

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

**14.**

**O. A. No. 404 of 2010**

**Ex. Hav. Ram Kishan**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Sh. Vinod Kumar, Advocate.

**For respondents:** Sh. Anil Gautam, proxy counsel for Sh. Mohan Kumar, Advocate.

**CORAM:**

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

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

**ORDER**  
**12.7.2011**

The petitioner by this petition has prayed that the respondents may be directed to grant disability pension to the petitioner w. e. f. 1.1.2004. @ 50%. He further prayed that the respondents may be directed to pay interest on arrears of the disability pension at the rate of 12% per annum.

2. The petitioner was enrolled in Indian Army on 15<sup>th</sup> December, 1984 and he became Havildar in October, 1994. He was discharged from service on 1.1.2004 on suffering from Seizure with 20% disability as recommended by the Medical Board. Therefore, he was invalided out of service on medical grounds. He was placed in medical category P2 (Permanent). The petitioner was given his pension as he has completed tenure of service but he was denied disability pension as the Medical Board stated that the Seizure was not attributable or aggravated by military service. He filed the first appeal on 28.7.2004 which was rejected on 10.11.2006. Then he

filed a second appeal on 12.1.2007, which was also rejected on 12.12.2008. The grievance of the petitioner is limited that he was stated to be suffering 20% disability and the Medical Board has recommended permanent disability, therefore, he was discharged but was denied disability pension. As per the recommendations of the Medical Board, the Seizure was not attributable or aggravated by military service.

3. The petition has been contested by the respondents and they have admitted the fact that the Medical Board has recommended that the Seizure was not attributable or aggravated by military service. Therefore, he was not granted disability pension.

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

5. It is an admitted position that the petitioner has put in 19½ years of service and he was discharged from service on account of being low medical category P2 (Permanent). However, the Medical Board has stated that he is suffering from 20% disability but it is not attributable or aggravated by military service. This Tribunal has examined such matters in detail in the case of **Nakhat Bharti Etc. Vs. Union of India & Ors., decided on 28<sup>th</sup> October, 2009** and has taken the view that as per the provisions of Rule 14(b) of Entitlement Rules for Casualty Pensionary Award, 1982, Regulation 173 of Pension Regulations for the Army, 1961 read with Section 423(c) of Regulations for Medical Services for Armed Forces, 1983, there is a presumption in favour of the petitioner when he entered into service, he was medically fit and that presumption has to be rebutted by the respondents by leading evidence that at the time when he was initially inducted, he was suffering from disability or disease, which

could not be detected at that time, for that reasons have to be given. In the present case, no such reasons have been given by the respondents and he has been discharged from service though on completion of tenure by Release Medical Board with 20% disability but that was not attributable or aggravated by military service. Since the position of law stands established, therefore, we are of the opinion that if the Medical Board justifies that at the time of initial induction the incumbent was suffering from that disease or for that reasons that the same could not be detected at the time of induction in service, then denial of disability pension is justified otherwise not. In the present case, it is apparent that there was no endorsement made that the petitioner was suffering from Seizure at the time of initial induction or why it could not be detected. The presumption is that he has acquired this disease during the course of service. Consequently, we are of the opinion that the petitioner has acquired Seizure disease during the course of military service. The petition is thus allowed. Therefore, the respondents are directed to pay 20% disability pension along with 12% interest thereon to the petitioner from the date of his discharge i. e. 1.1.2004. The same be worked within a period of three months and released to the petitioner. No order as to costs.

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

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

**New Delhi**  
**July 12, 2011**