

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

O.A. No. 172/2010

Ex. Nk. Bagh Singh

.....Applicant

Versus

Union of India & Others

.....Respondents

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

For respondents: Ms. Jagrati Singh, Advocate, proxy counsel for
Sh. A.K. Bhardwaj, Advocate.

CORAM:

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

**ORDER
28.09.2010**

1. Applicant by this petition has prayed that he may be granted war injury pension @ 80% of reckonable emoluments of Havildar and direct the AGI to release Rs. One Lac and Army Authorities may be directed to grant the applicant Havildar rank and its pension w.e.f. 01.07.1989 and other retiral benefits.
2. Brief facts of the case are that applicant was enrolled in the regular Army as combatant soldier on 16.06.1969 and he had no disability at the time of enrolment in the Indian Army. Applicant participated in Indo-Pak war of 1971 in Bangladesh and

during the war he received a gunshot wound in his left hand and became a war casualty. Applicant was placed in low medical category EEE and invalided out of service by properly constituted Medical Board. He was recommended 60% disability pension by the Medical Board but CDA (P), Allahabad reduced it to 50% and not granted the war injury pension till issuance of impugned letter. Presently applicant is getting 30% war injury pension and 20% disability pension which is contrary to the mandate of Government of India, Ministry of Defence which contemplates minimum of 80% of the reckonable emoluments last drawn in the case of PBOR in case of invalidment. Therefore, applicant has come up with this petition.

3. Applicant's grievance is that he is entitled to war injury pension @ 80% reckonable emoluments at the last pay drawn by virtue of Government letter dated 30.10.1987. This matter was agitated before Hon'ble Delhi High Court and Hon'ble Delhi High Court dismissed his petition on 17th July, 2002 vide CWP No. 40201/2002. Hence, there is no question of grant of war injury pension after decision of Hon'ble Delhi High Court as this Tribunal cannot sit over the matter and grant him war injury pension.

4. Now coming to the question whether he should have been treated as Havildar whereas he has been given pension on the basis of Naik. This petition was contested by respondents and respondents in their reply have pointed out that applicant has himself admitted that he was Naik from the very beginning and learned counsel for the respondents have placed before us original record and on perusal of record it appears that applicant received red ink entry in 1982 and another red ink entry in September, 1988 prior to retirement on i.e. 30.06.1989 and all thorough he was treated as Naik. Consequently, he cannot be declared Havildar at this distance of time. He was not retired as Havildar as there is no order subsisting or showing that he is Havildar whereas as per record he was retired as Naik and subsequently, he was granted pension as Naik only. Therefore, we do not find any merit in the petition. Same is dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
September 28, 2010.