IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
32.

O. A. No. 143 of 2010

Ex. Gnr Awadesh Kumar Singh .....**Petitioner**

Versus

Union of India & Ors. .....**Respondents**

For petitioner: Sh. S.R. Kalkal, Advocate.
For respondents: Sh. Ankur Chhibber, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
25.4.2011

1. Petitioner by this writ petition has prayed that the order dated 3rd March 2008 may be set aside and the respondents may be directed to release disability pension @ 50% from the date of discharge of the petitioner from service with 12% interest thereupon.

2. Petitioner was enrolled in service on 13th September 1984 after being duly examined by the Medical Officer at the time of recruitment. The petitioner was working at Katua in Jammu & Kashmir and started having health problem which was later on detected on a monthly routine examination when he was found suffering with high blood pressure. He was treated and was placed in low medical category and subsequently CEE (P) with effect from 28th April 1992. He was discharged on 31st January 1994. On the basis of the recommendations of the Medical Board 30% disability for primary hypertension was declared but hyper idrosis was said to be not attributable to the military service. The pension papers were forwarded to PCDA(P) Allahabad. The PCDA(P) Allahabad rejected the claim by letter dated 28th July 1995

on the plea that disability pension from which individual suffered is not attributable to military service. The above communication was sent to the petitioner by Records Office by letter dated 21st August 1995 with advice to prefer an appeal against rejection of disability pension to Government of India, Ministry of Defence, New Delhi within six months from the date of rejection of disability pension i.e. 28th July 1995, if he is not satisfied with the decision of PCDA(P) Allahabad. Then the petitioner filed Writ Petition No. 53270 of 2000 before Hon'ble Allahabad High Court and in that the Hon'ble Allahabad High Court disposed of the petition on 5th July 2005 with a direction to the respondents to consider the appeal of the applicant within a period of six months from the date of filing of the appeal. Accordingly in compliance of the order dated 5th July 2005 a time-barred appeal was filed on 12th September 2005 and that was in turn submitted to the Government of India, Ministry of Defence for examination on 6th July 2006 and same was rejected on 29th January 2007 on the ground that the Release Medical Board has appropriately held that the invalidating diseases essentially hypertension and hyper idrosis are neither attributable to nor aggravated by the military service and he was advised to prefer an appeal to the Ministry of Defence and then again it is alleged that a Medical Board was held on 27th August 2007 at the Base Hospital, Delhi Cantt and same view was taken by the Base Hospital, Delhi Cantt and Records Office informed them on 3rd January 2008 the result thereof that he is not eligible for grant of a disability pension. After this the petitioner served a legal notice and thereafter approached this Tribunal by filing the present petition. This is the chequered history of the case.

3. The respondents filed the reply and gave all the details.

4. We have heard learned counsel for the parties at length and perused the record. It is admitted position that the first Invalidating Board found the petitioner suffering from hypertension which was aggravated by the military service as up to 30% disability. Thereafter the first Medical Board and then second Medical Board, they all rejected the contention of the petitioner that hypertension cannot be attributed to military service. The Appellate Medical Board has given reason since petitioner has served in peace areas and not served in high altitude area or counter-insurgency area or any field area, therefore, this cannot be said to be a cause for aggravation due to military service. This has been alleged on account of the guidelines to the Military Officers Directions 2002. In this connection it may be relevant to mention that with reference to Rule 14B of the Entitlement Rules, Rule 173 of the Pension Regulations and Regulation 423(c) of the Regulation for Medical Services for Armed Forces 1983 a detailed judgment has been given by this Tribunal in the case of **Nakhat Bharti etc. v. Union of India & Ors. (T.A. No. 48 of 2009)** in which all these aspects were examined. But it is regretted that the authority seems to have been totally ignorant of all this. The gist of the decision is that as per the aforesaid rules and regulations, the presumption has to be in favour of the incumbent but the presumption is a rebuttal one that reasons for the rebuttal should be recorded that when the incumbent was inducted in service was he suffering from any disease or not. Normally the presumption is that when he was inducted in service he was physically fit in all respects and he acquired this disability aggravated or attributed by the military service but that is a rebuttal one. In the present case the initial Invalidating Board found the petitioner suffering from hypertension which was aggravated by the military service but subsequent Medical Board and second Medical Board found it otherwise and gave reasons of the so-called directions issued

by the medical authorities. But in the face of the statute those guidelines cannot be substituted. Rule 14B of the Entitlement Rules, Rule 173 of the Pension Regulations and Regulation 423(c) of the Regulation for Medical Services for Armed Forces 1983 if read together then it is a mandate on the medical authorities that they will have to give a reason that at the time when person was inducted in service was he suffering from any of the diseases on which he was sought to be invalided out of service. If that is not then law does not contemplate any guidelines which can substitute for these statutory provisions. But in the present case no such regulations have been followed, and for one reason or the other the matter has been tossed over by one medical opinion to another medical opinion but the medical opinion and findings has to be consistent with the statutory provisions of law.

5. Consequently, we find that all the orders passed by the respondents on the basis of the so-called Medical Board findings which are vitiated on account of the provisions of the law, are set aside and we direct that the petitioner is entitled for disability pension which was said to be 30% at that time and subsequently round up to 50% by a subsequent date of notification. The authorities shall work out the pension of the petitioner and the same shall be given to the petitioner with 12% interest per annum.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 25, 2011