

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

O. A. No. 240 of 2010

Sh. Uday Pratap Yadav

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Yogesh Pachauri, Advocate.

For respondents: Sh. Mohan Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

4.3.2011

1. The petitioner, by this petition has prayed for quashing the impugned discharge order and reinstating the petitioner vis-a-vis his juniors as a Havildar with all consequential benefits and to declare the injury as battle injury.

2. The petitioner was enrolled on 26.12.1992 as a Driver in the Army and was subsequently promoted to the rank of L/NK. He was detailed on operational exercise on 7.1.2002 in Jonga BA Mo. 96B59578A, but on the way, Captain Rahul Garg ordered the petitioner to hand over the Jonga to him and sit in co-driver seat and he took over the driving. The vehicle met with an accident on account of rash and negligent driving of the said Officer and caused serious injuries to the petitioner. The petitioner was admitted to the Civil Hospital and thereafter shifted to Military Hospital. The injury report was initiated by the Commanding Officer and counter signed by the Brigadier on 3.3.2002 and declared the injury suffered by the petitioner as 'battle injury'. Thereafter, after three years, the petitioner was examined by the Medical Board MH Patiala and was declared Low Medical Category permanent and assessed with 30% disability on 24.2.2003. The Court of Inquiry was held and it was

declared that the petitioner had not to be blamed for this accident. It is alleged that meanwhile, the respondents served the discharge order on the petitioner, which was withdrawn due to the order passed by the Hon'ble Supreme Court. Thereafter, the petitioner again served a legal notice on the respondents. The petitioner also filed the claim petition before Motor Accident Claims Tribunal, Jhansi. Since the petitioner met with an accident and received the battle injury. Therefore, he is entitled to disability pension @ 30%. Secondly, the grievance of the petitioner is that he had not been assigned any reason why promotion of the petitioner was not allowed to him as per the promotion policy. It is alleged that the persons who are JCOs and are in low medical category even then the promotion is not denied to them. It is alleged that he has been discharged in order to save Captain Rahul Garg, who was driving the vehicle. It is also submitted by the petitioner that he has not been treated fairly vis-a-vis his juniors and persons junior to him are getting Rs.18,000/- per month plus entitlement of Rs.8,000/- per month but the petitioner is restricted to only Rs.4,000/- per month as pension. So the petitioner filed this petition challenging the action of the respondents.

3. A reply has been filed by the respondents and the respondents, in their reply, have pointed out that in fact, the petitioner received injuries in the accident and his injury was said to be 30% in 2003 but when he was discharged on completion of his tenure, at that time, the Release Medical Board found his disability to the extent of 6 to 10%. Therefore, the petitioner is not entitled to any disability pension. However, so far as the promotion is concerned, it is said that the petitioner <sup>was</sup> considered but he could not make up a grade of Havildar and, therefore, the persons junior to him were promoted. It is also pointed out that the petitioner has been given the benefit of one Assured Career Progression (ACP) and the second Assured Career Progression (ACP) is already in the pipeline and the necessary corrigendum will be issued shortly for promoting him in the rank of a Havildar. It is also evident from the information given to the petitioner on the RTI that the orders for his second Assured Career Progression (ACP) have already been issued and he is to get it from 26.10.2008 but the grievance of the petitioner is that he has not been given the benefit of this Assured Career Progression. If it has not been issued, it may be given forthwith to the petitioner. So far as the disability pension is concerned, as we have already mentioned above, he is not entitled to the same as the injury received by him seems

to have been healed up when he was examined by the Release Medical Board. Therefore, the only grievance of the petitioner that survives in this petition is second Assured Career Progression (ACP) and which according to the RTI has already been issued but he has not received. The respondents are directed to send a copy of the second Assured Career Progression (ACP) in the grade of Havildar immediately to the petitioner and release the amount in question to him forthwith.

4. In view of the above, the petition is allowed in part with no orders as to costs.

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

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**March 4, 2011**