

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

O.A. No. 359/2010

Ex. Sep. Rambir SinghApplicant

Versus

Union of India & OthersRespondents

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

For respondents: Brig. (Retd.) A.K. Srivastava, Advocate.

CORAM:

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

**ORDER
14.09.2010**

1. Applicant by this application has prayed that he may be granted disability pension @ 50% from the date of his discharge from service along with the arrears and 12% interest.

2. Applicant was enrolled in the regular Army on 31.12.1972 as combatant soldier after having been found physically and medically fit in all respects. While he was posted in Field Area during the physical efficiency test which was conducted on 25.11.1980, applicant got injured in his knee (RT). Applicant was admitted and treated in Military Hospital but he could not

recover fully, therefore, he was placed in Low Medical Category CEE (T X 24 Weeks) and subsequently was placed in CEE (P). Thereafter applicant was brought before the Release Medical Board and the Release Medical Board declared the injury sustained by applicant as attributable to Military Service and assessed the disability @ 30% and applicant was discharged from service w.e.f. 30.09.1983 along with medical disability for a period of 2 years. But he was not granted any benefit of this because he was discharged voluntarily from service. He made representations from time to time but without any result. Ultimately, an identical petition was filed before Hon'ble Delhi High Court titled as Mahavir Singh Narwal vs. Union of India (CWP No. 2967/1989) which was allowed and the matter was taken to Hon'ble Supreme Court and Hon'ble Supreme Court dismissed the Special Leave Petition of Union of India *in limine*. Thereafter, applicant woke up and approached this Tribunal by filing present petition.

3. Matter was contested by the respondents and they have filed their reply.

4. So far as question of disability pension is concerned, the incumbent who has voluntarily discharged with medical disability earlier the view was that the incumbent will not get any benefit of this disability when he seeks voluntary discharge. In this connection, a recent decision of Hon'ble Supreme Court has also been cited in the case of Union of India Vs. Ajay Wahi in which their Lordships have upheld that such people are not entitled for disability pension. However, subsequently, Ministry of Defence issued a Notification dated 29th September, 2009 wherein they have accepted that an officer as well as persons below officer rank both will be entitled to disability pension if it is attributable to Military Service not less than 50% disability. The disability pension irrespective of the fact that whether he had discharged or voluntarily discharged, in pursuance to the decision given in the case of Mahavir Singh Narwal (supra), all have been called back by the Order dated 29th September, 2009 for the Resurvey Medical Board.

5. However, so far as the present case is concerned, applicant's disability was assessed @ 30% for a period of two years, therefore, he was entitled to the pensionary benefits for two years as per Regulation 173 (a) which was in force at the relevant

time, was applicable to PBOR. So far as the persons below officers rank are concerned, the condition was not there that they will not be entitled to disability pension. So far as the case of Ajay Wahi is concerned, it is not related to persons below officers rank and it is related to Officers. Be that as it may, but the fact remains that incumbent's disability was for a period of two years at the time of seeking voluntary discharge. The Regulation 173 (a) as it stood the incumbent is entitled to two years disability pension @ 30% which was denied to him. So far as the future case is concerned, applicant may be summoned by the Authorities in the light of the Notification dated 29th September, 2009 and he may be examined. Future payment will depend on the recommendations of the Review Medical Board. Respondents are directed to work out the arrears of two years disability pension i.e. from 30.09.1983 and same shall be paid to applicant with 12% interest within a period of two months. The petition is allowed in part. No order as to costs.

A.K. MATHUR
(Chairperson)

New Delhi
September 14, 2010

M.L. NAIDU
(Member)