

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

T.A. No.443/2009

[W.P. (C) No. 751/2009 of Delhi High Court]

Ex. CPL Dhanpal

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh. S.M. Dalal, Advocate.

For respondents: Ms. Kimmi Brara, Advocate.

CORAM:

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

ORDER

19.02.2010

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 respondents may be directed to grant service element of disability pension to the petitioner w.e.f. 16.05.1982.

3. Brief facts which are necessary for the disposal of the present petition are that petitioner was enrolled in Air Force on 18.11.1960 as an Airman and he was prematurely invalided out of service on 22.02.1968 after putting in only 7 years and 96 days of service. The petitioner was diagnosed as Pulmonary Tuberculosis which is said to be attributable to the service by invalidating Medical Board on 06.02.1968 and was assessed as 100% disability. Petitioner was granted disability pension w.e.f. 23.02.1968 @ 100% and he continued to receive this disability pension @ 100% upto 06.03.1971. Petitioner was subjected to Resurvey Medical Board periodically up to 13.10.1976. The Review Medical Board assessed disability as 20% or more and consequently, the petitioner kept on receiving disability pension upto 15.05.1982. However, on 16.05.1982 his disability was found to be less than 20%. Therefore, his disability pension as well as service element of pension were discontinued with effect from the said date. Against this order, he filed an appeal in the year 2008 and the said appeal was decided on 26.12.2008 and it was held that the petitioner was invalided out of service on 22.02.1968 and he did not complete 10 years of service. Therefore, he is not entitled to the service element of pension.

Consequently, petitioner filed the present petition before Hon'ble Delhi High Court which has been transferred to this Tribunal after its formation.

4. Learned counsel for the petitioner in this connection invited our attention to the Circular no.Tech/182 dated 06.05.1992 and submitted that in case of a seizure of disability, still the petitioner will be entitled to service element of pension. Learned counsel for the petitioner submitted that as per decision of the Government from 01.01.1973 onwards all persons who are having the disability and getting service element as well as disability element or seizure of disability, they will continue to get service element of pension from 01.01.1973.

5. As against this learned counsel for the respondents has invited our attention to the written filed by the respondents and pointed out that as per the very Circular, he is not entitled to service element of pension. It is submitted that unless and until petitioner has put in minimum of 10 years of service before 01.03.1968 and 5 years after that date upto to 31.12.1972. In such contingency since the petitioner has retired in 1968 and has

not put in 10 years in 1968, therefore, he is not entitled to the benefit of the Circular. This Circular had come up for consideration before Hon'ble Delhi High Court in the case of **Prithvi Singh Vs. Union of India & Others** and Hon'ble Delhi High Court has disposed of the same relying on the earlier judgment in the case of Ex. Sep. Chhaju Ram Vs. UOI & Others in Civil Writ Petition No. 2003 of 1999 and in that judgment learned Single Judge of Hon'ble Delhi High Court has examined the very Circular with reference to Army Regulation 173 and learned Single Judge after discussing the issue observed as under:-

"17. A reference to the note itself would show that though it refers to those out-off dates it goes on to say that up to those relevant dates the minimum period of service provided for must have been complete but "after which the service element becomes permanent feature as explained above." In my considered view this in fact supports the view. I am taking while interpreting these regulations and implies that all pensioners irrespective of their date of retirement would be covered under the regulations though the benefits would be available only prospectively.

18. In view of the aforesaid discussion I am of the considered view that the reading of Regulations 186 on 1.3.68 and 1.1.73 lead to the conclusion that the benefit of these regulations are available to the pensioners irrespective of their date of retirement though the benefits under the regulation would be available from the date when the said regulations came into force.

19. The effect of this would be that the petitioner was not eligible for the service element of pension since he had completed less than 10 years of service under the 1961 regulations and would further not be eligible for pension even under the amended regulation on 1.3.68 since though he had completed more than 5 years and less than 10 years of service but the benefit was made available with the cut-off limit of 10 years and 5 years depending when the particular individual retired. However, the petitioner would be entitled to the benefit of the service element of the pension from 1.1.73 when all such minimum requirements of service were removed for qualifying for service element of pension. However, as noted above in view of the delays and laches the benefit to the petitioner is confined to the period of 3 years prior to approaching the court that is from 1.4.1996."

6. Learned Single Judge in that judgement taken the view that the distinction in dates of 01.03.1968 and 31.12.1972 cannot be made and consequently learned Single Judge has allowed the petition and directed that the service element of pension shall continue. It was concluded that petitioner should be granted service element of disability pension from 01.04.1996 onwards i.e. three years prior to filing of the writ petition.

7. Learned counsel for the respondents has submitted that they did not dispute so far as the decision of the learned Single Judge of Hon'ble Delhi High Court is concerned and

submitted that it was a matter pertaining to the Army and Army Rules and Regulations and Air Force Rules and Regulations are not paramateria.

8. Learned counsel for the petitioner has also invited our attention to the decision in the case of **Ex. Gnr. Bhagat Singh Vs. UOI & Others** decided by the Division Bench of Delhi High Court in Writ Petition (C) No.8654/2007 wherein similar Circular came up for consideration with number of cases and the benefit was given to the petitioners in all those petitions. Be that as it may but the fact remains that we also feel that this micro and mini classification made in this cut off dates of 1968 and 1972 does not appeal to wisdom. Once the decision has been taken by the Authorities that the service element will continue after seizure of disability then there is no reason to further qualification with reference to 01.03.1968 and 31.12.1972. In the present case petitioner though was getting all pensionary benefits as a disability pension but since disability seized, therefore, he will be entitled to get the pensionary benefits as per this Circular which was issued on 06th May, 1992. We fail to understand this artificial distinction of 10 years or 5 years with reference to 1968 and 1972 and from

01.01.1973 all will get the service element of disability pension. There is no reason for further micro and mini classification. Be that as it may let the Authorities may examine the matter and consider for grant for disability pension to the petitioner in the light of the Circular dated 06th May, 1992. However, the petitioner has approached the Court so belatedly i.e. in the year 2009, he cannot get benefit from 1982 or 01.01.1973. All that petitioner can get benefit is from 3 years preceding the filing of the writ petition (i.e. 6th February, 2009). The arrears may be worked out and same may be released to the petitioner with interest @ 12%. This whole exercised may be completed as far as possible within three months from today.

9. Petition is accordingly disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
February 19, 2010.