

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

T.A. No. 261/2010

[W.P. (C) No. 10134/2009 of Delhi High Court]

Sep. Surender Singh .....Petitioner

Versus

Union of India & Others .....Respondents

For petitioner: Col. (Retd.) K. Digamber Singh, Advocate.

For respondents: Ms. Ritu Bhardwaj, Advocate.

**CORAM:**

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

**ORDER  
05.08.2010**

1. Present petition received on transfer from Hon'ble Delhi High Court after formation of this Tribunal.

2. Petitioner by this petition has prayed that a writ of mandamus may be issued directing reinstatement of the petitioner in service with full consequential benefits as if the petitioner was in service or alternatively pay full pay till the age of superannuation

along with 100% disability pension, which ever is more beneficial to the petitioner.

3. Brief facts of the case are that petitioner was selected through open competition to join the Army and after due selection he joined the Army on 19.10.2001. He was allotted to join JAT Regiment. Petitioner after availing his leave was going to join his duty at his battalion in army bus which was blasted on 09.10.2004 at 1115 hours at Srinagar Uri while crossing General Area at Narbal, A Maruti Car belonging to terrorists came from the opposite direction laden with explosives and a Gas Cylinder rammed into the Army Bus BA No. 03P-015622E. The bus was totally destroyed beyond recognition. Petitioner was one of the occupants proceeding for operation received severe head and facial injuries due to the attack. Petitioner was evacuated to 92 Base Hospital where he was treated and his medical category was brought down to S1, H1, A1, P5, E3 (IMB). He was invalided out as a result of IBM Board held on 05.12.2005 and thereafter, the recommendation of the Board was approved by the competent authority. The petitioner was invalided out from service in Low Medical Category with disability to the extent of 80%. According

to the petitioner whenever the disability is 80%, it has to be rounded up to 100% as per the broad banding policy laid down by the Army by the Notification dated 31<sup>st</sup> January, 2001, therefore, petitioner claimed that he is entitled to disability pension to the extent of 100%. However, petitioner was granted only 80% disability pension by the order dated 01.01.2007 issued by the issued by the Principal CDA (Pension), Allahabad.

4. The grievance of the petitioner in short is that since it was an injury arising out of violent terrorists attack, therefore, he is entitled to the benefits of War Injury and 100% disability as per the broad banding Notification issued by the Government.

5. This petition was contested by the respondents and a reply was filed by the respondents and respondents in their reply have admitted that at Srinagar Uri convoy was crossing General Area at Narbal, a Maruti Car belonging to terrorists coming from the opposite side laden with explosives and a Gas Cylinder rammed into the Army Bus and exploded. They have further admitted that petitioner received intensive facial injuries due to IED Blast. They further submitted that petitioner received 80%

disability attributable to Military Service. The papers were processed. However, the PCDA, Allahabad did not approve the recommendations sent by the Commanding Officer and it was directed that incumbent may be invalided out with 80%. However, in the reply it is stated that he was granted 100% disability. But learned counsel for the petitioner submitted that he has been actually released 80% disability. In case it is so then as per the reply, respondents should release 100% disability pension to him.

6. It is further alleged that PCDA, Allahabad, however did not treat him to be a Battle Casualty, therefore, only grievance now survives is injury which was received by the incumbent should be treated Battle Injury or not. As per the record filed by the respondents, the Commanding Officer who has given a certificate clearly stipulates that incumbent has received a Battle Casualty. However, it has not been accepted by the PCDA, Allahabad. No reason or justification has been given by the PCDA, Allahabad nor do we find it in the reply filed by the respondents. Learned counsel for the petitioner has submitted that the Uri Sector is under the Operation Prakaram, therefore, it is under a counter insurgency operation area and the incumbent

who was coming back after availing leave and was travelling in the Army bus to join his battalion after joining at the Transit Camp. This bus became the target of terrorist attack, therefore, incumbent was in fact on duty and he met with this accident in operational area. Therefore, learned counsel for the petitioner submitted that this injury should be treated as Battle Injury as has been certified by the Commanding Officer. No reason whatsoever was mentioned in the reply why this injury should not be treated battle casualty. It is no gain saying that it is established by the decision of Hon'ble Supreme Court as well as by this Tribunal that even if after availing the Casual Leave a person comes to join his Unit then incumbent shall be treated on duty. In the present case, after availing the leave, petitioner has already reported at Transit Camp and he was going to Unit and met with an accident, therefore, he shall be treated to be on duty and received the injury in Operation Zone. This injury should be treated as Battle Injury and he is entitled to War Injury pension. Therefore, we allow this petition and set aside the order dated 18.07.2006 issued by PCDA (Pension), Allahabad and direct that this injury should be treated as a Battle Injury and the pension of the petitioner should be redrawn as a War Injury Pension. According to the petitioner he is

not getting 100% disability benefits. But according to the respondents he is getting 100% disability benefits, if that be so, no further action is required to be taken in the matter and in case he is getting 80% disability pension then the deficiency may be made good. It is further made clear that petitioner will not be entitled to both the benefits. Authorities may decide whichever is beneficial to him, may be released. No order as to costs.

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

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

**New Delhi**  
**August 05, 2010.**