

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI

T.A. No. 213/2009

(W.P. (C) No.7213/2009 of Delhi High Court)

Krishan Kumar Gupta

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh.S.M. Dalal, Advocate

For respondents: Mr.Anil Gautam, Advocate with Maj. Ajeen

CORAM:

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

ORDER
08.01.2010

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this writ petition has prayed that findings and opinion of Medical Board held on 03.06.2007 be set aside being arbitrary, irrational and perverse and petitioner should be

granted disability pension on the basis of medical board held on 01.09.2002 wherein the Medical Board has held that petitioner is suffering from 30% disability attributable to Military Service. 9

3. Brief facts which are necessary for disposal of present petition are that petitioner was enrolled in Army as Sepoy Clerk on 28.08.1978 and after under going necessary training, he was posted in various units in the Indian Army. Petitioner had put in over 22 years of services and had suffered diseases 'Primary Hypothyroidism' and 'intermittent WPW Syndrome'. Both these diseases were caused by stress and strain of the Military Service. Petitioner was admitted to military hospital Ferozepur on 21.11.2000 and was placed in low medical category P-2. As a result of hypothyroids hormonal balance of petitioner's body was disturbed which caused abnormal weight increase and his diseases could not be cured. He was placed under medical category P-3(permanent) and ultimately, he was discharged on 31.08.2002 on the basis of medical report ascertaining that he has 30% disability attributable to Military Service. His papers sent for release of pension to PCDA (P) Allahabad were rejected. The petitioner filed an appeal to respondent no.2. Since the said

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appeal was not decided by respondent no.2 for 4 ½ years, he filed a writ petition before the Hon'ble Delhi High Court. In pursuance of order of Hon'ble Delhi High Court dated 04.04.2007, an appeal Medical Board was constituted which opined that the disability of petitioner was neither attributable to nor aggravated by Military Service and it is stated that disease was congenital disorder. Against this finding of appeal Medical Board, petitioner filed the present writ petition before the Hon'ble Delhi High Court which has been transferred to this Bench for disposal after constitution of Armed Forces Tribunal.

4. We have heard learned counsel for the parties and perused the record.

5. We have seen both the findings of the Release Medical Board. One is of dated 27.01.2002 wherein the Medical Board opined that petitioner is suffering from 'Unspecified Psychosis, Intermittent WPW Syndrome and Primary Hypothyroidism' and according to Medical Board 'Intermittent WPW Syndrome and Primary Hypothyroidism' are aggravated by Military Service and total assessment was 30% disability. Then

the second Medical Board took a different opinion and held that none of the disease pointed out by the first Medical Board is aggravated by Military Service and so much so in the Column C instead of 'Primary Hypothyroidism' they mentioned 'Primary Hypertension' which appears to be error on the face of it. Looking into inconsistencies between these two medical boards findings, we think it just and proper to give one more chance to the petitioner so that his case may be assessed by the Medical Board and record its reason why both the diseases are not attributable or aggravated by the Military Service and give the percentage of disability. Time and again Hon'ble High Courts and this Tribunal have also tried to emphasis on the Medical Board that they must give detailed reasons as per requirement of the procedure laid down in the Pension Regulations. It seems that the Medical Board are not properly adhering to the directions given in the Pension Regulations when they examine candidates for disability. In case in future such serious lapses is brought to our notice then the Doctors in the Medical Board will personally responsible and they may be taken to task of such kind of negligence. Consequently petition is allowed. The findings of the Medical Board dated 03.06.2007 is set aside and the case is remitted back

to the respondents to constitute a fresh Medical Board and the petitioner shall appear as and when the date is fixed for Medical Board for re-examination. After re-examination, if it is found that petitioner suffers from any disease which is attributable or aggravated by the Military Service and to what extent is suffered then on that basis the disability pension should be worked out. This whole exercise should be done within three months from today. Petition is allowed accordingly. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 8, 2010.