

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

T.A. No. 517/2010

[WP(C) No.4532/98 of Delhi High Court]

Col S.C. Talwar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

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

For respondents: Ms.Anjana Gosain, Advocate with Capt Alifa Akbar.

**CORAM:**

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

**ORDER  
25.05.2010**

1. An order has been passed on 17.03.2005 by this Bench that this may be taken up after decision of Hon'ble Supreme Court in case of Union of India vs Lt Col Ajaiwahi. Today, learned counsel for petitioner pointed out that this case is not covered by this said case and this case may be heard.

2. Heard learned counsels for parties.

3. Petitioner by this petition has prayed that respondents may be directed to pay the disability pension at 100% with 18% interest on accrued amount with effect from 11.04.1996 as per the recommendation of 5<sup>th</sup> Pay Commission.

4. Petitioner was commissioned in the Army Medical Corps on 29.10.1963 and he sought premature retirement from Army Service. He was granted premature retirement on 11.04.1996. At the time of premature release, a Release Medical Board was convened and said Release Medical Board recommended that petitioner is suffering from two diseases namely *ischaemic heart disease (inf wall MI) old 411, V67 and old united fracture talus with sub talak arthritis old V67*. So far as disease 'ischaemic' is concerned, it is recommended by said Release Medical Board that it is not attributable to military service but so far as other disease namely 'united fracture' is concerned,

it is said that it is attributable to military service and while assessing the total percentage of disability, the Release Medical Board assess the 'ischaemic' disease as attributable to military service to the extent of 30% disability and fracture to the extent of 10% disability i.e. rounding up to 40% disability for a period of 2 years.

5. We do not want to comment on it but it creates doubt that whether Medical Board has really applied their mind in proper manner or not. However, Release Medical Board assessed the disability for 2 years only. Therefore, instead of granting him the disability pension we directed that petitioner may be placed before fresh Medical Board and his disability may be examined and whether the disease is attributable to or aggravated by military service and to what extent.

6. Let fresh Medical Board may be convened and petitioner may be asked to appear before the said Medical Board for proper assessment of his disability/attributability or aggravation.

7. Accordingly, we dispose of the petition with a direction to the Authorities to convene the Medical Board within 3 months from today and assess the disability of petitioner and in case petitioner disability is more than 20% and it is attributable to or aggravated by military service then he shall be entitled to benefit of disability pension with service pension.

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

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

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

**New Delhi**  
**May 25, 2010.**