

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

**18.**

**O.A.No. 357 of 2010**

**Lt. Col. Sham Ved Sharma**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Sh. Santosh Kumar proxy counsel for Sh. S. S. Pandey,  
Advocate.

**For respondents:** Sh. Ankur Chhibber, Advocate.

**CORAM:**

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

**HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER**  
**19.01.2011**

1. Petitioner by this petition has prayed to quash the impugned order dated 30<sup>th</sup> January 2009 to the extent that the disability of Obstructive Sleep Apnoea-519 and Chronic Renal Failure-580 has been denied to him even after same was earlier found to be aggravated by the Military Service as well as direction of payment of disability pension to the petitioner with effect from 9<sup>th</sup> January 2006 and has also prayed that petitioner has not been granted a disability pension as recommended by the Medical Board in 1997 at the rate of 30% and the same should also be released to him. He has also submitted that a fresh Medical Board may be convened to consider the extent of disability of the petitioner.

2. Petitioner was commissioned on 14<sup>th</sup> March 1971 in Indian Army and he rose to the rank of Lt. Col. after holding various appointments. The petitioner was posted at Army Headquarters (DGOS) and joined duty with effect from 19<sup>th</sup> August 1993. He was appointed as Director OS-3 on 10<sup>th</sup> November 1993 as Col. N.D. Mehta who was then as Director was posted out. The petitioner came to learn that his blood pressure has increased to 170/110 and echo test revealed that he had an adverse effect on his heart during the annual medical examination held in 1995 and it was diagnosed as 'Moderately severe hypertension with left ventricular hypertrophy'. The petitioner was treated at Armed Forces Clinic, Dalhausie Road, New Delhi as he was placed in low medical category S1 H1 A1 P3 (T-24) E1 with effect from 25<sup>th</sup> September 1995 and diagnosed as 'Primary Hypertension (401)'. Then he was placed in low medical category S1 H1 A1 P2 (Permt) E1 by a review Medical Board on 20<sup>th</sup> March 1997. Then a release Medical Board was held for petitioner on 22<sup>nd</sup> April 1997 and the Medical Board recommended 30% disability on account of primary hypertension. It was also brought to notice that kidneys of the petitioner also failed while petitioner was in regular service. His blood urea and Creatinine was beyond normal limit. The petitioner was retired from regular service on 31<sup>st</sup> August 1997 on attaining the age of superannuation i.e. 52 years in low medical category P2 permanent. Then petitioner was re-employed on 27<sup>th</sup> December 1997 and the re-employment was sanctioned for three years instead of four years due to low medical category. However on the basis of the recommendations of the Medical Board which rejected 30% disability as aggravated because of Military Service, his request for grant of disability pension was rejected. Then he filed an appeal which was also rejected. Then petitioner was finally superannuated on 2<sup>nd</sup> August 2000 from the re-employment. Then again a Medical Board was held in 2001 and this Medical Board

also recommended that petitioner is suffering from hypertension with 40% disability for a period of five years. That time also disability pension was not given to him and he kept on fighting. Thereafter Medical Board was held in September 2003 and that Medical Board also found petitioner suffering from hypertension along with renal failure and recommended 60% disability pension but that amount was also not paid. Ultimately in 2005, another Medical Board was held and that Medical Board found petitioner's disability to the extent of 60% but did not recommend any disability pension for Renal Failure and Obstructive Sleep Apnoea. Thereafter in 2006 petitioner was granted a disability pension with effect from 9<sup>th</sup> January 2006.

3. The petitioner has now approached this Tribunal with a prayer that disability pension from 1997 may be released to him as well as with the prayer that the denial of the Medical Board for granting a disability pension on Renal Failure and Obstructive Sleep Apnoea should be re-convened and both the diseases i.e. Renal Failure and Obstructive Sleep Apnoea should be re-examined. It is also submitted that since 2003 Medical Board has found all the four diseases and accordingly recommended 60% disability but in 2005 the Medical Board has only considered two diseases i.e. Hypertension and Bilateral Sensori Neural Deafness.

4. A reply has been filed by the respondents and respondents have admitted that petitioner was granted 30% disability only by the PCDA (P) Allahabad despite all his appeals and other representations. Similarly same was denied to him on the basis of the recommendation of Medical Board held in 2000 and also of the 2003.

