

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 468 of 2010

Recruit/ (GD) Tejpal Saini

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner : Sh D.S. Kauntae, advocate.

For Respondents: Sh Rajender Nischal, Advocate for 1 to 6

CORAM:

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

ORDER

13.12.2010

1. The petitioner filed this writ petition in the Hon'ble Delhi High Court with a prayer to issue a writ of mandamus to reinstate him back in service by enforcing Regulation 143 of Defence Service Regulation. Recalling the medical opinion dated 17.4.2008 in the light of the opinion and certificate given by Dr. Vinay Gulati of All India Institute of Medical Sciences, New Delhi, as medically fit for all duties.

2. A Writ petition bearing No. 5116 of 2008 & CM. No. 9781 of 2008 in its order the Hon'ble High Court observed as under: -

"After some hearing learned counsel for the petitioner seeks to withdraw the petition and the application with liberty for the petitioner to get himself examined in a Government hospital to obtain an opinion that he is

medically fit and thereafter to move an application to the respondents with the said report for calling a medical board to review its earlier decision. Liberty granted.

Dismissed as withdrawn."

3. After disposal of the petition by the Hon'ble Delhi High Court on 18.7.2008 an application was filed by the petitioner in C.M. No. 8520 of 2009 seeking direction that respondent No. 6 is exercising undue influence when the petitioner was examined again by the medical board, the respondent No. 6 approached the board and insisted that since he has already found the petitioner suffering from "Pulmonary Tuberculosis" ineligible to be reenrolled therefore he should not be made fit to be enrolled. Therefore petitioner prayed for appropriate direction.

4. A notice of this application was issued on 15.7.2009 and respondent accepted notice. Meanwhile the petition was on 24.11.2009 transferred to this Tribunal after its formation.

5. When the matter came before this Tribunal this Court passed the order on 21.5.2010 directing the respondent to constitute a Review Medical Board at the Base Hospital, Delhi Cantt. The outcome of the review medical board and their finding to be produced in this Tribunal. Now the finding has been placed before us, as per the finding it appears that the petitioner is still suffering from Pulmonary Tuberculosis as per the medical report dated 27.8.2010, it is

observed the percentage of disablement because of Pulmonary Tuberculosis is 50% and the duration of disability is assessed for two years and it is stated that it is attributable to military service.

6. Therefore in view of this finding petitioner cannot be reinstated in service however he is entitled to 50% disability pension for two years till another medical board reviews his conditions.

7. Petition is accordingly disposed of and no order as to cost.

8. Photo copy of the medical board be kept on record.

9. The salary of the petitioner if not released earlier will be released on priority basis.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 13, 2010.