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IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

TA NO.247/09
WP(C) NO.7502/09 of Delhi High Court

Ex. Pnr. Tara Chand

...Petitioner

Versus

Union of India & Ors.

...Respondents

For the Petitioners : Sh.A.K. Trivedi with Sh.V.K. Ojha, Advocates

For the Respondents: Maj. Sangeeta Tomar, Advocate

C O R A M:

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

ORDER

1. Petitioner by this writ petition has prayed that respondents may be directed to authorize and grant the service element of disability pension for the intervening period from 04.02.1986 to 10.08.2005 and consequently, the petitioner may be entitled for arrears of back period pension with interest and with all consequential benefits.

2. Brief facts necessary for disposal of present petition are that petitioner was enrolled in the Indian Army as PNR on 11.02.1963 and was allotted his service number as 8008540 and was invalided out from Army service on 05.03.1965 being declared as medically unfit for service. Petitioner was suffering from 'Pulmonary Tuberculosis' which accepted as attributable to Military service and petitioner was granted 100% disability pension which was subsequently discontinued w.e.f. 04.02.1986. Petitioner filed an appeal against this order but his appeal was rejected. Then petitioner submitted representation for restoration of his disability pension which was also rejected. Petitioner was brought before the medical board at Army Hospital (R&R) Delhi Cantt. on 11.08.2005 and the disability of the petitioner was assessed as 20% for life w.e.f. 11.08.2005. He was boarded out with disability pension as well as service pension. He was periodically examined and improved with passage of time. The disability continued to be 80%, 60%, 50%, then 50%, 30% and lastly on 07.03.1980 to 31st January, 1986 was 20% and then from 01.02.86 to 19th November, 1986 it was reduced to less than 20%. On account of disability pension which is less than 20% his entire pension was discontinued. Thereafter he filed a writ petition making a grievance. Then again it is alleged that on 11.08.2005

Review Medical Board found that petitioner having 20% disability for life and his disability pension alongwith service pension restored back but his grievance for the period from 1986 to 11.08.2005 when his disability was gone down to 20%, the disability pension as well as service pension discontinued. Therefore the grievance of the petitioner is only limited to the extent of service pension for the period from 1986 upto 11.08.2005. In this connection our attention has been drawn to decision of Hon'ble Delhi High Court in the case of Chhaju Ram Vs. UOI - 2002 (1) Forces Law Journal page 568. Learned counsel for respondents has supported the respondents' case that petitioner is not entitled to service elements of pension. Our attention has also been drawn to decision of Division Bench of Hon'ble High Court in the case of Ex Pnr Sotaj Singh vs UOI. Learned counsel for respondents has justified the action of the respondents.

3 We have heard learned counsel for parties and perused the record.

4 In the light of facts mentioned above the relevant provision bearing on the subject is regulation 186 which reproduced as under:-

186. (1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20% shall be entitled to service elements only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability elements of disability pension from the date it falls below 20%. He shall however, continue to draw the service elements of disability pension.

5. As per this regulation an individual who is invalidated out of service with disability attributable or aggravated by the military service but assessed below 20% was also entitled to service elements pension and not the disability pension. But in case he was initially granted disability pension and his disability was assessed below 20% subsequently, he ceased to get disability but he will continue to draw service elements of pension. Section 173 contemplates two kinds of pension elements. One is service element of pension and another is disability pension. When disability goes below 20% then incumbent disability pension discontinues and thereby disability pension. But by that his service elements of pension is not lost. He continues to get service elements of pension which is also clear from Rule 183. Rule 183 (b) says that in such cases, he will be entitled to subject to minimum of Rs.375/-. Therefore, we are of the opinion that the petitioner is entitled to service elements of pension from the date he was discontinued on 04.02.1986 till he was restored on 10.08.2005. The arrears of pension

constituting the service elements may be determined with reference to the facts of the case and shall be paid to the petitioner alongwith 12% interest per annum. Petition is allowed accordingly. No order as to cost.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
13th November, 2009