

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

OA.No. 71 of 2010

Ex Naib Subedar Rattan SinghApplicant

Versus

Union of India & Others.Respondents

For Applicant : Ms. Rashmi Singh, Advocate

For Respondents: Ms. Jagrati Singh, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)

ORDERS

1. Petitioner by this petition has prayed that the order dated 23.12.2005 and 13.8.2009 may be quashed and respondent may be directed to release the disability pension to the petitioner.
2. Petitioner was enrolled in the Indian Army on 6.10.1980 and rose to the position of Naib Subedar. It is alleged that between December, 2002 and December 2003 while applicant

was carrying out an exercise in Pokhran (Rajasthan), the applicant fell sick and was admitted in Military Hospital Saugor and transferred to Military Hospital Jabalpur where his illness was diagnosed as 'DEPRESSIVE EPISODE – RELAPSE'. Thereafter, he was referred to Military Hospital, Meerut Cantt for obtaining 'opinion' of Senior Advisor of psychiatric Deptt. After prolonged illness he was released from the hospital and reported back to his unit in downgraded medical category as S2H1A1P1E1(T) in December, 2003.

3. The petitioner tried to perform his duties when he was deployed in high altitude at Arunachal Pradesh but he again ~~fell~~^{fell} sick and was admitted in the Base Hospital, Tejpur on 31.12.2004 and remained hospitalised till 6.3.2005 when he was discharged from the hospital. However, applicant was discharged from service on 01.08.2005 in low medical category with 50% disability and he remained under medical treatment at PGI, Hospital, Rohtak from August 2005 to May, 2009 and he after improvement wrote a letter to the respondent on 15.9.2009 for supply of medical documents to prepare a representation as he did not receive any intimation

about his claim of disability pension. Petitioner for the first time received an intimation from records of Rajput Regiment vide order dated 13.8.2009 that his claim for grant of disability pension has been submitted by the record office to the PCDA Allahabad, but same has been rejected by a communication dated 23.12.2005 saying that the disability of the applicant is neither attributable nor aggravated by the military service. It is alleged that petitioner did not receive any intimation prior to this. Hence petitioner filed a present petition claiming the disability pension.

4. The respondent filed its reply and respondent denied the claim of the petitioner and submitted that as per the recommendation of the medical board that the severe 'DEPRESSIVE EPISODE-RELPASE' from which petitioner was suffering was neither attributable nor aggravated to the military service.
5. We called for the original medical record and from the original record placed before us it is certified by the Medical Board that disability is 20%. This bears signatures of one Archit Roy

(AMC) and also bears signatures of Lt. Col. SM Masih, Classified Specialist, Anaesthesia and Neha Gupta, AMC. All of them signed as Members of the Medical Board on 6.6.2005 but unfortunately in the affidavit it is stated that the Medical Board has directed that the disease is neither attributable nor aggravated to Military Service, whereas recommendation of the Medical Board clearly mentions that it is aggravated to Military Service.

6. We don't want to comment on the affidavit filed by the respondent but fact remains that this kind of serious lapses should not be done in future. Learned Counsel for the Respondent tries to justify by saying that in fact the reply was drafted on the basis of the comments sent by the concerned record office. The persons who are filing the affidavit or sending the comments should be cautious enough not to file such wrong affidavits which are not borne out from the records. This is a very serious lapse but in future this kind of lapse will not be condoned.
7. Since the Medical Board has recommended that this disease is on account of stress and strain of military service and the

disability is to the extent of 20%, the rejection of PCDA, Allahabad was also wrong. As well as the sending of the papers to PCDA, Allahabad was also not correct. Be that as it may, we don't want to further probe into the matter suffice it to say that incumbent is discharged with 20% disability. As per government order dated 31.1.2001, the 20% has to be rounded upto the 50%. Therefore, the petitioner is entitled to disability pension to the extent of 50% from the date of discharge i.e. 2005 and he will be entitled to arrears with 12% and the respondent shall work out the arrears within the period of three months & pay to the petitioner.

8. The petition is allowed and no order as to costs.

[Justice A.K. Mathur]
Chairperson

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

New Delhi
November, 2010