

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

O.A. No. 286/2010

Ex. Rect. Ayub Ali Khan

.....Applicant

Versus

Union of India & Others

.....Respondents

For applicant: Sh. S.M. Hooda, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

**CORAM:**

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

**ORDER  
06.10.2010**

1. Applicant by this petition has prayed that respondents may be directed to pay him 20% disability pension w.e.f. 04.07.1979 to 31.12.1995 and then 50% disability pension w.e.f. 01.01.1996 and also pay arrears along with interest thereon.

2. Brief facts of the case are that applicant was enrolled as a Sepoy on 13.03.1978 and he was discharged from service on account of injury i.e. left Fracture Tibia and IDK (LT) Knee and

then applicant was invalidated out of service on 04.07.1979 and his papers for pension were sent to PCDA (P), Allahabad which was rejected on 29.04.1981. Thereafter, applicant did not take any step and then in 2008 a writ petition was filed by applicant before Hon'ble Delhi High Court vide W.P. (C) No. 8866/2006 and Hon'ble Delhi High Court directed vide order dated 16.12.2008 to supply the copy of Medical Board proceedings to applicant and same was supplied to applicant and thereafter, applicant approached this Tribunal by filing present petition.

3. A perusal of the Medical Board proceedings shows that applicant was said to have received the disability to the extent of 20% and there is finding recorded by the Medical Board that this disability arose due to the injury sustained in service and it is attributable to Military Service as per IAFY-2006 (Injury Report) and OC has recorded that injury has been received while he was practicing athletics for Inter company matches and same has been certified by Commanding Officer. Therefore, so far as the 20% disability received by applicant from the Military Service is beyond doubt. Though the petition is belated as this claim was rejected by PCDA (P), Allahabad in 1981 but applicant was not

given Medical Board proceedings and he got the same in view of the direction given by Hon'ble Delhi High Court and the disclosure of those papers clearly transpires that applicant's request for grant of disability pension was erroneously rejected by PCDA (P), Allahabad as PCDA (P), Allahabad had no occasion to see the patient and the PCDA (P), Allahabad cannot overrule the findings given by the Commanding Officer that incumbent has received this injury in Military Service. So far as the authority with regard to attributability is concerned, it is only given to the Commanding Officer. Hence, in the present case, it was held by the Commanding Officer that applicant has received this injury in Military Service and same has been certified by the Medical Board to the extent of 20% and on that basis incumbent was invalidated out of service. Thus, applicant is entitled to 20% disability pension w.e.f. 04.07.1979 for a period of two years i.e. upto 03.07.1981. This disability pension may be released to applicant with the interest @ 12%. Since it was for a period of two years, applicant may appear again before Resurvey Medical Board and the date and time shall be fixed by the Authorities. In case Resurvey Medical Board finds that applicant's injury still persists, then his

future pension will be depend on that. Petition is disposed of with aforesaid directions. No order as costs.

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

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

**New Delhi**  
**October 06, 2010.**