

T. A. No. 506/2010
[W.P. (C) No. 7877/2008]

12.08.2010

Present: Maj. (Retd.) K. Ramesh, Advocate, counsel for the petitioner.

Sh. Ankur Chibber, Advocate, counsels for the respondents.

This case is squarely covered by the judgment dated 06.07.2010 delivered by Hon'ble Supreme in the case ***Union of India & Others Vs. Ajay Wahi*** (Civil Appeal No. 1002 of 2006) and in that case their Lordships have held as under :-

"We are of the opinion that an officer is entitled for disability pension only when he is invalided out of service on account of disability attributable to military service or aggravated thereby and shall not be entitled for disability pension in case of voluntary retirement, unless it is found and held that the officer deserved to be invalided out of service on account of disability attributable to military service but the same was not granted to him for unjustified reasons and forced to seek voluntary retirement."

In view of the decision delivered by Hon'ble Supreme Court, no relief can be given. However, our attention invited to the Notification which was issued by the Government on 29th September, 2009 which reads as under :-

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29.09.2009

To
The Chief of the Army Staff
The Chief of the Naval Staff,
The Chief of the Air Staff,

Subject : Implementation of Government decision on the recommendation of the Sixth Central Pay Commission – Revision of provisions regulating Pensionary Awards relating

to disability pension/war injury pension etc. for the Armed Forces Officers and Personnel Below Officer Rank (PBOR) voluntary Retire/discharge on own account of disability on or after 01.01.2006.

The undersigned is directed to refer to note below Para 8 and 11 of this Ministry's letter NO. 1 (2)/97/D/(pen-C) dated 31.01.2001 wherein it has been proved that Armed Forces Personnel who retire voluntary or seek discharge on request, shall not be eligible for any award on account of disability.

2. In pursuance of Government decision on the recommendation of the Sixth Central Pay Commission vide Para 5.1.69 of their report, President is pleased to decide that Armed forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have forgone lump sum compensation in lieu of that disability may be given disability element/war injury element at the time of retirement/discharge whether voluntary or otherwise in addition to Retiring Service Pension or Retiring/Service Gratuity.
3. The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 01.01.2006.
4. Pension Regulation for the three Service will be amended in due course.
5. This issue with the concurrence of Ministry of Defence (Fin) vide their U.O. No. 3545/(Fin/Pen) dated 29.09.2009.
6. Hindi version will follow"

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As per the Circular, if any person already discharged on account of seeking voluntary discharge and he has disability then he will be entitled to disability pension. This has been made applicable to the persons who ^{now} have discharged on

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or after 01.01.2006. This artificial date of 2006 cannot be adhered to in view of the decision given by this Tribunal in the case of Brig. (Retd.) Brijendra Singh vs. Union of India & Others (T.A. No. 519/2010) and Brig. K.K. Khajuria (Retd.) Vs. Union of India & Others (T.A. No. 176/2009). This cut off date will not deprive the persons who have received the disability prior to 01.01.2006. However, the monetary benefits only will be applicable to them from 01.01.2006. Authorities may consider such cases and review the order in accordance with law. Petition is disposed of accordingly. No order as to costs.

A.K. MATHUR
(Chairperson)

Z.U. SHAH
(Member)

New Delhi
August 12, 2010