

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

OA/82/10

**NO.14253738Y EX HAV PREM NATH SINGH
S/O LATE SH. RAM SARIKHAN SINGH
HOUSE NO.RZ3A/1C-56
RAJ NAGAR-II, PALAM COLONY
NEW DELHI-110 045.**

THROUGH : SH.S.S.PANDEY, ADVOCATE

...APPLICANT

VERSUS

- 1. UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF DEFENCE
SOUTH BLOCK, DHQ PO
NEW DELHI-110 011.**
- 2. THE CHIEF OF THE ARMY STAFF
INTEGRATED HQ OF MINISTRY OF DEFENCE (ARMY)
DHQ PO
NEW DELHI-110 011.**
- 3. ADDITIONAL DIRECTORATE
GENERAL PERSONNEL SERVICES (PS-4)
ADJUTANT GENERAL BRANCH
INTEGRATED HQ OF MINISTRY OF DEFENCE (ARMY)
DHQ PO
NEW DELHI-110 011.**
- 4. RECORDS SIGNALS
JABALPUR (MP)**

THROUGH : LT COL NAVEEN SHARMA

...RESPONDENTS

CORAM :

HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT. GEN. S.S.DHILLON, MEMBER

JUDGMENT

Dated : 22.07.2010

1. This application has been brought for quashing the orders dated 02.06.2006 and 29.09.2009 passed by the respondents whereby denying disability pension of the applicant. Simultaneously interest @18% has been desired on the arrears of disability pension if allowed to the applicant. It is contended by the applicant that he was enrolled in the Army (in Signal Corps) on 17.12.1983. He continued to serve with utmost devotion with unblemished service record at different places. In the month of May, 2003 he had certain domestic problem for which he sought premature discharge from service while serving at HQ Western Air Command (AFS). In the month of September, 2003 the applicant proceeded on 12 days casual leave from 15.09.2003 to 26.09.2003. He met with an accident en route while proceedings on casual leave and got fracture "TIBIAL PLATEAN (LT) BICONDYLAR FRACTURE". The applicant got hospitalized in Military Hospital Danapur on 18.09.2003 for his treatment and thereafter was transferred to Base Hospital, Lucknow on 23.09.2003. He was also allowed six weeks sick leave. After availing

sick leave, the applicant reported at Base Hospital, Delhi Cantt. for medical review. On 22.09.2003, the applicant applied for premature retirement on compassionate ground which was accorded vide letter no.2002/ CA-3/T-5/01 dated 27.09.2003. It is further contended that the applicant was placed in low medical category S1, H1, A3 (P), P1, E1 due to "TIBIAL PLATEAN (LT) BICONDYLAR FRACTURE" w.e.f. 26.12.2003 by a Medical Board. The applicant there at Base Hospital, Delhi Cantt. reported for release Medical Board and medical authorities also recommended his case to be released from service in low medical category as S1, H1, A3 (P), P1, E1 due to "TIBIAL PLATEAN (LT) BICONDYLAR FRACTURE" with 30 percent disability. The applicant was discharged from the service but was not allowed disability pension and hence, this application.

2. This application was resisted on behalf of Union of India contending that the case of applicant does not fall within the provision dealing with disability pension and moreover the new policy was formulated by Govt. of India on the basis of 6th Pay Commission and that scheme has been made enforceable w.e.f. 01.01.2006 making all the Armed Forces Personnel who retired voluntarily or sought discharge on personal request to be eligible for disability pension, however, in this

order the cut off date has been fixed making only those Armed Forces Personnel eligible for the disability pension who have retired/discharged from service on or after 01.01.2006. The applicant sought voluntary retirement much before this cut off date so he cannot claim the benefit of this disability pension. It has been argued that the cut off date is fixed by the Authority keeping in view the terms and conditions. This view of the cut off date was also endorsed by the Apex Court to be rational in the case of *Government of Andhra Pradesh Vs. N. Subbarayudu and Others* (2008) 14 SCC 702.

3. On the basis of the Executive Order dated 29.09.2009, other decisions given in the matter of disability pension by the High Court and Hon'ble Supreme Court would not make applicant entitled for disability pension.

4. Further it is submitted by the learned counsel for the applicant that the matter with regard to the grant of disability pension was finally adjudicated by Delhi High Court in the matter of *Mahender Singh Narwal Vs. Union of India* wherein court having taken into consideration all the relevant rules and also certain decisions of the Apex Court held that *disability pension which is given to an individual for disability*

suffered by him during the course of performance of duties cannot be denied because individual has taken voluntary discharge. This judgment was affirmed by the Apex Court by dismissing Special Leave Petition. It is also said that the Armed Forces Tribunal, Principal Bench had also held the admissibility of disability pension in *OA/65/09 Ex Sep Bachan Singh Vs Union of India & Ors* in such category of personnel. It is clear from the records that now the Government of India on the basis of the recommendation of 6th Pay Commission granted disability pension w.e.f. 01.01.2006. This would imply that Government of India has also accepted the decision given by Delhi High Court in the case of *Mahender Singh Narwal vs. UOI* which was also upheld by the Apex court. There appears to be no dispute that disability pension is admissible to the person who was discharged even on compassionate ground.

