

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

TA No.174/2009
[W.P.(C) 16187/2004 of Delhi High Court]

Ex Nk Sant Ram

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioners: Col.S.R. Kalkal(Retd.), Advocate

For respondents: Ms. Swatee Singh, Advocate, Proxy counsel for
Dr.Ashwani Bhardwaj, Advocate with Capt Alifa
Akbar.

CORAM:

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

**ORDER
24.11.2009**

1. Petitioner by this writ petition has prayed that direction may be issued directing the respondents to release 50% disability pension in favour of the petitioner from the date of his discharge i.e. 01.01.2001. It is further prayed that order dated 20.01.2002 by PCDA(P) Allahabad be quashed.

2. Brief facts which are necessary for disposal of present petition are that petitioner was enrolled in the regular Army as combatant soldier on 03.12.1983. Petitioner while posted to 152 A.D. Regiment was attached with movement control office of Delhi, on 26.03.1995 when he was going on duty was struck down by a speeding car and he received severe head injury and became unconscious. He was lifted by a passerby and was admitted in Army Hospital in the intensive care unit as a case of severe head injury. As it was a case of severe head injury, a staff court of inquiry was ordered. The court of inquiry declared the injury caused to plaintiff as attributable to Military service and he was invalided out of service with 20% disability pension. Petitioner was granted 20% disability pension for a period of 2 years. After that PCDA(P) Allahabad rejected this claim of petitioner on 20.01.2002 and petitioner was communicated vide letter dated 17.07.2002. Then petitioner preferred an appeal before First Appellate Committee. After review of matter, the First Appellate Committee came to the conclusion that *petitioner ID "Closed Head Injury" be regarded as attributable to military service and the degree of disablement be viewed at 20% for life with effect from 1st January 2001 by competent sanctioning authority.* Therefore, petitioner filed the present writ petition seeking writ of mandamus that as per notification of Government of India, Ministry of Defence dated 31.01.2001 that *in case incumbent has*

received the disability less than 50% then he will be reckoned with computed disability pension to the extent of 50%.

3. As per this circular, since the petitioner received injury on account of accident while travelling on the road side for going on for duty hit by a private vehicle, therefore, he is entitled to disability pension and disability has been held to be more than 20% but less than 50%. Therefore, 50% element of disability has to be computed for arriving at the pension.

4. Accordingly, the present petition is allowed. The order of PCDA(P) Allahabad dated 20.01.2002 is set aside and respondents are directed to release the pension to the petitioner with 50% disability from the date of retirement i.e. 01.01.2001 and onwards. No costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
November 24, 2009