5. We have heard learned counsel for the parties and perused the record.

6. We fail to understand that when the Medical Board has already recommended in 1997 that petitioner's hypertension is attributable to Military Service, there was no reason for the respondents to reject the request of the petitioner for release of a disability pension to the extent of 30%. So-called Medical Board at Allahabad which has no occasion to examine the petitioner without any examination of the petitioner has arbitrarily rejected the request of the petitioner for disability pension, appears to be arbitrary, illegal and without jurisdiction. Once a competent Medical Board has recommended that hypertension is aggravated by the Military Service, there was no reason for the PCDA (P) Allahabad without examining the petitioner to take a view that it is not aggravated to Military Service. The finding of the so-called PCDA (P) Allahabad was without jurisdiction and has no jurisdiction to deny the recommendations of the duly constituted Medical Board. Therefore, petitioner is entitled to the disability pension from 1997 as recommended by the competent Medical board. Similarly when again the Medical Board was held after two years in 2000 that Medical Board also recommended that petitioner's disability has increased up to 40%. Then too also his request was not acceded to for the reasons best known to the respondents. We have perused the original record of the Medical Board which has recommended 40% disability. Petitioner is also entitled to the benefit of the disability pension from 2000 @ 4%. Then the Medical Board was constituted in September 2003 and in that also the Medical Board found 60% disability aggravated by the Military Service and he was found to have suffered four diseases i.e. Primary Hypertension, Chronic Renal Failure, Bilateral Sensori Neural Deafness and Obstructive Sleep Apnoea. Therefore he is also entitled to the benefit of the recommendations of the Medical Board to the disability pension @ 60% from 2003. Then another Medical Board was held in the year 2005 and its

recommendation was given in 2006 and in that also it was re-affirmed the percentage of disability to the extent of 60% but took the view that he is not entitled to any disability pension on account of Renal Failure and Obstructive Sleep Apnoea. Therefore the grievance of the petitioner is that both the diseases on which 2006 Medical Board has not found to be attributable to the Military Service, the 2003 Medical Board has found these two services also aggravated to the Military Service. Therefore, learned counsel for the petitioner submits that a fresh Medical Board may be directed to be held to assess whether the Renal Failure and Obstructive Sleep Apnoea is due to hypertension or not and let the Medical Board take independent view of the contradiction between the opinion of the two Medical Boards i.e. 2003 and 2005.

7. We are constrained to observe here that the Medical Board has recommended for grant of a disability pension to the petitioner right from 1997 has been denied for no reason and authorities have seem to acted in very high-handed fashion. Petitioner has filed appeals and representations that seem to have no effect. If the appeal and representation is being disposed of in a manner which has been done in the present case then it shows that it is worthless filing representation and appeal before the respondents. It is expected from the benevolent government that when the representation and appeal are filed they are to be duly considered in objective manner and not in a mechanical manner. We record our displeasure the way the respondents have dealt with the matter and rejected the appeals and representations of the petitioner in a very high-handed fashion without actually examining the records. However after perusing the records of all the Medical Boards consistently right from 1997 till 2005 that the petitioner is suffering from hypertension

and varying disability from period to period. If that was the position then there was no reason why disability pension was denied to the petitioner.

8. We direct that the petitioner's disability should be calculated from 1997 on the basis of the Medical Boards i.e. in 1997 it is 30%, in 2000 it is 40%, in 2003 it is 60% and in 2005 it is 60%. The petitioner has admitted that his disability pension at the rate of 60% has been released to him after the 2005 Medical Board. It is still unfortunate that the recommendations of the Medical Board came in 2005 and the amount of disability pension was released to the petitioner in 2009. This speaks volume of the insensitive approach of the respondents.

9. We allow this petition and direct that the respondents shall release disability pension with interest at the rate of 12% to the petitioner right from 1997 with varying percentage of disability. There is contradiction in the opinion of two Medical Boards i.e. 2003 and 2005 Medical Board and wherein 2003 Medical Board petitioner was found to have been suffering from four diseases, in 2005 Medical Board it was found that Renal Failure and the Obstructive Sleep Apnoea was not attributable to the Military Service whereas 2000 Medical Board held them to be attributable to the Military Service. Therefore, we further direct to the respondents that a fresh Medical Board may be constituted so as to decide whether the two diseases i.e. Renal Failure and Obstructive Sleep Apnoea is attributable to Military Service or not and if it is found that they are aggravated to Military Service then accordingly the percentage of disability may also be ascertained on the basis of findings of the fresh Medical Board. This exercise may be done within a period of three months.

10. The petition is allowed with no order as to costs.

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

**M.L. NAIDU**  
**(Member)**

**New Delhi**  
**January 19, 2011**