

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

T.A. No. 519/2010

[WP(C) No.12375/05 of Delhi High Court]

Brig (Retd.) Brijendra SinghPetitioner

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

2. Petitioner by this petition has alleged that he has not been given the disability pension. He made earlier petition before Adjutant General and CDA but without result. Therefore, petitioner has filed the present petition seeking direction to release

disability element of pension to him as he had been found at the time of release by the Release Medical Board having 30% disability attributable to Military Service.

3. Brief facts which are necessary for the disposal of the present petition are that petitioner was commissioned in the Indian Army on 14th March, 1971 and he sought pre-mature retirement on 02.08.2004 and he was accordingly discharged after completing 33 years and 4 months service. Petitioner claimed that Release Medical Board has recommended that he suffered from disability to the extent of 30% which is attributable to Military Service, therefore, he is entitled to 30% disability pension also.

4. Learned counsel for the respondents placed before us the recommendations of the Medical Board in which Medical Board has opined that the petitioner's primary hypertension is due to stress and strain of the service and they have assessed the disability to the extent of 30% only for life. Therefore, the petitioner filed the present petition before the Hon'ble Delhi High Court praying that he may be given disability element of pension

to the extent of 30%. This petition was transferred to this Tribunal on its formation for final disposal.

5. A reply was filed by the respondents and respondents have relied on the decision of Delhi High Court in the case of Mahavir Singh Narwal vs. Union of India cited as 111(2004) DLT 550 which was taken up before Hon'ble Supreme Court in appeal and it has now been dismissed. It was also contended by the respondents in their reply that as per Regulation 50 the incumbent who has sought voluntary retirement is not entitled to disability pension.

6. We have heard learned counsel for the parties and perused the record. We have also examined this matter in the light of the decision in the case of Mahavir Singh Narwal (supra) decided by Hon'ble Delhi High Court. We have also decided similar issue in the matter of Brig. K.K. Khajuria (Retd.) vs. Union of India & Others (T.A. No. 176/2009) and in that matter after examining the scope of the Regulation 50 and 53 of the Pension Regulations for the Army, 1961 as well as Regulation 179 we held

that the incumbent is entitled to disability pension along with regular pension. We are overrule the contention of the respondents that in case incumbent sought voluntary retirement, he will not be entitled to disability element of pension. After detailed discussion, we have held that even if incumbent may seek pre-mature retirement, still he is entitled to disability element of pension also. In the present case, the incumbent sought pre-mature retirement after completing 33 years and 4 months service at the time of release. He was placed before Medical Board and Medical Board found that he has 30% disability which is aggravated by the Military Service, therefore, he is entitled to the disability element of pension.

7. Learned counsel for the petitioner submitted that now recently percentage has also undergone a change by broad banding in the Fifth Pay Commission and it has been clearly mentioned in para 7.2 of the Circular dated 31st January, 2001 issued by the Government of India, Ministry of Defence/Raksha Mantralaya, New Delhi on the recommendations of the Fifth Pay Commission which is applicable from 01.01.1996 that in case

disability is less than 50% then percentage to be reckoned for computing the disability element should be 50%. In the present case, incumbent has 30% disability, therefore, he is entitled to 50% disability element of pension. Accordingly, we direct that the petitioner should be released 50% of disability element of pension with effect from the date of his discharged from service i.e. 02.08.2004. Arrears may be calculated and same may be paid to the petitioner with interest @ 12% p.a. Whole exercise should be completed as far as possible within three months.

8. Petition is allowed accordingly. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
May 25, 2010.