

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

T.A. No. 277/2010

[W.P. (C) No. 10138/09 of Delhi High Court]

Sh.Ram Janam Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Dr.D.S. Chaudhary, Advocate with petitioner.

For respondents: Ms.Ritu Bhardwaj, Advocate with Flt Lt. Vishal
Chopra.

CORAM:

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

**ORDER
12.04.2010**

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

2. Petitioner by this petition has prayed that findings of appeal medical board dated 31.12.2007 may be quashed and respondents may be directed to grant 60% disability pension to him from the date of his discharge i.e. 15.06.1999 with interest.

3. Brief facts which are necessary for the disposal of present petition are that petitioner was enrolled in the Air Force as Airman on 12.04.1971. At the time of induction in service, he was found medically fit. He was again subjected to thorough medical examination on 16.01.1981 to assess his medical fitness to perform Flight Gunner duties and he was found medically fit and he was put in medical category A1G1. He was promoted from time to time and finally he was promoted to the rank of Master Warrant Officer as a Flight Gunner. Petitioner developed some medical problem and as a result of this, he was declared permanently unfit for flying gunner duties. The permanent disability was assessed as 60% by the medical board. It is mentioned in the said report that the disability is not directly attributable to service but it has been aggravated due to stress and strain of service. The Commanding Officer of the petitioner

had also recommended in his report that the disability is not attributable to service but it was aggravated due to condition of service. He was discharged from service by the order dated 06.04.1999. He made a request for grant of disability pension but same was rejected by the order dated 17.03.2003. Against this, he preferred an appeal on 15.09.2003 but same was rejected by the order dated 07.04.2005. Thereafter, he submitted another appeal in May, 2007 and 10.09.2007 requesting the respondents for grant of disability pension. The respondents called the petitioner for medical examination by the Appeal Medical Board by letter dated 14.11.2007 and accordingly, he reported to Base Hospital, Delhi Cantt. He was informed by letter dated 22.09.2008 that his claim for disability pension has been rejected on the basis of report dated 31.12.2007 of the Appeal Medical Board. Thereafter, he filed a writ petition bearing no.870/2009 before the Hon'ble Delhi High Court but he withdrew the same so as to challenge the findings of Appeal Medical Board. Thereafter, he submitted a representation dated 24.03.2009 challenging the findings of appeal medical board but on that no order was passed by the respondents. Hence, he was driven to file the present writ

petition before the Hon'ble Delhi High Court which was transferred to this Tribunal on its formation.

4. A reply was filed by the respondents wherein they took the position that on 13.06.1988, petitioner was admitted at Base Hospital and he was treated conservatively and discharged from hospital on 15.06.1988 and sent on sick leave for 4 weeks. After expiry of sick leave, he was admitted at 5 Air Force Hospital and reviewed by medical Specialist. He was placed in low medical category A4G5 (T-12) vide AFMSF-15 dated 22.08.1988 and later on he was upgraded to medical category A1G1 vide AFMSF-15 dated 23.06.1989. On 15.08.1993, he reported to Station Medicare Center, Air Force Station with complaints of sudden disarticulation of speech. He was transferred to Command Hospital Air Force Bangalore where he was diagnosed as a case of CVA (Lt) MCS infarct and on discharge from hospital he was sent on sick leave for 4 weeks. On expiry of sick leave, he was reviewed at CHAFB and was placed in low medical category A4G3(T-12) vide AFMSF-15 dated 19.10.1993. Thereafter, he was placed under medical surveillance and reviewed periodically.

On 04.07.1997, he was admitted at 11 Air Force Hospital with complaints of chest pain and subsequently, transferred to Army Hospital (R&R) on 07.07.1997. He was investigated for myocardial ischemia which included TMT and echocardiography and was found to have inducible ischemia during modified TMT. He was discharged from hospital on 25.07.1997 and sent on sick leave for 4 weeks. During sick leave on 28.07.1997, he developed loss of power and was admitted to 11 Air Force Hospital and immediately transferred to Army Hospital (R&R). He underwent CART on 05.09.1997 at Batra Hospital which revealed total occlusion of LAD and subsequently, PTCA and stenting of LAD was done on 23.09.1997 at Batra Hospital. He was discharged from hospital and sent on sick leave for 4 weeks. On expiry of sick leave, he was reviewed at Army Hospital (R&R) and he was placed in low medical category A4G4 (T-12) for CVA (Lt) MCA infarct and IHD SVD(LAD) vide AFMSF-15 dated 18.12.1997. He was placed in low medical category with restrictions permanently unfit for flight/gunner duties and fit for ground duties not involving unusual stress. Therefore, he was discharged from services and he was released from service in low medical category A4G3(P) on 15.06.1999 under clause 'being

