

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

T.A. No. 471/2010

[W.P. (C) No. 9313/2009 of Delhi High Court]

Hav. Betal SinghPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Ms. R. Archana, Advocate.

For respondents: Ms. Ritu Bhardwaj, Advocate.

CORAM:

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

**ORDER
31.08.2010**

1. Present petition received on transfer from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this petition has prayed that by writ of mandamus or direction respondents may be directed to convene a Medical Board and medically examine the petitioner for assessment of disability pension within one month and grant him

disability pension from the date of discharge till the date with arrears within three months.

3. Brief facts of the case are that petitioner was Havildar in Indian Army and National level Champion of boxing who won many medals but because of severe stress and strain, he landed up with a Prolapse Inter Vertebral Disc. (operated) and was placed in Low Medical Category of P3 (Permanent). He could have continued with sedentary duties but at the same time there were lot of domestic problems with the result he sought premature retirement and was granted discharged from service with effect from 30.11.2001. He had 18 years to his credit and was granted service pension. Owing to the injury he applied for disability pension which was rejected on the ground that he had proceeded on voluntary premature retirement, therefore, he is not entitled to disability pension.

4. Learned counsel for the petitioner submitted that in view of the judgment in the case of Mahavir Singh Narwal vs. Union of India given by Hon'ble Delhi High Court whereby Hon'ble Delhi High Court had held that a person proceeding on voluntary

retirement cannot be denied a disability pension. This matter was taken up to Hon'ble Supreme Court and same was dismissed by Hon'ble Supreme Court on 04.01.2008. Therefore, petitioner filed the present petition and prayed that since he had sought voluntary retirement because of the disability which was attributable to Military Service as such he is entitled to disability pension. The order passed by the respondents clearly mentioned that he may be released on medical ground but the quantum of disability attributable will be decided later on.

5. No reply was filed by the respondents and respondents produced before us the record and from record it transpires that the petitioner was examined on 01.09.2001 and the Medical Board recorded his disability as 20% for a period of two years. This should have been informed to the petitioner but till this date no information was sent to the petitioner. However, as per the Medical Report (Annexure P-2), the extent of attributability to Military Service was to be informed later on but they did not inform the petitioner and the petitioner himself also made a request to the Authorities to decide his case (Annexure-P-3) on 09th January, 2004 and requested about his Medical Category to

be assessed. But the petitioner has neither been informed about the findings of the Medical Board nor he received any information about his disability even after two years time. This letter was replied by the Authorities in a cursory manner on 22.01.2004 that since you proceeded on voluntary retirement, you are not entitled to disability pension. Then he again on 12.10.2004 made request (Annexure-P-4) but same was rejected on 20.11.2004. Therefore, net result is that though the petitioner was examined by the Medical Board and his disability to the extent of 20% was also determined on 01.09.2001 for a period of two years but no such information was sent to the petitioner whatsoever. This may be bonafide mistake on the part of the respondents or totally lethargy on their part. Be that as it may, but the facts remains that the Medical Board recorded his disability to the extent of 20% for a period of two years aggravated by the Military Service. Since, 20% disability has been said due to the Military Service, therefore, petitioner is entitled to disability pension. However, petitioner's disability was for a period of 2 years which was recorded by the Medical Board on 01.09.2001 that means for a period of 2 years he is entitled to the disability pension and that should be worked

out and paid to petitioner with 12% within three months from today.

6. Petitioner shall be examined again medically and if his disability still persists then Authorities are directed to release pension to the petitioner. Fresh Medical Board may be convened within a period of three months from today. Petition is disposed of accordingly. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. Naidu
(Member)

New Delhi
August 31, 2010.