

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

16.

O.A. No. 596 of 2010

Sowar Shiv Singh Shekhawat

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. K. Ramesh, 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
31.01.2011

1. Petitioner by this petition has prayed that a direction may be issued to the respondents to grant disability pension @ 20% from date of discharge i.e. 14th September 1970 till date with arrears and 9% penal interest for the delay caused in grant of disability pension.

2. Petitioner was enrolled in Armoured Regiment on 17th September 1968 and on 30th January 1970 while standing on a roll call he slipped and fell down resulting in a dislocation of his shoulder. It was immediately attended to by the Orthopaedic Surgeon and in the absence of the specialist it was handled by a Regimental Medical Officer who could not compress the injured part correctly and consequently he was discharged from military service on 14th September 1970. A Medical Board assessed the disability of the petitioner to the extent of 20% which had been rejected by CDA (P) Allahabad on 8th November 2002 as intimated by Armoured Corps

Records Letter dated 25th November 2002. Therefore, petitioner has filed present petition claiming benefit of disability pension from 1970.

3. A reply has been filed by the respondents and the respondents have pointed out that after 1970 petitioner has been sent for Resurvey Medical Board held on 27th May 1997 in Military Hospital Jaipur and disability assessed at 20% for ten years w.e.f. 27th May 1997. However, PCDA (P) Allahabad vide their letter dated 17th October 1997 had accepted his disability at 6-10% for five years. However it was not mentioned that it was attributable to military service and as such he was not granted the disability pension. On both occasions it was assessed less than 20% and it was not attributed to military service. Then again the petitioner was sent for a Review Medical Board. On 1st June 2002, the Resurvey Medical Board was held at Military Hospital Jaipur and disability was re-assessed as 6-10% i.e. less than 20% for life long w.e.f. 28th May 2002. Therefore, the disability pension was not granted to him. Then again on 17th November 2006, another Medical Board was held and in that also it was found that his disability was less than 20%. The original papers have been placed before us and from the Court of Enquiry it is found that the petitioner on the relevant day when he got up from bed fell down and hit against the kit box and suffered dislocation of his shoulder. He has wrongly stated in petition that he fell when he was standing at the time of roll call.

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

5. Learned counsel for the petitioner submitted that the case of the petitioner is identical with the case of **Smt. Krishna Singh v. Union of India & Ors.** (T.A. No.

208 of 2010) decided by this Bench on 1st October 2010. In that case also though the authorities have said that it is not attributable or aggravated by military service, the Tribunal has awarded the benefit of disability pension to the petitioner. We have gone through the judgment of **Smt. Krishna Singh** (Supra) and we find that there is a distinguishing feature in that case and the case in hand. In that case petitioner was suffering from Schizophrenia and a Psychiatric Specialist has opined that “this illness is likely to be aggravated in military service”. Therefore, the benefit was given to the petitioner in that case. However, in the present case consistently four Medical Boards have been constituted in 1970, 1977, 2002 and 2006 has consistently taken the view that this disease is not attributable to the military service.

6. In view of the consistent opinion given by four Medical Boards that this disease is not attributable to military service, we are not inclined to give any benefit to the petitioner in this petition. Consequently, the petition is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 31, 2011