

**THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.1)**

O.A NO. 360 of 2011

IN THE MATTER OF:

Col. (Retd). S.C. Talwar**APPLICANT**
Through : Mr. S.R. Kalkal, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS**...RESPONDENTS**
Through: Mr. R. Balasubramanian, Additional Solicitor General

CORAM:

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

JUDGMENT

S.S. DHILLON, Member

Date: 30.07.2012

1. The Petitioner seeks release of 75% disability pension from the date of his discharge i.e., 11.04.1996.
2. The brief facts of the case are that the Petitioner had first approached the AFT Principal Bench at New Delhi vide TA No.517/2010 in which he had sought 100% disability pension. The AFT had heard the matter and vide its order of 25.05.2010 had directed the authorities to convene a fresh Resurvey Medical Board to assess the disability of the Petitioner. Vide the present OA, the petitioner seeks 75% disability as granted by the Resurvey Medical Board.

3. The Petitioner was commissioned on 29.10.1963 as a Doctor in the Army Medical Corps. At the time of his Commissioning, the Petitioner stated that, he was physically and medically fit and the same had been certified in his initial medical examination. In 1993, while playing organised games, the Petitioner suffered a heart attack which was assessed as IHD (INF MI-411), and the duly constituted Medical Board opined that it was attributable to military service due to stress and strain of service. Thereafter, the Petitioner sought premature retirement and was released from the Army on 11.04.1996. However, he was denied any disability pension on account of Pension Regulation-53, which prohibited payment of disability pension to individuals who had sought premature retirement. The Petitioner filed a Civil Writ Petition No.4532 of 1998 in the Delhi High Court on 07.09.1998 which was transferred to the AFT and reached finality by the AFT order of 25.05.2010 under which a Resurvey Medical Board was ordered.

4. The main issue at hand was that while the first Medical Board of 03.02.1994 had assessed the IHD disability as attributable to military service on account of stress and strain, the Release Medical Board held in 1996 assessed this disability of IHD as not attributable or aggravated by military service. In order to resolve the conflicting opinion of the two Medical Boards, the AFT had ordered a Resurvey Medical Board. The Resurvey Medical Board had taken into account all 12 disabilities of the Petitioner and had given an opinion for each of

these disabilities resulting in a composite assessment of 70%, which as per the latest Government orders should be rounded off to 75%.

The opinion of the Resurvey Medical Board is extracted below:-

**PART V- OPINION OF THE MEDICAL BOARD ON COURT ORDERS
IN R/O MR-01978F COL S C TALWAR (RETD)**

Para 6. Assessment of disablement

Disability (as numbered in Question I Part IV)	Percentage of disablement	Composite assessment for all disabilities with duration (Max 100%)	Disability qualifying for disability pension with duration	Net assessment qualifying for Disability pension (Max 100%) with duration
(i). Ischemic heart disease (Inferior wall MI)	30%	70% (Seventy percent) for life. For all the disabilities irrespective of entitlement (attributability/ aggravation factor)	(ii).Old Fracture Talus with subtalar arthritis & (v) plantar fasciitis & (vii) calcaneal spur ankle 6-10% for life	40% (forty percent) for life For Ids (ii), (iii), (v), (vii), (ix) & (xi) only.
(ii) Old Fracture Talus with subtalar arthritis	6-10%		(iii) PIVD-L5S1 20% for life	
(iii) PIVD-L5S1	20%		(xi) Cervical Spondylosis 6-10%	
(iv) Post Traumatic tooth extraction	NIL		(ix) Osteoarthritis Rt Knee 11-14% for life	
(v) Plantar Fasciitis	Already assessed for dis (ii) as both involve function of same joint			
(vi) Tubercular Cervical Lymphadenitis	Nil Disability cured			
(vii) Calcaneal spur Lt ankle	Already assessed for dis(ii) as both involve function of			

	same joint			
(viii) Prostatitis	1-5%			
(ix) Osteoarthritis	11-14%			
(x) Hypertension	30%			
(xi) Cervical Spondylosis	6-10%			
(xii) Herpes Zoster with post herpetic neuralgia	Nil No evidence of disability			

5. The Petitioner also argued that some persons suffering from the same ailment had been considered as attributable/aggravated by military service, while he had been denied the same. Learned counsel also placed reliance on the following judgments:-

(i) 2006(92) DRJ 390 DB Samaj Kaur Vs UOI & Ors.

(ii) 110(2004) DLT 306(DB) Col B.S. Dhanda Vs UOI & Ors.

(iii) 2006(4)SCT 342 Ex Sepoy Gopal Singh Dadwal Vs UOI & Ors.

6. Respondents strongly contested this view and stated that the Resurvey Medical Board ordered by the AFT on 25.05.2010 had duly evaluated the parameters for all the disabilities and while doing so, had examined the Release Medical Board and other related medical documents and on evaluation of the current medical status of the Petitioner, they had held that the disease Ischemic Heart Disease (IHD) was neither attributable nor aggravated by military service. Respondents further contended that the onset of disease occurred

when the Petitioner was posted at Patiala which was a peace station and there was no close time association with any stressful area such as Field/High Altitude/Counter Insurgency operational area. The 14 days charter of duties prior to onset of the disease, which was submitted by the Petitioner himself, clearly stated that the heart attack occurred while he was playing golf, which had nothing to do with military service. The Medical Board was conducted based on the guidelines laid down in Guide to Military Officers (Military Pensions) 2002, para 47 which deals with Ischemic Heart Disease. After taking all these facts into consideration and going through the previous Medical Boards as well as personal examination by the Medical Specialist, Cardiologist, Urologist, Neuro Surgeon and Orthopaedic Surgeon, the Medical Board had concluded on 11.10.2010 that Ischemic Heart Disease was neither attributable nor aggravated by military service.

7. The Medical Board had given a composite assessment of all disabilities as 70% but had gone on to state that the net assessment qualifying for disability pension was 40%. Therefore, the Petitioner was only entitled to 40% disability pension and not 70% as is being argued by him.

8. Respondents placed reliance on the citations (i) **(2010)12 SCC 667 Om Prakash Singh Vs UOI & Ors.**, and (ii) **(2011)7 SCC 735 UOI & Ors., Vs Jujhar Singh** wherein the Apex Court had held that

final authority for deciding attributability/aggravation rests with the Medical Board and unless there were extraordinary reasons to disregard their opinion, it should not be interfered with.

9. Respondents further argued that notwithstanding the fact that the IHD had been considered as not attributable to military service, there were six ailments which had been considered as attributable/aggravated by military service for which a composite disability of 40% had been assessed.

10. Keeping in view the above facts, we do not find any need to interfere with the decision of the Resurvey Medical Board held on 11.10.2010 and direct that the Petitioner be paid the medical disability as decided by this Resurvey Medical Board from the date it was finalised.

11. The OA stands disposed off accordingly. No order as to costs.

S.S. DHILLON
(Member)

A.K. MATHUR
(CHAIRPERSON)

New Delhi
Dated 30th July 2012