

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

TA No. 494/2010

[WP(C) No.10605/09 of Delhi High Court]

Ex. L/Hav. Dharamvir Singh

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh. Randhir Singh Kalkal, Advocate.

For respondents: Sh. Vaibhav Agnihotri, Advocate.

**CORAM:**

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

**ORDER**  
15.02.2010

1. Petitioner by this petition has prayed that respondents may be directed to quash the impugned order dated 02<sup>nd</sup> May, 2009 and direct the respondents to pay the disability elements @ 30% of disability pension to the petitioner w.e.f. 01<sup>st</sup> April, 1996 along with interest.

2. Brief facts which are necessary for disposal of the present petition are that petitioner was enrolled in Indian Army on 23<sup>th</sup> April, 1977. He was found medically fit by the Medical Board. Petitioner continued to serve. Thereafter on 04.11.1995 he was admitted to hospital and remained admitted till 13.11.1995 and he was diagnosed as low backache patient by doctors. He was accordingly discharged as low medical category. Petitioner was discharged on application moved by him from service w.e.f. 31<sup>st</sup> March, 1996. Though as per the Medical Board findings that he was having a disability to the extent of 15% to 19% for a period of two years and made a CEE (Permanent) that means low medical category (Permanent). He was given service pension but he was denied the disability pension.

3. A reply was filed by the respondents and respondents in their reply have pointed out that petitioner's medical disability is 15% to 19% i.e. below 20% for a period of two years, therefore, he is not entitled to disability pension. So far as the service pension is concerned, he is already getting the same. It is also pointed out that petitioner has already been getting service pension, therefore, he is not entitled to disability pension.

4. We have heard learned counsel for the parties and perused the records. We may straightaway mention here that simply because of the incumbent has sought a voluntary discharge that will not disentitle him to the disability pension. In fact disability which he incurs is going to last permanently irrespective of the fact that he has sought voluntary discharge on the medical ground. It has also been clearly mentioned in the release medical order passed by the Medical Board that petitioner's medical problem is aggravated by the service. But since it was found to be to the extent of 15% to 19% for a period of two years, he could not get the disability pension. Normally when the Medical Board found that the disability for a period of two years by their order dated 25<sup>th</sup> November, 1995, petitioner after expiry of two years should have been called back for resurvey medical board but that was not done. However, be that as it may, the facts remains that it was the duty on the part of the respondents to call the petitioner for resurvey medical board that was not done. Therefore, in these circumstances, we direct that the respondents shall call the petitioner for resurvey medical board to assess his disability; if the disability is increased from 15% to 19% to 20% or more than 20% then the petitioner will be entitled to the disability pension also. It may be clarified here that simply because he is getting service pension on voluntary discharge he is not disentitled to disability pension if so found by the Medical Board. Consequently, we allow the petition in part and direct the respondents

to convene Resurvey Medical Board and examine the petitioner's disability and in case it is 20% or more, he should be given benefits which he is entitled to in accordance with law. This full exercise should be done within two months from today. No order as to costs.

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

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

**New Delhi**  
**February 15, 2010.**