

O.A. No.275 /2010

10.11.2010

Present : Co. (Retd.) S.R. Kalkal, Advocate, Counsel for the
applicant Shri Anil Gautam, Counsel for the respondents

1. The petitioner by this petition has prayed that disability pension @ 50% may be released to the petitioner from the discharge of the service. The petitioner was enrolled in the Army in 1980 and he was discharged in June, 1997 as he was suffering from chronic duodenal ulcer. The medical board recommended that it is attributable to military service because of dietary compulsions and recommended for disability pension @ 20%. The petitioner sought a voluntary discharge on account of this disability. The petitioner was denied the disability pension.
2. It was pointed out that in the case of Ex-Sep Mahabir Singh Narwal, the Delhi High Court allowed the petition of the petitioner and granted him the disability pension against which Union of India submitted an appeal before the Apex Court and the same was dismissed. Therefore, petitioner has prayed that on the basis of reasoning given by the Delhi High Court

which has been affirmed by the Hon'ble Supreme Court, petitioner may be granted disability pension @ 50%.

3. The petition has been contested by the respondent. It is pointed out that the petitioner was placed on low medical category and he was offered a shelter appointment which he accepted for the period of two years i.e. upto March, 1998. But, before completion of the shelter appointment, applicant applied for premature discharge from the service and the resurvey medical board assessed the degree of the disability @ 20% for two years and regarded as not attributable but aggravated. He was granted service pension. It is also pointed out that the petitioner was not released on the ground of invalidity but he was released on his own request on compassionate grounds.
4. We heard learned counsels for the parties. It is true that he was provided a shelter appointment as the petitioner was qualified. It was pointed out that he was not discharged on the medical ground but on the compassionate grounds, therefore, this case is not covered u/s 173A of the Pension Regulations for the Army, 1961. It was also pointed out that as per the decision in the Mahabir Singh Narwal case he will

not be entitled to benefit of rounding off the pension to 50% as he was not invalidated out of the service. However, he was eligible for grant of disability pension in accordance with the finding of the Medical Board for the period of two years, but he is not entitled to the benefit of rounding off. A distinction has to be kept in mind between Release Medical Board & the Invalidating Medical Board. The Release Medical Board considered the disability at the time of discharge on completion of tenure, whereas the invalidating Medical Board considered where the incumbent is invalidated out on account of medical category EE i.e., permanent medical disability. The Government Order dated 30.1.2001, for rounding or broad banding, para 7.2 says that personnel who are invalidated out under para 4.1 will be entitled to this benefit of broad banding. Therefore, the broad banding is not applicable in all cases, except where the incumbent has been invalidated out on account of permanent disability, but not in the case of incumbent who seeks voluntary discharge or release. This distinction has to be kept in mind. The petitioner in the present case was granted a disability pension for a period of two years and he was not discharged on account of medical

disability but he was released on the account of compassionate grounds, therefore, he will not be entitled to broad branding.

5. Since, the petitioner was granted disability pension for the period of two years and he was not called by the Re-Survey Medical Board, he may now be again summoned by the Re-Survey Medical Board and in case he still suffers from the duodenal ulcer then his disability pension will be dependent on the recommendation of the re-survey medical board.
6. The authorities shall issue notice to him and fix a date for the examination of the petitioner by the re-survey medical board. It should be done within the period three months.
7. The petition is allowed in part. No orders as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)