

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

T.A. No. 578/2009

[W.P. (C) No. 1298/2008]

Ex. Sepoy Mukhtiar Singh

.....Petitioner

Versus

Union of India & Others

.....Respondents

For applicant:

Sh. Deepender Hooda, Advocate.

For respondents:

Sh. Romil Pathak, Advocate, proxy
counsel for Dr. Ashwani Bhardwaj,
Advocate.

CORAM:

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

**ORDER
13.08.2010**

1. Present petition received on transfer from Hon'ble Delhi High Court on its formation.
2. Petitioner by this petition has prayed that the order dated 15.02.1985 and 22.12.2004 rejecting the request of the petitioner for grant of disability pension may be quashed and respondents may be directed to sanction disability pension to the petitioner with immediate effect along with arrears.

3. Brief facts which are necessary for disposal of the present petition are that petitioner was enrolled as a Sepoy on 12.06.1978 and he was attached to 102, Medium Regiment of Artillery and assigned the duties of Driver. Petitioner was medically examined at initial stage and he was also quarterly examined by the Medical Authorities. But he was discharged on 01.01.1985 on account of Generalised Epilepsy. He requested for grant of disability pension but same was rejected in 1985. He filed an appeal before the Government of India, Ministry of Defence. Same was also rejected. Then he made representation to the Prime Minister but without any result. It is alleged that petitioner was assured that he will be re-examined but it did not materialise. Then he sent a letter by registered post on 30.06.2004 and on 30.07.2004 requesting that he may be re-examined but without any result. Ultimately he filed the present petition before Hon'ble Delhi High Court which was transferred to this Tribunal on its formation.

4. The grievance of the petitioner is that the disease Generalised Epilepsy is on account of Military Service and the Invaliding Medical Board has not provided any reason for this

disease and they have said it is not aggravated or attributed to Military service. It is submitted by the petitioner that when he entered into service he was hale and hearty and during the service he developed the disease of Generalised Epilepsy. It is also pointed out that he has no family medical history.

5. A reply was filed by the respondents and they have taken the position that as per the recommendations of the Medical Board this disease is not attributable to Military service or aggravated, therefore, he is not entitled to disability pension.

6. Learned counsel for the respondents have placed before us findings of the Invaliding Medical Board in which the Medical Board has certified that petitioner is suffering from Generalised Epilepsy (Idiopathic Recat) 345 and they have also recorded that petitioner has no family history of Generalised Epilepsy. However, they have recorded that it is not attributed to or aggravated by Military Service.

7. Learned counsel for the petitioner submitted that in such an identical situation, a Division Bench of Hon'ble Delhi High

Court had remitted back the case to the Authorities and directed them to re-examine the case of the petitioner. Learned counsel for the petitioner invited our attention to the decision given in the case of **Ex. Cfn. Pitamber Sharma vs. Union of India & Others** – 2006 VII AD (Delhi) 309, para 6 and 7 of the judgment read as under :-

"6. The disease of epilepsy coming after year of service would normally be attributable to military service and in any case it would be aggravated by military service. Various causes have been stated in these provisions, which make it obligatory upon the authorities to consider whether the petitioner was posted to such places, which may result in onset of such disease. It is also to be recorded whether the cause is not discoverable and the person did not develop epilepsy while in service. The medical board has nowhere stated that epilepsy of the petitioner is not related to infection, service trauma or other conditions stated for aggravation of the disease under these rules. These rules require liberal construction to extend the benefit to as many persons of the army as the law permits rather than denial of the same. The opinion of the medical expert is that Neurological examination had not revealed any local sign of such disease. All his symptomatic examinations or other diagnosis were found to be within normal limits.

7. When the rules contemplate that various factors have to be considered by the medical board before they can form an opinion in relation to attributability or aggravation of disease by military service then they essentially must follow the prescribed procedure and give reasons in terms thereof. It is difficult to reconcile the observations of the Classified Specialist and one vague line written by the medical board. It is expected of such authorities to work in line with spirit of law and perform their duties in comity with the discipline of the

force. The Court cannot lose sight of the fact that they have been vested with powers, in exercise of which, they can deny or grant benefit of disability pension to a person, who has admittedly served the army and developed the problem during the course of service."

8. In this background, case was remitted back to the Resurvey Medical Board. We have also perused the findings of the Invaliding Medical Board and we find that the matter has not been examined by the Medical Board in the light of Regulation 423 of Guide to Medical Officers (Military Pension), issued by DGAFMS, Government of India which has been quoted by the Division Bench in its judgment. After examining the matter, we find that incumbent had entered into service when he was hale and hearty and thereafter he developed this Generalised Epilepsy then the matter should have been examined in the light of Regulation 423 of Guide to Medical Officers (Military Pension), issued by DGAFMS as reproduced by the Division Bench in its order. No such examination have been undertaken by the Invaliding Medical Board, therefore, we deem just and proper to set aside both the orders dated 15.02.1985 and 22.12.2004 and remit this case back to the Authorities to send petitioner for Resurvey Medical Board and examine the petitioner in the light of the aforesaid guidelines given by DGAFMS, Government of India.

Petition is allowed in part. Authorities are directed to convene the Resurvey Medical Board under intimation to the petitioner and thereafter act upon the recommendations of the Medical Board in accordance with law. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. Naidu
(Member)

New Delhi
August 13, 2010.