

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

12.

O. A. No. 33 of 2011

Ex Sub Jai Kumar Singh Tomar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Ram Niwas, Advocate.

For respondents: Mr. Mohan Kumar, Advocate.

CORAM:

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

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

ORDER
28.03.2012

1. Petitioner by this petition has prayed that the Respondents may be directed to sanction the disability pension and make the payment thereof along with the arrears with effect from 31st July 2008 and direct the Respondents to pay the compensation to the Petitioner in lieu of 02 years and 03 months remaining engagement period of the Petitioner. He has also submitted that the errant officials who tampered with and interpolated the Medical Board proceedings dated 2nd May 2008 may be hauled up.

2. Petitioner was enrolled on 19th February 1981 and with the passage of time he rose to the position of Subedar and after completion of his tenure he was discharged from service on 31st July 2008. But while he was discharged he was said to have a disability to the extent of 50% i.e. 20% for the sensory neural hearing loss of the right and left ear and 30% for primary hypertension. Therefore the Petitioner claimed a disability pension on account of this finding of the Medical Board. But the disability pension was not approved by the

competent authority and thereafter he filed a representation and after that approached this Tribunal for aforesaid relief.

3. A reply was filed by the Respondents and the Respondents contested the position and said that the Petitioner's loss of hearing and hypertension has nothing to do with the military service as per the Medical Board findings that they are neither attributable to nor aggravated by the military service.

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

5. The contention of the Petitioner that he has been invalided out from service appears to be not correct. As per the Medical Board proceedings which has been placed on record as Annexure A-6, the Petitioner has been released under low medical category and not invalided out from service. While the Medical Board examined the Petitioner on 31st July 2008 it has categorically mentioned in the opinion that the Petitioner's disease is neither attributable to nor aggravated by the military service. However, in the last column they have found that both the disabilities have 20 and 30 per cent respectively but we cannot read these disabilities to be aggravated by the military service. In para 5 of the Medical Board proceedings, it is clear that it is neither attributable to nor aggravated by the military service. Learned counsel for the Petitioner has invited our attention to the original Medical Board proceedings and there is some overwriting but this overwriting stands clearly cut and after that signature and seal is put there. There is nothing like interpolation. It may be an error which has been rectified by the Respondents with the proper signatures of the competent authority and under his seal.

Therefore the apprehension of the Petitioner that it was a case of interpolation does not appear to be correct. Learned counsel also invited our attention to the earlier Medical Board of 2006 while he was in service. There a single member of the examining board found that the Petitioner has both these diseases which are attributable to military service but that was not confirmed. The confirming authority has clearly mentioned that it does not require any confirmation with reference to the Army Order 3/2001 of DGMS. Therefore this might be an examination by a single member for medical categorisation or re-medical categorisation/sick leave but in fact the correct Medical Board was the Board which examined the Petitioner at the time of his release from service after completion of his tenure of service which is 27 years for his rank and on that basis the Petitioner has been discharged from service and it has been clearly mentioned that both the diseases have nothing to do with the military service. It may also be relevant to mention here that Petitioner has been a Clerk throughout and he has not been exposed to any harsh military duty or any high altitude duty. Therefore to attribute both these diseases to military service cannot be sustained. Consequently, we do not find any merit in this petition and same is dismissed with no order as to costs.

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

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

**New Delhi
March 28, 2012
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