

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

TA No.540/2009

[WP (Civil) No.8061/09 of Delhi High Court]

Makhan Lal

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: None

For respondents: Flt Lt Vishal Chopra

**CORAM:**

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

**ORDER  
17.12.2009**

1. The present petition was transferred from Hon'ble Delhi High Court to this Tribunal on its constitution.
2. Petitioner by this writ petition has prayed to issue a writ of in the nature of certiorari for quashing the impugned letter dated 17.12.2008 and direction to the respondents to pay 75%

disability element of pension with effect from 06.11.2007 and also pay the arrears along with the interest thereon.

3. Petitioner was enrolled in Indian Air Force as combatant Air Man on 05.05.1987. Petitioner was transferred to Delhi Area in March, 2000. In July, 2004, petitioner was diagnosed as 'developmental glaucoma' both eyes and he underwent laser P.I. (Eye hole). Petitioner was transferred to Port Blair in December, 2004 where he continued the treatment of eye drops and he was diagnosed as 'ocular hypertension' both eyes and he was placed in low medical category. Petitioner was transferred to Patiala in February, 2007 and he was sent to re-categorization medical board in August, 2007 at M.H. Ambala Cantt. where petitioner was placed in permanent low medical category. Petitioner was not promoted to the rank of J.W. and his juniors were promoted. Therefore, petitioner sought premature release and accordingly, he was discharged with disability which was assessed 20% for the ear problem and 40% for eye problem which comes to 60%. Petitioner was invalided out of service on 05.11.2007. Petitioner submitted an application for grant of

disability element of pension but his request was refused on the ground that since petitioner was discharged on his own request, therefore, he was not entitled to disability element of pension. Hence, petitioner approached the Hon'ble Delhi High Court by filing present writ petition.

4. We gone through the matter and heard Flt. Lt. Vishal Chopra appearing on behalf of respondents.

5. The only ground which appears to have been held out against the petitioner for grant of disability element of pension is that he has boarded out at his own request, therefore, he is not entitled to disability element of pension. Flt. Lt. Vishal Chopra appearing on behalf of respondents submits that as per Government order when the incumbent goes on volunteer discharge then disability element of pension is not awarded. In this connection petitioner has referred to the decision of Division Bench of Delhi High Court in wherein it was held that a person when goes out on voluntarily retirement on the ground of disability attributable to the military service with 50% then he is entitled to

disability element of pension. The matter was remitted back by the Hon'ble Delhi High Court to the Government for reconsideration. However, after going through the matter, we are of the opinion that to deny the person disability element of pension just because voluntarily opt to go out from Army on account of his superannuation as a result of medical disability that should not be held ground against the incumbent. In the present case the disability has been pointed out by the petitioner is more than 50%. Therefore, as per recommendation of 5<sup>th</sup> Pay Commission Report a order has been issued on 31.01.2001 and clause 7.2 says that in case the disability is less than 50% then 50% shall be reckoned for computing of disability element and in case the disability is between 50 and 75 then 75% shall be reckoned for computing of disability element and in case if it is between 76 and 100 then 100% shall be reckoned for computing of disability element. As per petitioner, his disability is more than 75% and he is entitled to 100% disability element. However, the Authorities may examine the matter and find out what exactly is the percentage of disability. If it happens to be more than 50% then 75% shall be reckoned for computing the disability element and if it is more than 75% then 100% shall be reckoned for computing the disability element. The

petition is accordingly allowed. The impugned order dated 17.12.2008 is quashed. Petitioner shall be entitled to arrears of disability element of pension and same be released forthwith. The whole exercise should be done within a period of 3 months. No costs.

**A.K. MATHUR**  
(Chairperson)

**M.L. NAIDU**  
(Member)

**New Delhi**  
**December 17, 2009**