

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

T.A. No. 466/2010

[W.P. (C) No. 725/09 of Delhi High Court]

Ex Sep Gurudayal Gurjar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.D.K. Sharma, Advocate.

For respondents: Sh.Ankur Chibber, Advocate.

CORAM:

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

**O R D E R
05.04.2010**

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 by a writ of certiorari, invaliding medical board proceedings dated 16.04.2001

to the extent it was neither attributable to nor aggravated by military services may be quashed and likewise the order dated 13.10.2008 whereby he is intimated that his claim of disability pension is not admissible, should also be quashed. It is also prayed that by a writ of mandamus, respondents be directed to condone the shortfall of service for pensionable service and grant full service pension as well as disability pension to him with effect from date of his discharge i.e. 06.05.2001 with all consequential benefits.

3. Brief facts which are necessary for the disposal of present petition are that petitioner was recruited in the Indian Army in the rank of Sepoy on 10.06.1986. At the time of recruitment, he was medically fit but because of stress and strain of service, he developed some illness and he was hospitalised on 07.03.2001. Thereafter, he was brought before Invaliding Medical Board on 16.04.2001 and the Invaliding Medical Board diagnosed his disease as 'paranoid state (delusional disorder) relapse' and recommended that he may be invalided out from service in low medical category. Accordingly, he was discharged from services

on 06.05.2001. He has completed 14 years, 10 months and 25 days of service and just 35 days short of his pensionable service i.e. 15 years. Since, his request for grant of service pension as well as disability element, was not acceded by the respondents, he filed 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 pointed out that petitioner developed disease namely 'paranoid state (delusional disorder) relapse' on account of his family circumstances and it is not attributable or aggravated to the Army Service. It is also pointed out in reply that petitioner resorted to excessive alcohol consumption and became aggressive with his wife and children. He harboured doubts about his wife's fidelity. Therefore, medical board found disease 'paranoid state (delusional disorder) relapse' is on account of family circumstances and not related to military service. Therefore, petitioner was denied disability pension though invaliding medical board recorded disability to the extent of 20%. So far as service pension is concerned, it is submitted that petitioner has not

completed full period of qualifying service for pension i.e. 15 years. It is also pointed out that petitioner has rendered 14 years, 7 months and 24 days service excluding 92 days non reckonable service. Therefore, according to the respondents, petitioner is short by 4 months and 6 days for completing full period of qualifying service for pension. Hence, petitioner was also denied the service pension.

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

6. So far as the disability to the extent of 20% is concerned, this cannot be attributed or aggravated by Military service as it is on account of his family circumstances. Therefore, there is no reason to doubt the findings of the Medical Board.

7. The second question is with regard to amount of service pension. We fail to understand why the period of four months and six days could not be rounded up to six months according to the Regulation 125 Clause C which clearly

contemplates that *an individual who is invalided with less than 15 years service deficiency in service for eligibility to service pension may be condoned by a Competent Authority upto 6 months in each case.* In this case petitioner's service is short by four months and six days i.e. less than six months. When the petitioner being invalided out on account of medical disability which is though not attributable or aggravated by Army service then there was no reason why period of four months and six days could not have been rounded up to 6 months to make 15 years qualifying service for pension. The power to condone up to six months is with the respondents, these four months and six days could have been condoned so as to enable the petitioner to earn full service pension. In this background, we are of the opinion that if period of four months and six days is condoned then it will be treated as qualifying service of 15 years.

8. We allow this petition and direct that this period of four months and six days is condoned to make it 15 years qualifying service for pension. His pension may be released from the date of discharge i.e. 06th May, 2001. The entire arrears should be

worked out within three months from today with interest @ 12% per annum. In case service element of gratuity was paid to the petitioner, it may be adjusted against arrears of salary. No order as to costs.

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

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

**New Delhi
April 05, 2010.**