

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

15.

O.A. No. 49 of 2012

Ex Sepoy Rajesh Hooda

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Satayan Kundalwal, Advocate.

For respondents: Ms. Sangeeta Tomar, Advocate

CORAM:

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

ORDER
30.07.2012

1. Petitioner vide this petition has prayed that respondents be directed to grant pension to the petitioner as per his real and actual disability in view of assessment held by respondent no. 5 vide certificate no. 602 dated 14.03.2011.
2. Petitioner was enrolled in the Army on 02.02.1995 and was posted to Jat Regiment on 29.03.1997. On 16.05.2000, the petitioner was wounded in action at 1600 hrs in Op Rakshak (Operation Vijay). On 31.08.1999 the battle injury of the petitioner was assessed at 60% vide opinion of Lt Col S.M. Bhatnagar, Classified Specialist Command Hospital, Western Command Hospital, Chandi Mandir and petitioner was referred to the Medical Board. On 05.10.2001, petitioner was brought before Resurvey Medical Board (RSMB) based on the opinion dated 04.10.2001 at 159 GH wherein disability of the petitioner was assessed as 40% attributable to Military service ignoring the actual disability and other factors.

3. Petitioner was discharged from service due to low medical category caused due to battle wounds on 30.11.2001 and was granted war injury pension on the basis of 40% disability. On 03.09.2003, RSMB of the petitioner was carried out at Base Hospital, Delhi Cantt, New Delhi and his disability was re-assessed as 40% (static) for life and accordingly war injury pension was granted. He requested respondent no. 5 being the Commandant, Base Hospital, Delhi Cantt for his disability re-assessment on 03.03.2011. Accordingly on 14.03.2011, on his request, he was re-examined and his disability was re-assessed as 60% vide disability certificate dated 14.03.2011. He has, therefore, filed the present petition seeking aforesaid relief.

4. A reply has been filed by the respondents and they contested the matter.

5. We have heard both the parties and gone through the record. Petitioner has based his whole case on the certificate dated 14.03.2011 which was issued to him on his request for civil employment and not for pensionary benefits in which his disability has been assessed as 60% permanent. This is not the certificate issued by the Re-survey Medical Board. Before his discharge, he was brought before a duly constituted medical board wherein the disability was assessed at 40% for two years attributable to military service and accordingly he was granted war injury pension. Again on 03.09.2003, his disability was re-assessed by the RSMB for 40% for life and he was granted war injury pension for 40% for life. The certificate granted by respondent no. 5 at his own request for civil employment cannot be decisive of the matter. The disability of the petitioner has been assessed by a duly constituted medical board i.e. RSMB to the extent of 40% which is relevant and decisive of the matter.

6. In view of above, we do not find any merit in the petition. Same is accordingly dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 30, 2012
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