

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

O.A. No.58/2010

Sub RampahlPetitioner

Versus

Union of India & OthersRespondents

For Petitioner: Sh. S.M. Dalal, 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
15.09.2010**

1. Applicant by this petition has prayed that respondents may be directed to compute the disability element of pension to the Petitioner @ 50% and direction may also be given to amend the impugned Pension Payment Order accordingly.

2. Brief facts of the case are that Petitioner was enrolled in Army on 06.02.1970 and he suffered with heart disease in

December, 1994 and this heart disease was said to be attributable to Military Service. Therefore, his disability was assessed @ 40% for life and he was released by the Medical Board and discharged on 01st March, 1998. Now, Petitioner is already getting 50% of the pension and he is getting 40% disability pension.

3. The grievance of the Petitioner is that he is entitled to rounding up of 40% disability pension. In this connection our attention invited to the Circular dated 07th June, 1999 which was amended by the Corrigendum dated 23.06.1999 in which para 1 line 8 for 'retirement' the words have been added "retirement/discharge/invalidment". Learned counsel for Petitioner submits that Petitioner has been invalided out as such he is entitled to rounding up of 50% w.e.f. 01.01.1996. But we regret that we cannot accede to the request of Petitioner. The Circular dated 07th June, 1999 clearly says that implementation of the Government decision on the recommendations of Fifth Pay Commission relating to pensionary benefits in respect of Commissioned Officers and PBOR and the relevant provisions reads as under :-

“.....the President is pleased to decide that w.e.f. 1.1.1996 pension of all Armed Forces pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 of the rank, and Group (in case of PBOR) held by the pensioner.”

4. This is with regard to pay and not with regard to the disability. The expression is very clear in case of the persons who retire or invalid out and discharge from service if their pension is less than 50% then they will be entitled to minimum of pay in the revised pay scale introduced from 01.01.1996. This does not include disability pension. The Circular is read in context with pay and pension only not with disability. The expression 50% minimum of the pay that the incumbent who retires his pay shall be 50% of the minimum pay in the revised pay scale introduced w.e.f. 01.01.1996 on the rank last he held. This does not include disability pension. Our attention further invited to the decision of Division Bench in the case of Ex. Sub. Shamsheer Singh vs. Union of India [W.P. (C) No. 1990/2003] but the Division Bench did not determine this question; they only remitted back the matter to the Government to clarify the Circular dated 07th June, 1999. Therefore, we are very clear on this issue that this Circular does not cover the cases of disability pension. Hence, we do not find

any merit in the present petition. Same is dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
September 15, 2010.