

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

O.A. No. 13/2009

Capt Aditya SinghApplicant

Versus

Union of India & OthersRespondents

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

For respondents : Col.R. Balasubramanian(Retd.), Advocate

CORAM:

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

**ORDER
19.03.2010**

1. Applicant by the present original application has prayed that he should be given war disability pension from the date of discharge from service and he should be granted Rs. 1 lac as exgratia payment as entitled as per Annexure A-8.

2. Brief facts relevant for the disposal of present original application are that applicant was selected for National Defence Academy Kharkwasla, Pune in the year 1984. After undergoing strenuous tough training for 3 years in National Defence Academy and 1 year training at Indian Military Academy Dehradun, he was granted permanent commission in the Army on 17.12.1988. In the year 1990, he was posted with 11 Guard Battalion located at Siachin glacier where he participated actively in operation Meghdoot against Pakistan Army. In September, 1990 while he was actively participating in the operation one boulder (stone) hit his left knee resulting into injury. He was volunteered for Parachute Commando and was attached with 10th Battalion of Para Commando for training. He again developed pain in his knee due to earlier injury and reported sick with medical Authorities. He had ankle sprain while playing organised game of Basket Ball on 27.06.1992 and was placed in low medical category (temporary). He was placed before a medical board for review and medical board found that injury in the left knee and pain in the spine resulting into disability to the extent of 30%. He was again placed in low medical category with restrictions of employability 'not fit for duties in combat or hilly terrain and

extreme cold climate'. Despite that, he was posted with 31st Battalion of Assam Rifles located at Manipur which is mountainous and high altitude. He found himself not been able to cope up with the requirements of local unit, therefore, he submitted his resignation from service. He requested for benefit of war injury pension as per Government Notification dated 31st January, 2001 but that was rejected. He filed an appeal but without any result. Ultimately, he filed the present original application before this Tribunal with aforesaid reliefs.

3. Respondents filed the reply wherein they pointed out that applicant did not receive any war injury as there is no corresponding record to show that he received the injury during operation Meghdoot. On contrary it is pointed that applicant received the knee injury while playing Golf and therefore, it is not a war injury and he is not entitled to benefit of war injury pension.

4. We have heard learned counsels for the parties and perused the record.

5. Learned counsel for the applicant invited our attention to Government of India, Ministry of Defence order dated 07.02.2001 and submitted that once the injury has been recorded by the Medical Board that will be final for life unless incumbent asks for review. Learned counsel for the applicant heavily relied on the aforesaid order and submitted that once the injury is recorded then it should be final for life.

6. We have bestowed our best of our consideration to the order dated 07.02.2001 and we are of the opinion that this contention raised by the learned counsel for applicant not appears to be well founded. In fact under the heading "Injury Cases", Item 3 says "Assessment" which reads as under:-

"Assessment: The assessment with regard to the percentage of disability as recommended by the Invaliding Medical Board/Release Medical Board as approved by the next higher medical authority, would be treated as final unless the individual himself requests for review".

7. This in our opinion only means so far as the decision given by the Release Medical Board will not be final and it cannot be treated to be for full life unless the Medical Board records that it is for life, permanently. Just because the Release Medical Board

has said that particular injury is to the extent of 20% or 30% and it is for the period of two years that will be final unless Medical Board certified that it is permanent. Therefore, contention of the learned counsel for applicant treating it permanently for life is not correct on reading of this circular.

8. Learned counsel for the applicant next submits that applicant received knee injury during the Operation Meghdoot at Siachin. We called for the original record and we have gone through the same. We find that there is no corresponding medical record to show that the applicant received this injury during Operation Meghdoot. It is recorded that applicant stated that he received this injury somewhere in 1990 but he did not report this and only reported this on 14.01.1992. This shows that had the applicant received this injury during the Operation Meghdoot why did he waited that long. This shows that he did not receive this injury during Meghdoot operation. As per medical record he received one ankle injury which is said to have been received by the applicant during Basket Ball competition and knee injury he himself admitted to have received while playing Golf. But after going through the record we found that there is no corresponding

record to show that the applicant received this knee injury during Operation Meghdoot. Therefore, this contention of learned counsel for the applicant does not appear to be correct. As per the medical record so-called injury in the ankle received by the applicant while playing Basket Ball Competition was assessed to the extent of 30% for a period of two years. That two years have expired long back and applicant did not approach the Authorities for Resurvey Medical Board to assess that he still suffering that disability on account of injury or not. Therefore, alternatively learned counsel for applicant has submitted that now at least his case may be referred to Resurvey Medical Board to assess whether he still continues with old disability or not as two years have expired long back. Ordinarily, we would have directed the applicant to apply for Resurvey Medical Board but that will unnecessarily take cumbersome exercise. To cut short the time, we direct that Authorities may convene the Resurvey Medical Board and send the case of the applicant to assess the disability, if there is any. Applicant may request the Director General, Armed Forces Medical Services and send copy of this order and request that Resurvey Medical Board should be convened at Command Hospital, Pune as he is residing in Pune.

9. The present original application is accordingly disposed of with aforesaid directions. No order as to costs.

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

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

**New Delhi
March 19, 2010.**