

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

26.

O.A. No. 424 of 2011

Ex Gnr Nakhat Bharti

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Dalal, Advocate.

For respondents: Mr. J.S. Yadav, Advocate

CORAM:

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

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

ORDER
22.05.2012

1. This is second round of litigation. The first petition was filed by the Petitioner which was allowed by this Tribunal by the order dated 28th October 2009 and the following direction was given:

"22. However, in view the fact that and detailed relevant provisions reproduced above clearly mandates the presumption in favour of the army personnel only. It is rebuttable by a good reason by the medical board. In above three cases viz. 'Nakhat Bharti v. Union of India & Ors.', 'N.K. Sisram v. Union of India & Ors.' and 'Manmohan Singh v. Union of India & Ors.' we have found no detailed reasons have been provided that why the disease was not initially detected. Therefore, in this view of the matter we allow above three petitions and direct that the incumbent shall be entitled to disability pension as per rules therein on the subject in each case. Accordingly, three petitions viz. 'Nakhat Bharti v. Union of India & Ors.' [TA No. 48/2009], 'N.K. Sisram v. Union of India & Ors. [TA No. 36/2009]' and

'Manmohan Singh v. Union of India & Ors.[TA No.5/2009]' are allowed and impugned orders are set aside. Respondents are directed to redetermine their quantum of disability pension as per rules and regulations. However, the case of 'Naresh Kumar v. Union of India & Ors.' [TA No. 106/2009] is rejected as we are satisfied that the cogent reason has been provided therein. No order as to costs."

2. In pursuance of this direction, the Respondents passed the order dated 9th November 2010 which reads as under:

"P/10150/Legal/PC LN-237/GS/Arty
10B/278/2010/DHC-352/AG/PS-4(Legal)
09 Nov 2010

The Principal Controller of Defence Accounts
(Pensions), Allahabad

Implementation of Tribunal order dated 28 Oct 2009 passed by the Hon'ble AFT (PB), New Delhi in TA No. 48/2009 (WP No.6324/2007) filed by No. 15136353 Ex Gnr. Nakhat Bharti v. Union of India & Ors.

1. I am directed to refer to the above cited Tribunal order and to convey the sanction of the President of India regarding grant of disability element to No.15136353 Ex Gnr Nakhat Bharti @ 40% for five years w.e.f. 18 Mar 2000 i.e., the date of invalidation. The Petitioner be brought before a Re-assessment Medical Board for assessment of his present degree of disablement within a period of three months from the date of issue of this sanction. Necessary PPO be issued immediately.

2. PCDA(P), Allahabad is requested to work out the amount involved during the period of award and intimate the same to this HQ so that ex-post-facto sanction for "Charged Expenditure" may be accorded. A copy of the PPO issued be furnished to this office.

3. This sanction will, however, be subject to the final outcome of the SLP if filed subsequently by the UOI before the Hon'ble Supreme Court of India. In case the SLP is decided in favour of UOI, the Petitioner shall be liable to refund the entire amount paid to him under the ibid sanction.

4. This issues with the concurrence of Finance Division of the Ministry vide their U.O.No. 3883/Fin/Pens dated 04 Nov 2010."

3. The grievance of the Petitioner now in this second round of litigation is that he has not been granted the service element of the disability pension. Learned counsel for the Petitioners has invited our attention to Regulation 173 of the Pension Regulations for the Army 1961 which clearly states that the disability shall consist of service element and disability element both. Pension Regulation 173 reads as under:

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

4. Though the Respondents have granted the disability element as per the directions given by this Court but in fact they seem to have ignored to grant a service element which ought to have been granted as per Regulation 173. Respondents in their reply have only said that the matter has been referred to the Army HQ and they are awaiting the reply. It is strange that the matter was decided way back in October 2009 and in that also they deliberately or bonafidely not granted the service element of the pension which was the basic requirement of law under Regulation 173. It may be either bonafide or a deliberate one. We do not know as the Respondents have not even contested the matter and left it by saying that the reply is awaited from the Army HQ. Having regard to the facts of the case, the disability consists of service element as well as disability element and once disability element has been already granted then service element should have been granted necessarily. Since the Respondents have not granted service element, they are directed to release service element to the Petitioner forthwith.

5. With this observation, the petition is disposed of with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 22, 2012
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