

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

TA No.367/2009

[WP (Civil) No.2185/1997of Delhi High Court]

Ex. Cpl. Ram AvtarPetitioner

Versus

Union of India & OthersRespondents

For petitioner: None.

For respondents: Flt. Lt. Vishal Chopra.

CORAM:

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

**O R D E R
07.01.2010**

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

2. Petitioner by this writ petition has prayed that respondents may be directed to release pensionary benefits to the petitioner.

3. Brief facts which are necessary for disposal of present petition are that petitioner was recruited as Airman on 20th May, 1982 after due medical examination. Petitioner after recruitment served the Indian Air Force with best of his ability. He was recommended for promotion also. But unfortunately in the year 1994 Medical Board examined the petitioner and came to the finding that he was suffering from colour blindness which disenables him from job in the trade of Instrument Fitter in the Indian Air Force. Petitioner was again re-examined and the Medical Board confirmed their opinion. Therefore, Commanding Officer recommended that his trade may be changed. The Authorities offered him lower trade which he was not willing to accept and he objected for changing his trade. Despite his protest, petitioner was directed to join the lower trade which petitioner refused to accept. Therefore, respondents discharged him service. He was discharged by the order dated 06th April, 1995 and it was clearly mentioned that petitioner was discharged from service "*being medically unfit for Instrument/Fitter duties and unwilling to remuster to any other lower trade*". Therefore, petitioner was found medically unfit to work as an Instrument Fitter

and he was discharged from service under Rule 52 Clause 2 (h) of the Air Forces Rules. Petitioner had put in 12 years and 350 days service. Petitioner of course was paid gratuity and other benefits but he was deprived of regular pension. Therefore, petitioner filed present petition before Hon'ble Delhi High court.

4. Respondents in their written have admitted that petitioner was discharged because he was not prepared to accept the lower grade and he was found medically unfit. It is pointed out that since petitioner was unable to discharge duties with the post of Instrument Fitter, he was offered a lower post which he was not willing. Therefore, respondents had no choice other than to discharge him from service.

5. Petitioner is not present but we have heard Flt. Lt. Vishal Chopra appearing for respondents and perused the reply filed by the respondents. It is true that minimum qualifying service for pension is 15 years and in the present case petitioner has less than 15 years of qualifying service, therefore, he was not paid service pension.

6. After going from the record it appears that this case is covered under Rule 153-A of Air Force Rules, 1961 which reads as under :-

“153-A. If individuals who are placed in a lower medical category (other than ‘E’) permanently and who are discharged because no alternative employment suitable to their low medical category could be provided, shall be deemed to have been invalided from service for the purpose of entitlement rules laid down in Appendix II to these regulations.”

In this case, it appears that the order dated 06th April, 1995 clearly says that petitioner is colour blind therefore, he is medically unfit to discharge duties of Instrument Fitter and he was not willing to accept lower trade and therefore, he was discharged from service which virtually amounts to invalidating out from service being a lower medical category.

7. Since petitioner was medically found unfit to discharge his duties as such he will be entitled to pension as per Rule 172 which says that in such cases the person would be entitled to

pension after putting 10 years of service. The Rule reads as under :-

“172. The minimum period of qualifying service required for an invalid pension is 10 years.”

In the present case the incumbent has already put 12 years and 350 days. For persons who have been going out on medical ground and not inclined to accept lower trade, for such persons 10 years of service will be qualifying service. In view of this, we are of the opinion that petitioner has wrongly been denied the pension. Petitioner is entitled to pension as per Rule 172 as a result petition is allowed and petitioner shall be paid pension as per Rule 172. This should be worked out within a period of three months from today. All the arrears should be paid to the petitioner and arrears will carry interest @ 12% p.a. No order as costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 7, 2010.