

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

T.A. No. 510/2010

[W.P. (C) No. 9023/2009 of Delhi High Court]

Flying Officer R.K. AggarwalPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Petitioner in person

For respondents: Sh.Ankur Chibber, Advocate with Ms.Tinu Bajwa

CORAM:

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

**ORDER
22.02.2010**

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this writ petition has prayed that letter dated 31.07.2007 issued by respondent no.2 and letter dated

06.11.2007 issued by respondent no.3 may be quashed and respondents may be directed to release the disability pension to the petitioner and all benefits following therefrom.

3. Brief facts which are relevant for the disposal of present writ petition are that petitioner was selected for grant of short service commission in Indian Air Force and in June 1957 he joined the 15th Ground Duty Officers Course in Air Force Administrative College, Coimbatore. After successful completion of training, he was granted short service regular commission on 02.05.1958 and nature of his duty was 'Fighter Controller'. Petitioner was sent for routine medical check up. In October, 1962 he was referred to Chest Disease Hospital, Pune. He was released from said Hospital on 23.07.1963 and also released from service on said date with 100% disability attributable to service. Thereafter, his disability was reviewed periodically through medical boards/resurvey medical boards from time to time and disability from the year 1963 to 1968 was reduced to 30% and after 29.08.1971 it was reduced to less than 20%. Petitioner's disability pension was discontinued but his service element of

pension was also discontinued. He was also not paid the gratuity due to him despite his requests. Thereafter, he again requested for resurvey medical board in the year 1988. The resurvey medical board was conducted at Army Hospital, Delhi Cantt. and said board assessed the disability of petitioner as 20%. The Air Head Quarter vide letter dated 15.07.1988 directed the CDA (Pension) Allahabad to grant continuance of disability pension. After about two years, respondent no.2 vide its letter dated 25.06.1990 informed the petitioner that he is not entitled to reassessment of disability pension as the disability assessed in the year 1971 was final. Thereafter, petitioner did not pursue the matter further and ultimately, when he learnt through Air Force Association that Ministry of Defence vide its circular dated 30.08.2006 has issued guidelines to cover all the past cases of short services commissioned officers irrespective of the date of release. Persuaded by this circular, he again took up his matter of pension before CDA(Pension) Allahabad but without any result. Therefore, petitioner filed the present writ petition on 06.05.2009 before the Hon'ble Delhi High Court with aforesaid grievance. This petition has been transferred to this Tribunal on its formation.

4. Petitioner in person submits that his service element of pension was discontinued from the year 1971 after his disability fallen from 20% i.e. 19% but in view of recent circular issued on 30.08.2006, he submitted that discontinuation of his service element of pension cannot be denied again in the light of para 2 of this circular which reads as under:-

“2. Service element of disability pension in respect of non regular commissioned officers retired before the date of issued of these orders shall be revised prospectively in accordance with these orders. In the case of aggravation, the benefit of service element as per these orders will be applicable only to those who retire on or after the date of issue of this letter. Past cases will not be re-opened.”

5. Petitioner submitted that in view of circular dated 30.08.2006 he being non regular permanent officer and retired on 23.07.1963, he is entitled to service element of pension in the light of para 2 of the order.

6. Learned counsel for the respondents has only raised a question of gap of 17 years but the fact remains that order dated 30th August, 2006 which has revived the hope of petitioner that why his case should not be considered in the light of this circular

and his service element of pension should be revised prospectively. Let the Authorities may examine his case and consider the grant of service element of pension from prospective date i.e. from 30th August, 2006.

7. He also submitted that Resurvey Medical Board which was convened in May, 1988 by the competent Authorities on his request found that his disability increased to 20% and when his disability increased to 20%, he should have been given the disability pension on the basis of 20% disability. But the petitioner did not approach the Court in 1988 when the Resurvey Medical Board was convened, he approached the Hon'ble Delhi High Court by filing the present writ petition somewhere in 2009. Though the petition was highly belated but the fact remains that this Resurvey Medical Board has assessed his disability as 20% as such he is entitled to disability pension on the basis of 20% disability. But he has approached the Hon'ble Delhi High Court in 2009, we therefore, restrict the arrears from three years preceding filing of this petition. The Authorities are directed to work out the arrears of disability pension as well as revision of the prospective

service element of pension as per the order dated 30th August, 2006 and pay the arrears to the petitioner with 12% interest. This whole exercise should be done within three months from today.

8. Petition is disposed of accordingly with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
February 22, 2010.