5. The applicant was discharged voluntarily but before the cut off date (01.01.2006). Now the question arises so as to how far he was benefitted by government scheme making disability pension to such category of persons. In the matter of *Government of Andhra Pradesh Vs. N. Subbarayudu and Others (2008) 14 Supreme Court Cases 702* it is clear that Govt. of India because of economic conditions may fix up the cut off date. This decision was given by the Apex Court on 26.03.2008.

There was a subsequent decision of the Apex Court in the case of *Union of India & another Vs. SPS Vains (Retd) and others*, (2008) 9 SCC 112. This was also in the matter of Armed Forces Personnel. Here the Apex Court had gone back to the decision of *D.S.Nakara & Ors. Vs. Union of India*, (1983) 1 SCC 305. In the case of *State of Punjab & Ors. Vs. Amarnath Goyal & Ors.*[2005 (6) SCC 754], the Apex Court put an end to the distinction between pre and post with regard to the grant of pension. These points were discussed and resolved by the Principal Bench of this Tribunal in OA No.139 of 2009 decided on 30.06.2010 and observed as under:

16. In this case there is a conflict between the two decisions, one render in the case of SPS Vains (supra) and another in the case of Amarnath Goyal (supra). Both the decisions are headed by a two Judges Bench, but, in the case of Vains it is a later point of time, consensus of judicial opinion is a decision given in later point of time has to be followed. In this connection reference made to a Full Bench decision of Punjab and Haryana High Court in the case of The State of Punjab v. Teja Singh [The Punjab Law Reporter Vol. LXXVIII-1976 page 433], which reads as under:

“... .. Now it is trite learning to say that when an earlier judgment of the Supreme Court

is analysed and considered by a latter Bench of that Court then the view taken by the latter as to the true ratio of the earlier case is authoritative. In any case latter view is binding on the High Courts.”

Similarly, in the case of ‘Govindanaik G. Kalaghatigi v. West Patent Press Co. Ltd. and Anr.’[AIR 1980 KARNATAKA PAGE 92], a Full Bench of Karnataka High Court has taken the same view that:

“... ..If two decisions of the Supreme Court on a question of law cannot be reconciled and if both Benches of the Supreme Court consist of equal number of Judges, the later of the two decisions should be followed by High Courts and other Courts.”

Similarly, in the case of Vasant Tatoba Hargude and Ors. v. Dikkaya Muttaya Pujari [AIR 1980 Bombay page 341], their Lordships also observed that:

“... .. In the event of there being clear conflict, the decision of such later Bench would be binding on us.”

17. Therefore, in view of the judicial opinion that when there are two conflicting judgments bearing on the same

issue, then, later decision of the Apex Court is binding on the Courts.

18. In this connection our attention was also invited to a decision given by the Chandigarh Bench of Armed Forces Tribunal in the cases of ‘Babu Ram Dhiman vs. Union of India’ and ‘Sohan Singh v. Union of India’. The Division Bench of the Tribunal has observed that:

“... ..It is quite clear that the State cannot lay down different criteria for grant of pension for same rank of officers and Personnel Below Officer Rank (PBOR) on the basis of the cut off date of retirement. All pensioners, irrespective of the date of retirement are entitled to (the) same pension... ..”

6. On such premises the Notification no.10 (01)/D(Pen/Pol)/2009/Vol.II dated 19.01.2010, fixing a cut off date for the grant of disability pension was struck down as making arbitrary classification and final directions were given as under:

As a result of above discussion we hold that notification 16(6)/2008(1)D(Pension/Policy) dated 04.05.2009 is struck down to the extent of pre & post distinction i.e. pre 01.01.2006 and post 01.01.2006 and likewise the distinction made in the circular no. 16(6)/2008

(1)D(Pension/Policy) dated 04.05.2009 para 2.1 is also struck down and respondents are directed to give the benefit of disability pension to all the members of three forces viz. Army, Air Force and Navy including persons below officers rank on equal basis without making distinction between pre and post 01.01.2006. Respondents are directed to work-out the arrears of the pension from the date of filing of this petition and the difference in amount shall be paid to the petitioner with 12% interest. Petition is allowed. No order as to costs.”

7. The applicant shall also be entitled to the benefit of disability pension as per the order dated 30.06.2010 given in OA no. 136/2009. **Respondents are directed to release disability pension to the applicant within a period of two months.**

S.S.DHILLON
(Member)

S.S.KULSHRESTHA
(Member)

**PRONOUNCED IN THE OPEN COURT
TODAY ON DATED 22.07.2010**