medically unfit for flight/gunner duties and unwilling to revert back to his basic rank and trade'. It is alleged that he has put in total 28 years and 64 days of service and he has been granted service pension, DCRG and commutation of pension. At the time of release of petitioner from service, a release medical board was held 15.05.1999 for his disabilities (i) CVA (Lt MCA infarct) (old) and (ii) IHD (ASMI) (PTCA done). The release medical board assessed ID (i) at 20% and ID (ii) at 30% (composite 30%) for five years. The release medical board recommended ID (ii) as aggravated by service. Petitioner's case for grant of disability pension was sent to the pension sanctioning Authority i.e. PCDA(P) Allahabad through Joint CDA (Air Force) New Delhi vide letter dated 04.09.2002. On that the Medical Advisor (Pension) attached to PCDA (P) Allahabad had opined that disabilities suffered by the incumbent during service were neither attributable to nor aggravated by Air Force service and rejected his claim for disability pension vide letter dated 09.02.2003 and he was communicated vide letter dated 17.03.2003. Aggrieved by this, he preferred first appeal which was forwarded to First Appellate Committee at Air Headquarters through PCDA (P) Allahabad alongwith all relevant medical and service documents. The First

Appellate Committee rejected the appeal and communicated the same to petitioner vide letter dated 07.04.2005. After that, petitioner preferred second and final appeal against the reject to Defence Minister's Appellate Committee for consideration and the Defence Minister's Appellate Committee opined that petitioner should be brought before appeal medical board vide order dated 10.08.2007. Accordingly, appeal medical board was arranged and petitioner was asked to appear before the board and the said board reassessed his disabilities ID (i) CVA (Lt MCA Infarct) (old) at 20% and (ii) IHD (ASMI) (PTCA done) at 30% (composite assessment 50%) for life and recommended disabilities as neither attributable to nor aggravated to service as the disabilities are due to atherosclerosis of bloods vessels and there was no close time association of the onset with field/operational/high altitude area tenure. Accordingly, Defence Minister's Appellate Committee rejected petitioner's second appeal.

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

6. We fail to understand how the PCDA (P) Allahabad could sit over the findings of the Release Medical Board which was held in the year 1999 in which Release Medical Board has categorically recorded that Ischemia was because of the stress and strain of the Military service and they assessed the disability to the extent of 30%. The original medical record of the first Medical Board i.e. Release Medical Board placed before us which was held somewhere in April, 1999 and it was finalised on 26th May, 1999 under the signature of Deputy PMO, Headquarters, Western Air Command, Indian Air Force. Originally the Medical Board recorded that incumbent is suffering from IHD ASMI PTCA Old 40% for a period of 5 years then it was reduced to 30% and similarly for both these diseases it was assessed to 60%. It was also reduced to 30% under the signature of Deputy PMO. On the basis of this recommendation, matter was processed for sanction to the PCDA (P) Allahabad and PCDA (P) Allahabad has overruled and rejected the same. Then the petitioner kept on filing petition one after another. Ultimately, in 2007 he got an order in his favour to appear before the Appeal Medical Board. Accordingly, Appeal Medical Board was constituted in the 2007 and the Appeal Medical Board held that both the diseases are not

aggravated to Air Force service. During contemporary period, petitioner was released by the Release Medical Board and the Release Medical Board, the competent Authority found disability of the petitioner to the extent of 30% on account of Ischemia and there is no reason how can after such a long time the Authorities change their opinion that it is not aggravated by the Military service. The contemporary Medical Board recorded that Ischemia was due to stress and strain of the service. There is no reason for the PCDA (P) Allahabad to give a finding that it is not aggravated by the Air Force service just on the basis of paper without examining patient physically. We are of the opinion that this kind of summary disposal by the PCDA (P) Allahabad without examining the patient just going on the basis of paper rejected or overruled the Medical Board opinion, is totally unwarranted. Therefore, this finding given by the PCDA (P) Allahabad cannot be sustained.

7. Now, coming to the second Medical Board which was held in 2007 on the appeal of the petitioner. This Medical Board also affirmed that petitioner is suffering from Ischemia to the

extent of 30% and still it shows that petitioner is carrying on same malady which he was having in the year 1999 and which still persisting in the year 2007. Therefore, this Medical Board held in 2007 cannot improve the Release Medical Board finding which has categorically recorded that because of stress and strain of the service petitioner suffered ischemia, rather it reaffirms the findings of the Release Medical Board that incumbent is still suffering from Ischemia which is aggravated by service in the Air Force. Therefore, we are of the opinion that the view taken by the PCDA (P) Allahabad and view taken by the Review Medical Board in 2007 cannot be sustained and reaffirmed the findings of the Board which originally at contemporary period of time examined the patient and took the view that petitioner is suffering from Ischemia and disability to the extent of 30% for a period of 5 years. Therefore, the view taken by the PCDA, Allahabad as well as by the Review Medical Board in 2007 cannot be sustained. We set aside both the findings and direct that petitioner is entitled to disability pension from the date of release @ 30% and same should be calculated and paid to the petitioner. Petitioner is entitled to have interest @ 12% on arrears of the pension.

8. Petition is accordingly allowed. Respondents are directed to calculate the amount and pay to the petitioner within 3 months from today. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
April 12, 2010.