

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

16.

**O.A. No. 240 of 2011**

**Sep Jai Bhagwan**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioners: Sh. K. Ramesh, Advocate.**

**For respondents: Sh. J.S Yadav, Advocate.**

**CORAM:**

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

**ORDER**  
**04.11.2011**

1. The petitioner by this petition has prayed that the respondents be directed to call for the records of Release Medical Board of the case to satisfy grant of 60% disability pension by the Medical Board and attributable to military service and to set aside the Artillery Records letter of 11.8.2008. He has also prayed that the respondents be directed to grant him disability pension at the rate of 75% from the date of discharge i.e. 14.12.2002.

2. The petitioner was enrolled in the Artillery as a Sepoy on 21.2.1994. On 9.3.1997, he met with an accident while he was going to join duty at Bikaner. On account of the accident, his right leg was amputated. The Medical Board assessed his disability to the extent of 60%. But unfortunately, instead of discharging the petitioner on account of the disability, he was discharged by the respondents being

an undesirable soldier, as he had earned to his credit 5 red ink entries and 4 black entries, under Army Rule 13(3).

3. A reply has been filed by the respondents and contested the matter stating therein that the petitioner has not been discharged on medical grounds, but he has been discharged on the ground of disciplinary action having earned 5 red ink entries and 4 black entries. Therefore, the benefit of disability pension cannot be extended to the petitioner.

4. We have heard learned counsel for the parties and perused the records. The incumbent has lost one leg because of the accident, which occurred at Bikaner Railway Station while going to join duty. The petitioner had put in 8 years and 9 months of service. But unfortunately, in the present case, the petitioner had been released not on medical invalidation, but on account of disciplinary action being initiated against him. Learned counsel for the petitioner has tried to press into service Regulations 173 and 197 of Pension Regulations for the Army 1961. But we are of the opinion that the petitioner's case does not fall under any of these Regulations. We have full sympathy that instead of sending the incumbent on disciplinary action; he could have been dealt with medically because his right leg was amputated while on duty. The matter could have been looked into in a more humane manner. However, the authorities thought it fit not to give him the benefit of medical invalidation and discharged him being an undesirable soldier, as he had earned 5 red ink entries and 4 black entries, under Army Rule 13(3). We cannot substitute the nature of the order. However, we leave it to the respondents to sympathetically

consider the petitioner's case if he files a representation within 4 weeks. The respondents shall decide the matter within two months thereafter.

5. We find no merit in the petition. It is dismissed, with no order as to costs.

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

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

**New Delhi**  
**November 04, 2011**  
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