

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

T.A. No. 500/2010
[W.P. No. 10457/2009 of Delhi High Court]

Ex. Rect. MukeshPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Col. (Retd.) S.R. Kalkal, Advocate.

For respondents: Ms. Ritu Bhardwaj, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. Z.U. SHAH, MEMBER.**

**ORDER
09.09.2010**

1. Present petition received from Hon'ble Delhi High Court on transfer.

2. Petitioner by this petition has prayed that the order dated 02.03.2007 and 05.11.2008 being arbitrary, irrational and illegal may be quashed and respondents may be directed to reassess the percentage of disability of petitioner by holding his re-survey Medical Board and release disability pension to the petitioner.

3. Brief facts of the case are that petitioner was enrolled in the regular Army 24.03.2005 as combatant soldier after having been found physically and medically fit in all respects. Petitioner was detailed to undergo for basic military training at Rajputana Rifles Training Centre at Delhi Cantt. On 02.06.2005, when the petitioner went to toilet at night, he was subjected to sexual assault by one of his instructor Hav. Bijender Singh. Petitioner scuffled and resisted but because of another Hav. Jalem Singh, the petitioner was overpowered. Petitioner fainted after this incident. Petitioner was taken to M.I. Room and from there he was admitted at Base Hospital, Delhi Cantt. Petitioner reported this matter to the Medical officer and based on the complaint of petitioner, the respondents authorities conducted a court of inquiry and in that court of enquiry they found that complainant was right in his accusation. Respondent authorities to save the reputation of Army and specially to avoid confrontation with the raw recruits took administrative action against Hav. Bijender Singh and discharged him from service with immediate effect. Hav. Jalem Singh approached petitioner at Base Hospital to threaten him about the consequences in case he reported the matter. This incidence was also again reported by petitioner to the Medical Officer-in-Charge of the Ward at Base Hospital, Delhi Cantt.

4. Petitioner was treated but could not be cured and he was brought before a properly constituted Medical Board and the Medical Board invalided out the petitioner from service in a low medical category S-5. Petitioner could not be given shelter appointment and he was discharged from service on 22nd November, 2005. Therefore, grievance of the petitioner is that Invaliding Medical Board did not adhere to rules and regulations bearing on the subject and also the Guide to Medical Officers (Military Pension), 2002 and the assessment of the Invaliding Medical Board of disability from 15 to 19% is not correct and it should not have been less than 40% as per the Guide to Medical Officers (Military Pension), 2002. Petitioner filed appeal before the authorities and gave notice under CPC but without any result. Eventually he filed the present petition before Hon'ble Delhi High Court which was transferred to this Tribunal after its formation.

5. A reply was filed by the respondents and respondents evaded to answer a specific allegation made by the petitioner that he has suffered Moderate Depressive Episode in consequent to the incident in which he was sexually assaulted by Hav. Bijender Singh. Respondents did not come out with definite reply to this allegation and just evaded the question and only confined to the effect that petitioner after coming from the toilet on 02nd June, 2005 manifested in sudden stiffening of body followed by unresponsiveness for which he was

taken to Unit M.I. Room and thereafter to Base Hospital, Delhi Cantt. But they did not answer the question that whether he was sexually assaulted by Hav. Bijender Singh or not. Even their reply to rejoinder is very evasive and in that also they only mentioned that a classified specialist doctor Lt. Col. A. Anand has opined that this 19 years old recruit manifested a Moderate Depressive episode precipitated by an incident of assault by a soldier in his Unit. The statement "he was subjected to a sexual assault by an NCO in his regimental centre" was recorded by the specialist in the summary based on the statement given by the applicant himself not based on any medical examination. Still this answer only corroborates the fact that immediately after the incident when he was examined by the doctor Lt. Col. A. Anand who stated that petitioner has disclosed the sexual assault on him but respondents in their reply deliberately did not disclose whether the incident as alleged by petitioner happened or not and in that Hav. Bijender Singh was also discharged from service. This lends a credible assurance to the allegation made by petitioner that something of this kind did happen. Petitioner also alleged that a court of inquiry was held in this case. But to this also there is no reply by respondents whatsoever.

6. Now coming to the question to the question of disability to the extent of 15% to 19% as reported by Lt. Col. A. Anand which is

very vague. As per the medical guidelines, the assessment has to be 40% in such cases, but we do not want to venture in the matter. Therefore, we think it just and proper to send the petitioner for a medical board to be examined by a competent doctor other than Lt. Col. A. Anand and all the facts which have been disclosed by the petitioner and all the papers should be given to the Medical Authorities and they may examine the case of the petitioner as alleged by him and assess his disability if there is any. Medical Board may be convened within three months from today and petitioner may be informed about the time and place where he can come for medical examination and thereafter, Medical Board may accordingly recommend in accordance with law. Petition is accordingly disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

Z.U. Shah
(Member)

New Delhi
September 09, 2010.