

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A.No. 200 of 2010

Ex. Nk. Ishwar Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Randhir Singh Kalkal, advocate

For respondents: Sh. Mohan Kumar, advocate

CORAM:

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

ORDER
11.01.2011

1. The petitioner by this writ petition has prayed that the order dated 6th October 2007, 26th December 2007, 15 November 2008 and 31st January 2010 may be quashed and respondent may be directed to pay a War Injury Pension w.e.f 1st Nov 2004 along with 24% interest and he has also prayed that benefits in the Army Group Insurance which was applicable to the "Battle Casualty" may also be released to the petitioner.

2. The petitioner was enrolled in Indian Army on 27th October 1987 and he was medically fit. After undergoing basic training he joined the 14 Mahar Regiment on 19th August 1988 and he served at various places, in the field area and in other operations, and was awarded many commendations. While in J&K the applicant received an injury on 17th November 1997 in an accidental fire of a Rocket Launcher while posting in J&K by a Misfired Rocket Launcher which was found in the forest area in J&K by the Patrolling Party of the Army and same was brought and kept in a Bunker. The applicant was posted as the Naik of that headquarters of the Unit. The applicant along with Nk Richpal happened to go to the Bunker and just on reaching the Bunker, the Rocket Launcher which was held by Hav. Jasbir Singh in hand got fired and as a result of this the applicant received injuries in his right hand and the applicant was operated in hospital and his Index, Middle and Little fingers were amputated. Medical Board was held on 4th February 1998 and injury of the applicant was accepted with 40% disability but not attributable to Military service. Then review medical board was held in MH Kasauli on 5th February 2004 and the disability of the applicant was accepted as "Battle Casualty" with the assessment of 40% disability.

3. The Petitioner also complain of pain and he was operated for LUMBER CAMAL STENOSIS WITH PROLAPSE DISC L4-5, L5-SL, in Military Hospital Pune. However the petitioner was downgraded in the medical category CEE (Permanent) and on the recommendation of Invaliding Medical Board he was invalidated out of Army Service w.e.f 31st October 2004 with the benefit of service pension without disability element. The applicant was granted service pension only and disability element was not paid to the applicant so he filed an appeal against the non grant of disability element of pension on 21st March 2005 against the rejection of his disability

pension. He could not get a proper response on time but however applicant at last received the communication on 6th October 2007 in which the disability element was accepted on the basis of review medical board and disability element granted to the applicant w.e.f. 1st May 2007 for life for 70% disability. The petitioner is now getting a disability pension w.e.f. 1st May 2007 @ 70%. The petitioner is now claiming to a War Injury Pension as well as disability pension from 1st Nov 2004 when he was discharged from service.

4. A reply has been filed by the respondent and contested the matter and submitted that a court of inquiry was held and in the court of inquiry it was found is that the petitioner was himself responsible for misfire of the rocket and therefore it is not attributable to military service.

5. We have heard learned counsels for the parties and perused the record. So far as grant of benefit of war injury is concerned the learned counsel for the respondent has produced the report of the court of inquiry. In the court of inquiry report the finding is that petitioner himself is responsible for this injury therefore he cannot be given the benefit of war injury pension. As per the finding given in the court of inquiry on the basis of the statement recorded by the Hav. Jasbir Singh that in fact petitioner tried to fondle with the Launcher when he was asked to protect and not to touch that rocket but out of curiosity he tried to touch that rocket and it got accidentally fired and he got injured. Strict instructions were issued not to touch it and not to go near it, he was deputed to protect it. Instead of protecting it the petitioner tried to fondle with it and it got misfired therefore the finding of the court of inquiry is that this misfire of the rocket was on account of the touching of the rocket by the

petitioner which he should not have done. After going through the original record of the court of finding we don't find any ground to take a different view of the matter as this finding has been recorded on the basis of the evidence appeared before the court of inquiry and court of inquiry after reviewing the evidence came to a finding and there is no reason for us to take a different view of the matter. Hence the petitioner is not entitled to benefit of war casualty pension.

6. The next question is with regard to the disability pension which was also not granted to the petitioner though he had 40% disability and he filed an appeal which was rejected. Ultimately in the review application filed by the petitioner in the 2007 the review medical board held that the petitioner's disability is attributable to military service and to the extent of 70% as such he was granted a disability pension w.e.f 1st May 2007.

7. Learned counsel for the petitioner submitted that he has received the injury in 1997 and was discharged from the military service in 31st October 2004 therefore this review medical report should relate back to the incident and he is entitled to the disability pension from the date of discharge. This submission of the learned counsel for the petitioner appears to be justified. In fact the review medical board has reviewed the injury received by the petitioner and it is not that something which has come up suddenly in 2007. Therefore the finding of the review medical board should necessarily relate back i.e. 2004 when the petitioner is being discharged from service on the medical disability, he is entitled to disability pension from the date of discharge from 1st November 2004. Therefore this submission of evidence is justified.

8. Consequently we allow this petition and direct that the petitioner shall be entitled to disability pension @ 70% from the date of discharge that is 1st November 2004. All the arrears shall be worked out and pay to the petitioner with 12 % interest. The whole exercise should be worked out with in period of three months. Accordingly petition is allowed in part. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 11, 2011.