

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O. A. NO. 192/10

Ex. Sep. Mohar Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner : Sh. S. R. Kalkal Advocate.

For respondents: Sh. Ankur Chibber, Advocate.

CORAM:

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

**ORDER
08.12.2010**

1. Petitioner by this writ petition has prayed that the impugned order dated 11.12.2009 be set aside and respondent may be directed to pay the service element of disability pension to the applicant w.e.f. 30.10.1975 along with the interest.
2. Petitioner was enrolled in Indian Army on 14.11.1961 and was found medical fit by the recruit medical board and he was invalidated out from service on 19.2.1964 in the low medical category. The applicant was granted disability pension and the disability pension of the petitioner was stopped w.e.f.27.3.1968 without any reason. The applicant being ex-serviceman was called in a meeting of ex-servicemen ^{league ✓} in the year 1999 ~~on league~~ ✓ at CSD Canteen, Charkhi Dadri, Distt. Bhiwani, Haryana and in that meeting applicant was told by the member of the league that

applicant is entitled to service element of disability pension. Then he sent a representation and same was denied and ultimately the petitioner approached this tribunal by filing this petition.

3. The respondent contested the matter and submitted that petitioner is not entitled to any service element of disability pension after disability has come down below 20%. The matter came before us on two or three occasions and on 15.9.2010 the respondent took the position that the petitioner was discharged in 1964 and they do not have any record and they have only sheet roll which does not transpired that he was getting disability pension. Petitioner was directed to produce any order showing that he was drawing a disability pension. Counsel for the petitioner placed before us a copy of the letter dated 1.5.1968 showing that he was given disability pension but that was discontinued from 27.3.1968 being less than 20%. Then this copy of this letter was given to the Counsel of the Respondent to verify and make the submission.
4. Today the counsel for the respondent has produced before us the intimation received from PCDA Allahabad dated 11.11.2010 and in that they admitted that the individual was granted disability pension @ Rs.16.35 per month, w.e.f. 19.2.64 to 8.12.65 (PP No.D/509/64). Then @ Rs.20 p.m. w.e.f. 9.12.65 to 8.2.98, then @ Rs.20/- p.m. w.e.f.9.2.68 to 27.3.68 and they further observed that no disability pension is payable w.e.f. 28.3.68 as individual disability has been assessed less than 20% from that date. Since

his disability was fallen from less than 20% his disability pension might have been discontinued but nonetheless he is entitled to the service element of disability pension as per regulation 186 of the Pension Regulations For the Army, 1961. Therefore, the petitioner is entitled to the service element of disability pension as his disability has fallen from 20%.

5. Respondent is directed to pay the service element of disability pension from three years preceding to filing of this petition. The arrears should be worked out and payment should be made to the petitioner along with 12% interest within the period of three months.
6. The petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 08, 2010.