

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

T.A. No.235/2010

[WP(C) No.4038/2006 of Delhi High Court]

Ex Hav Surender Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.Manish Kumar Singh, Advocate

For respondents: Sh.Ankur Chibber, Advocate

**CORAM:**

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

**ORDER  
15.03.2010**

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 a writ of mandamus be issued directing the respondents to grant disability

pension to the petitioner from the date of his discharge i.e. with effect from 01.07.2005 from the Army after declaring to the effect that the disease i.e. Bronchial Asthma which resulted in him being downgraded to medical category P-2 by Release Medical Board assessing the disability to the extent of 30% was attributable to Military service and further prayed to quash the orders dated 10.08.2005 and 08.12.2005 denying the disability pension to him.

3. Brief facts which are relevant for the disposal of present writ petition are that petitioner was enrolled in Indian Army on 31.01.1987 as Technical Assistant after successfully completing basic and trade training at R.T. Centre, Hyderabad for a period of 52 weeks. He was posted to 165 Field Regiment, Amritsar in March, 1988 and from there his unit moved to Kargil area (J&K) which is a high altitude area and remained there for a period of two years and from there his regiment again moved to Meerut, U.P. in 1991 where he remained posted upto 1995. In August, 1995 his Regiment moved to Silliguri, Assam and he remained posted there for about 3 years. Again in the year 1998, he was posted to J&K and remained there for a period of about 3

years in Sambha Area. In the year, 2001, his Regiment again moved to Shershali (Uri Sector J&K) and remained there upto May, 2004. Thereafter, he was posted in different places. Petitioner was granted one month annual leave on 28.02.2005 and after he reported back from leave in time, he complained of breathlessness and it took a serious turn in first week of April, 2005 because of which, he became unconscious and he was rushed to Military Hospital Bareilly and remained admitted there upto 11.05.2005. The Senior Advisor at said Hospital gave his opinion that he is suffering of Bronchial Asthma and recommended him to be released in Category P-2. Consequently, a Release Medical Board was held on 09.05.2005 at Military Hospital Bareilly which placed him in lower medical category P-2 and recommended his release from Army Service with 30% disability. The petitioner finally discharged from service on 01.07.2005. He has put in 18 years and 5 months of service. The petitioner received a letter from Officer I/C Records dated 10.08.2005 by which it was intimated to him that since he had been discharged from service with effect from 01.07.2005 at his own request on compassionate ground under item III (iv) of Army Rule 13(3) and not on medical grounds, therefore, he was not

entitled for disability pension. He made a representation but without any result. Ultimately, he approached the Hon'ble Delhi High Court by filing present writ petition with aforesaid reliefs. This petition has been transferred to this Tribunal on its formation.

4. A reply was filed by the respondents wherein they admit that petitioner is suffering from medical disability to the extent of 30% and since he was released from service on compassionate ground, therefore, he was getting pension but he is not entitled for disability pension to the extent of 30%.

5. We have heard learned counsels for the parties and perused the record.

6. The fact of the matter is petitioner received the disability during service and it is attributable to Army Service. If he is discharged on account of compassionate ground, there is no reason why disability pension should not be given to him. This issue is no more *res-integra* and it has also been decided by

Hon'ble Delhi High Court in case of **Mahavir Singh Narwal vs. Union of India & Another** in C.W. No. 2967/1989 which has been confirmed by Hon'ble Supreme Court. This Tribunal has also decided the same issue and held that simply because incumbent was discharged on account of compassionate ground his disability pension cannot be denied to him. Consequently, we allow this petition and direct the respondents to release the disability pension from the date of his discharge @ 30%. Amount may be calculated and all arrears shall be paid to the petitioner with interest @ 12%.

7. Petitioner is accordingly allowed. No order as to costs.

**A.K. MATHUR**  
(Chairperson)

**M.L. NAIDU**  
(Member)

**New Delhi**  
**March 15, 2010.**