IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

TA No.257/2009
[W.P.(C) 7583/09 of Delhi High Court]

Wg Cdr (Retd) M.K. Chadda .....Petitioner

Versus

Union of India & Others .....Respondents

For petitioner: Sh.V.S. Tomar, Advocate

For respondents: Sh.Mohan Kumar, Advocate

CORAM:

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

ORDER
27.11.2009

1. Petitioner by this writ petition has prayed that letter dated 22.12.2008 declining grant of disability pension to the petitioner may be set aside and respondents may be directed to grant disability pension to the extent of 75% to the petitioner with effect from 01.01.2006 alongwith 9% interest thereon.

2. Brief facts relevant for disposal of present writ petition are that petitioner was commissioned in Indian Air Force on 16.06.1976 in the Logistics Branch and was assigned service

no.14519. At the time of commission, petitioner was in the medical category of A4G1. Petitioner was posted to Air Force Station Leh for two years i.e. from 1979 to 1981. Thereafter, petitioner was sent to Sri Lanka to participate in IPKF operations from September, 1988 to January, 1989. Petitioner suffered a heart attack on 27.11.1989 while undergoing course at Staff College Wellington and admitted in ICCU at MH Wellington for 72 hours. Medical Board on 15.12.1989 observed that case of heart attack was due to stress and strain and petitioner was given temporary medical category of At.GI. Thereafter, petitioner underwent open heart surgery at Escorts Heart Institute, New Delhi on 11.12.1991. Petitioner applied for voluntary retirement and he was granted voluntary retirement on 30.08.2001. At the time of release, the petitioner was given medical category of A4G2 which was lower than A4G1. However, petitioner was not given disability pension.

3. The matter has been examined by the medical board which was under the signature of Commanding Officer in that it was recorded that disability of petitioner is to the extent of 15% to 19%. Learned counsel for petitioner has invited our attention to Guide to Medical Officers (Military Pension) and the heading "assessment of cardio-vascular conditions" and in that he invited our attention to

"assessment based on treatment modality offered for IHB" and submitted that PTCA have done 40-50% and CABG in triple vessel disease have done 50-100%. Learned counsel for petitioner has submitted that infact the assessing medical disability to the extent of 15% to 19% of petitioner is nothing but a mockery whereas the petitioner has already undergone triple vessel by-pass surgery which has been duly sanctioned by the authorities. Therefore, it is submitted that assessment of 15% to 19% appears to be absolutely without any basis. Learned counsel for respondents has pointed out that petitioner had not challenged the findings of the medical board. Be that as it may be but the fact remains that petitioner has undergone triple vessel by-pass surgery and he is entitled to be considered for disability and in that connection learned counsel for petitioner invited our attention to regulation 43 of Pension Regulation of the Air Force and also invited our attention to similar provision of Para 54 of Pension Regulations of Army. After going through the matter we are of the opinion that the assessment of 15% to 19% appears to be something unacceptable. However, we are not qualified to assess the percentage of the disability but we think just and proper that let the review medical board may take place and petitioner may appear before that and review medical board shall decide the present disease is attributable or aggravated by the

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conditions of Air Force service and thereafter, authorities shall assess the disability by competent medical board. The authorities directed to convene the Review Medical Board within one month and assess his disability as well as the factor whether it was attributable or aggravated by service conditions or not. The petition is disposed of with above observation. No costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
November 27, 2009