

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI  
07.

O.A. No. 543 of 2011

Ex. Nk Suk Bahadur Gurung

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. V.K. Sharma, 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**  
**23.05.2012**

1. Vide this petition, petitioner has prayed that the respondents may be directed to grant War Injury Pension w.e.f. 01 Dec 1977 being a battle casualty (1965 and 1971 Indo-Pak war) and to grant ex-gratia payment of Rs 1 lakh from Army Central Welfare Fund and having been discharged prematurely before completion of tenure of service of last rank held as Naik.
2. The petitioner served in the Indian Army on 29 Nov 1962 in 6/8 GR and further transferred to 13 Guards on 10 Feb 1968 and finally discharged on 01 Dec 1977. He served Army for 15 years and 11 days and was wrongly discharged under provisions Army Rule 13, 3, III (i), 2 A because he was placed in Medical Category CEE (permanent) due to war injury mentioned at para 3.1 above with 40% disablement assessed by Release Medical Board (RMB) at the time of discharge from service. He ought to have been discharged under 13, 3, III (iii), medical unfit clause. His case was periodically

reviewed by Resurvey Medical Board (RSMB) and in 1993 his disability was assessed for life for 40%.

3. He was unaware of that he was receiving 40% war injury element of disability or normal disability pension, until he was counselled after the recommendations of IVth Vth Pay Commission Report got widely publicized. The disability element of 40% paid to petitioner wrongly as a non-battle casualty case, was required to be converted to war injury (battle-casualty) case by Records Brigade of the Guards. His case was further required to be referred PCDA(Pension), Allahabad along with sheet Roll and medical documents in terms of Circular No. 282 dated 06 Aug 2001, issued by PCDA(Pension), Allahabad. Had this action been taken in time, by Records/PCDA(Pension), Allahabad, he would have received double the amount i.e. Rs.2808/- p.m. in lieu of Rs.1404/- pm. He has also submitted that at present the cap on war injury pension with reference to emoluments last drawn has been removed by Govt of India, MoD, with effect from 01.07.2009 and therefore, prayed that he is put to great financial loss by not considering his case to be a battle casualty.

4. Respondent in his reply has pointed out in para 7 that the case of the petitioner was referred to Integrated Headquarters of Ministry of Defence (Army) to accord sanction from the competent authority to change the clause of discharge and also to waive off time limit to process the case for all terminal benefits. In reply, Integrated Headquarters of Ministry of Defence (Army) has intimated to forward statement of case along with undertaking certificate of to the petitioner vide Records, Brigade of The Guards letter No.

5740586/SBG/D-Pen dated 24 Jan 2011 but the same has not been given. Therefore, his case has not been processed.

5. Learned counsel for the petitioner pointed out that as per the undertaking sent to him would mean that he has to give undertaking that he will accept the benefit only for a period of 3 years which he has seriously disputed. He has pointed out that it was a case of wrong documentation by the respondents as a result of which he has suffered therefore why should he loose his benefit and give undertaking to full satisfaction or for the payment for the last 3 years. Respondents have thus admitted that it was a case of wrong documentation as it is apparent from the order dated 18 Aug 2011 and they have categorically stated that individual was discharged on 30 Nov 1977 and drawn disability pension since 01 Dec 1977 instead of War Injury Pension due to improper documentation.

6. Therefore, it is a case of mistake on the part of the respondent that because of the wrong documentation he has made to suffer the benefit of disability pension whereas he is entitled for War Injury Pension which will be more than what he is getting. Therefore, in this case we direct the respondents shall not insist on so called undertaking given by the petitioner that he will be entitled for the arrears for three years since it was a mistake of the respondents of wrong documentation. Therefore, no further document need to be enclosed by the petitioner and Record Office should forward statement of case to competent authorities and the case of the petitioner should be processed and he should be given War Injury Pension as per the rules. Learned counsel for the petitioner has invited our attention to a similar matter in which a similarly situated person namely Ex Hav Mehar Singh, No.

573604 of 4.8 GR at Dehradun, was given benefit of War Injury Pension in one go.

7. In view of the above, Petition is allowed. Respondents are directed to re-consider the case of the petitioner and release his entitled pension amount with arrears @ 12% within a period of 6 months' time from the date of this order.

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

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

**New Delhi**  
**May 23, 2012**  
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