

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

T.A. No. 290/2010

[W.P. (C) No. 451/07 of Delhi High Court]

Ex Nk Prem Shankar ShastryPetitioner

Versus

Union of India & Ors.Respondents

For petitioner: None.

For respondents: Sh.Ankur Chibber, Advocate with Capt
Alifa Akbar.

CORAM:

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

ORDER
30.04.2010

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.
2. None appear for the petitioner.

3. Petitioner by this petition has prayed to declare the action of respondents of rejecting his claim of disability pension in terms of his invalidation from service in Indian Army with effect from 31.01.2006 vide respondent no.5 letter dated 18.05.2006 and action of respondents in the matter of disposal of his appeal dated 17.08.2006, as being violative to Articles 14, 16 and 21 of the Constitution of India.

4. Brief facts which are necessary for the disposal of present petition are that petitioner joined the Indian Army as soldier in the Regiment of Artillery on 28.10.1990 and he has been posted to various places from time to time. On 01.03.2004 when he was standing in PT formation, he felt giddiness and fall down. He was evacuated to the medical room therefrom and he was evacuated to 173 MH and after that, to 173 MH at Faridkot and later on evacuated to 173 MH Bhatinda and from there, he was shifted to Command Hospital, Chandimandir, Western Command. After examination, he was down graded to medical category S1H1A1P3E1 [T-24wk] for the reason of 'generalised seizure'. He was again re-categorised on 29.09.2004 which down graded his medical category. Ultimately, he was discharged from service

with effect from 31.01.2006. Medical Board at the time of discharge had assessed the disability to the extent of 20% to 50%. His claim of medical disability pension @50% was preferred through Artillery Records and forwarded to CDA(P), Allahabad on 08.02.2006 but CDA(P), Allahabad on 18.05.2006 rejected the claim of petitioner for disability pension on the ground that disability in question is neither attributable to nor aggravated by Military service and disability found to be constitutional in nature and not related to service. Thereafter, he filed an appeal on 17.08.2006 before the Appellate Authority but no reply was received from respondents. Therefore, he was driven to file the present petition before Hon'ble Delhi High Court which was transferred to this Tribunal after its formation.

5. None reply was filed by the respondents.

6. We have gone through the matter and medical proceedings placed before us by learned counsel for the respondents. We find that the Medical Board proceedings only say that disease was 'constitutional'. No reason that why it was constitutional and why it was not detected at the time of initial stage. It is needless to emphasize here that as per para 423 of

the Regulation for Medical Services, 1983, it is for the Medical Board to give reason why this disease could not be detected at the time of induction in service. Time and again Courts have emphasised that the expression 'Constitutional or Symptomatic' are totally non speaking one. The Medical Authorities have been time and again warned that they must look into the proper rules and regulations bearing on the subject and give reason for why the disease is not attributable or aggravated by the Military Service. But it is unfortunate that this seems to have fallen on deaf ears and they are still passing the orders without showing proper application of mind.

7. This Tribunal has also earlier emphasised this aspect that there is a presumption in favour of the incumbent unless it is rebutted by cogent reasons by the Medical Authorities that this disease is not attributable or aggravated by the Military Service. In the present case also, we record our displeasure that despite decision of the Court, still the Medical Authorities are acting in the lackadaisical manner with incumbents by writing one word 'Constitutional' or 'Symptomatic'. We again emphasize that this

kind of attitude will not be tolerated and the Medical Board which does not give explanation, shall be personally liable in terms of cost.

8. Our attention also invited to para 4 of Entitlement Rules for Casualty Pensionary Awards, 1982 which says that *“Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service.”*

9. In the present case, we find that the only expression used is ‘constitutional’ and it has not been explained why it is ‘constitutional’ or why this disease was not detected at the time of induction in the service. Incumbent has put in 15 years service and for the first time complaint of this problem was reported in the year 2004, then why it should not be presumed that this has been on account of stress and strain of the service. Therefore, we set aside the order of the PCDA(P), Allahabad and remit back the

case to the Medical Authorities to examine and give proper explanation why this disease has been aggravated or attributable to the Military Service. Respondents shall reconvene the Medical Board and the Medical Board shall examine the petitioner and then give its explanation that whether disease is attributable or aggravated by the Military Service. The respondents are directed to reconvene the Medical Board within three weeks and send notice to the petitioner for appearance before them for medical examination.

10. Petition is allowed in part. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
April 30, 2010.