

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

O.A. No. 93/2010

Ex Hav (AEC) Bhup Singh

.....Applicant

Versus

Union of India & Others

.....Respondents

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

For respondents: Sh.Anil Gautam, Advocate with Capt Alifa Akbar.

CORAM:

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

**ORDER
25.05.2010**

1. Applicant by this petition has prayed that order dated 27.07.2009 may be set aside and respondents may be directed to sanction the invalid pension with effect from 06.02.1995 and also pay the arrears alongwith interest.

2. Brief facts which are relevant from the disposal for present petition are that applicant was enrolled in the regular Army as combatant soldier on 10.12.1984 and he was released from Army on 05.02.1995 on the recommendations of Medical Board being invalid. He moved for grant of pension but same was rejected. Therefore, he approached the Hon'ble Delhi High Court and the Hon'ble Delhi High Court vide order dated 13.08.2008 directed the respondents to consider the case of applicant for grant of invalid pension. The matter was re-examined by the Authorities and they found that applicant invalided out on account of invaliding disability 'crush injury right hand with traumatisation partial amputating index, middle and ring finger' with effect from 06.02.1995 and that invaliding disability had resulted from an injury, which he had sustained on 06.08.1994 while cutting fodder in electric fodder cutting machine at home during annual leave granted to him from 18th July to 16th August, 1994. The Authorities found that applicant had non qualifying service i.e. 87 days over staying of leave. Though the applicant had put in 10 years and 58 days of service and this 87 days over staying of leave was reduced from his service period then qualified service remains to 9 years and 336 days i.e. less than 10 years of service.

It is alleged that as per regulation 198 of Pension Regulation for Army, 1961, *the minimum qualifying service actually rendered and required for grant of invalid pension is 10 years and for less than 10 years actual qualifying service invalid gratuity shall be admissible.* Therefore, Authorities found that since applicant has not put in 10 years of service as such he is not entitled to invalid pension and rejected the claim of applicant. Hence, applicant approached this Tribunal by filing present petition.

3. It is submitted by learned counsel for applicant that it is true as per Regulation 198, 10 years service is required for granting invalid pension and this invalid pension can be granted to the incumbent whether injury is attributable to or aggravated by military service. Therefore, the Authorities are not disputing the fact that applicant is entitled to the invalid pension but because of shortage of 29 days, he could not be granted invalid pension.

4. Learned counsel for the applicant has invited our attention to Regulation 125 (c) of Pension Regulations for the Army, 1961 which says that *an individual who is invalided out with*

less than 15 years service, deficiency in service for eligibility to service pension or reservist pension or gratuity in lieu may be condoned by the competent authority upto six months in each case. As per this Regulation the competent authority has been given the power to condone the period upto six months whereas in the present case applicant is short of 29 days and that too on account of overstaying leave for 87 days. Had he not overstayed for a period of 87 days, perhaps he would have completed 10 years of service and got the full pension. Authorities have enough power with them to condone the period upto six months then they should not driven the applicant to approach the Tribunal by filing this petition. When the applicant approached the Hon'ble Delhi High Court and Hon'ble Delhi High Court directed the Authorities to consider the matter sympathetically despite there being provision for condonation, respondents have not applied their mind and acted in most arbitrary manner. It looks that Authorities have lost their sensitivity in matters of grant of the pension to such invalid person. This does not speak very high of them. We regret that this kind of approach is not proper. In such matters human approach should be taken and not a ritualistic and indifferent attitude.

5. Accordingly, we allow this petition and set aside the order dated 27.07.2009 and direct the Authorities that 29 days period should be condoned and applicant may be released invalid pension in accordance with law forthwith. Arrears should be worked out and paid to the applicant within three months from today with interest @ 12% p.a. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
May 25, 2010.