engagement), if found suffering from disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is less than 20 per cent or more and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element as the case may be,

(2) The disability element referred to in Clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.

Note: *in case of an individual discharged on fulfilling the terms of his retirement, his unwillingness to continue in service beyond the period of his engagement should not affect his title to the disability element under the provision of the above Regulation.*

6. As per Regulations 50 an officer who retires voluntarily shall not be eligible for any award on account of any disability. The proviso makes that if the incumbent who is due for retirement on completion of tenure or on completion of service limits or on completion of terms of engagement or attaining the prescribed age of retirement and who seeks pre-mature retirement for the purpose of getting higher commutation value of pension, shall remain eligible for disability pension. Therefore, so far as the proviso is concerned, Regulation 50 makes it clear that on account of completion of terms of engagement or on completion of

tenure or attaining the prescribed age of retirement, incumbent can be granted disability pension. Therefore, Regulation 50 has to be divided in two parts, first part talks about a incumbent who goes on voluntary retirement and in that he will not be eligible for award of disability pension but it is further circumscribed by the proviso that in case incumbent goes on retirement after completion of service or completion of term of engagement or on attaining the age prescribed for engagement then he will be entitled to disability pension. Same is the intention expressed in the Regulation 53 also. It talks about same that an officer on completion of tenure or completion of term of engagement or attaining the age of 50 years if his disability is more than 20% then he is entitled to disability pension. Then Regulation 179 also makes it very clear that the incumbent who retires or discharges on completion of tenure or on completion of 50 years of age and found suffering from disability attributable or aggravated by military service and his disability is more than 20% then he is entitled to the benefit. The note appended under sub-rule (2) of Regulation 179 as reproduced above clarifies the point further that in case of an individual discharged on fulfilling the terms of his retirement, his unwillingness to continue in service beyond this

period should not affect his title to the disability element under the proviso of the above regulations.

7. Therefore, reading of all these provisions together makes it clear that in case incumbent has completed minimum period of his engagement or attaining age of 50 years or his unwillingness to continue in service after an injury received by him attributable or aggravated by the military service and his disability is more than 20% then he is entitled to disability pension also.

8. Therefore, in these circumstances the argument of learned counsel for respondents that petitioner is not entitled to the disability pension in case he goes on voluntary retirement cannot be sustained. The certificate which has been filed by the petitioner clearly states that incumbent has 40% disability. That being the position, therefore, we are of the opinion that denial of the disability pension to the petitioner is absolutely wrong and we set aside the order denying the 40% disability pension. We further direct that the incumbent is entitled to disability pension as per rules as his disability is to the extent of 40% and his disability

pension may be treated as war injury and he should be granted all the benefits as per rules as amended and applicable to him. The whole exercise should be completed within three months from today. Petition is accordingly allowed. No order as to cost.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 4, 2009