

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

TA No.274/2009

[W.P.(C) 7445/09 of Delhi High Court]

Hav Zile Singh

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh.S.M. Dalal, Advocate

For respondents: Sh.Rakesh Mittal, Advocate

CORAM:

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

**ORDER
02.12.2009**

1. Petitioner by this writ petition has prayed that the order dated 30.08.1985 passed by respondent no. 3 and order dated 31.12.2008 be quashed and findings and the opinion given by the Invaliding Medical Board be set aside and the petitioner may be given disability pension w.e.f. 19.01.1983 with interest @ 12% on the arrears of disability pension.



2. The brief facts which are necessary for disposal of the present petition are that petitioner was enrolled in Army on 27.02.1962. After completing almost 20 years of service, he was boarded out on medical ground on 19.01.1983 being suffering from 'unspecific psychosis' and this disease was not attributable or aggravated by the army service. Medical Board invalidated out the petitioner observing that this disease was because of the constitutional disorder though the percentage of the disability was assessed at 60%. Since it was not attributable or aggravated by the army service, therefore, petitioner was not given any disability pension. Thereafter, petitioner approached Hon'ble Delhi High Court by filing the writ petition and the Division Bench by the order dated 14.07.2008 set aside the order. The matter was remitted back to the Government to reconsider the same in the light of decision given by Hon'ble Delhi High Court in case of General Ved Prakash Vs. Union of India & Others in W.P. (C) No. 18907/2006 dated 22.04.2008. The Government as per the direction given by Hon'ble Delhi High Court reconsidered the matter and an order dated 31.12.2008 was passed by one Lt. Gen. S.R. Mehta, Officer-in-Charge Records and he observed in the order as under :-



"Records available indicate that the petitioner has not availed any high altitude tenure during his entire service. The invaliding disability was viewed as neither attributable to nor aggravated by military service by the Invaliding Medical Board being a constitutional disease."

This observation was given by the Officer-in-Charge Records and not by the Medical Board. In fact the order of Hon'ble Delhi High Court seems to have not been properly understood by the authorities. When the matter was remitted back to the authorities, it should be sent to Review Medical Board to consider it in the light of the judgment given in the case of General Ved Prakash Vs. Union of India (supra). But it seems that the Officer-in-Charge Records looked upon himself and decided the matter but that was not the intention. It is the Medical Board who shall decide whether this person is fit or not. If the Medical Board finds that petitioner's disease was not aggravated or attributable to Army service then it is the Medical Board who shall give reasons for it. Therefore, the Officer-in-Charge Records was not the competent person to examine the matter of petitioner and come to finding that disease was not attributable or aggravated by military service. It is only the Medical Board which is competent to reconsider and give its findings after reviewing the petitioner's

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posting and in the light of Guide to Medical Officer which was considered by this Tribunal in the case of **Nakhat Bharti etc. Vs. Union of India bearing TA No.48/2009 decided on 28.10.2009.** Consequently, we allow this petition and set aside the order dated 31.12.2008 passed by the Officer-in-Charge Records and direct that ~~let~~ the case may be remitted back to the Review Medical Board and after findings of the Review Medical Board, authorities should consider whether petitioner should be granted disability pension or not. The whole exercise should be completed as far as possible within three months from today. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 2, 2009