

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

T.A No. 862 of 2010

(arising out of CWP No.9539 of 1995)

Kartar Singh	...	Petitioner
v.		
Union of India and others	...	Respondents

ORDER

01.07.2010

Coram Justice N. P. Gupta, Judicial Member
 Lt Gen H. S. Panag (Retd), Administrative Member

For the Petitioner Mr. Surinder Sheoran, Advocate
For the Respondents Mr. Sanjay Joshi, Senior Panel Counsel

Justice N. P. Gupta

This is a transferred petition having been transferred from Punjab and Haryana High Court, where it was filed as CWP o. 9539 of 1995.

According to the petition, the petitioner was recruited in 1953 and joined the service after passing recruitment test in 1955. It is, thus, alleged that he was medically examined in the year 1963 and was declared to be suffering from disability to the extent of 45%. It is alleged that the disability was attributable to Army Service, but he

was admitted for test in the Army Hospital and discharged on 27.08.1963. The petitioner then applied for grant of disability pension, but the same was rejected vide communication dated 27.08.1964, Annexure P-10. Then, an appeal was filed being Annexure P-11, which was dismissed on 14.08.1964. Then, his prayer was turned down on 16.03.1965. With these factual averments, the petitioner has claimed disability pension.

Reply to the writ petition has been filed, wherein it has been pleaded that the petitioner was invalidated out from service on 27.08.1963 in medical category EEE as a case of schizophrenia reaction, with the result that the petitioner was granted 4 days' casual leave with effect from 19.04.1963 and soon after his rejoining, he showed abnormal behaviour and was admitted to the Military Hospital, where he was given proper treatment, but ultimately having not been found fit, he was invalidated out on the recommendation of Medical Authorities, his disability was assessed at 60% with the remarks, "constitutional disease which aggravated due to stress and strain of Military Service." In Para 2, it is pleaded that in the present case, disability is not attributable or aggravated by military service. As such, the petitioner is not entitled to any benefit under Regulation 173 of Pension Regulations for the Army 1961. In Para 9 of the reply, it has been pleaded as under:-

"His disability "SCHIZOPHRENIC REACTION 300-309"
was assessed at 60% and regarded as a constitutional

disease which was not attributable to military service but was aggravated due to stress and strain of military service.”

Then, in Para 12, it was admitted that disability pension claim was rejected on the ground that the disability from which he suffered during service is not attributable to military service and does not fulfil the condition that existed before or during the military service and has been retained or aggravated thereby.

It would suffice to say that the above stand, as taken by the respondents in the reply, makes it clear that despite admitting that the disability was not attributable to military service, but was aggravated due to stress and strain of military service, the claim of the petitioner has been denied on the pretext that it is neither attributable nor aggravated by military service. Obviously, therefore, the ground for refusing the disability claim is untenable.

Consequently, the petition is allowed. The impugned orders are quashed and the petitioner is held entitled to disability pension to the extent of disability, as assessed by the Medical Board, subject to legally permissible Resurvey Medical Board. It may be noticed here that found above, the petitioner was invalidated out way back in the year 1963 and his claim for disability pension was finally refused in the year 1964, still the petition has been filed only in the year 1995. In that view of the matter, the petitioner would be entitled to disability pension, only with effect from 15.05.1992, i.e. since three years before the date of filing of the writ petition by the petitioner.

The respondents are directed to make necessary calculations and then make payment of the amount payable to the petitioner within a period of four months from today, failing which all the amounts shall carry interest @ 12% p.a. from the date the petitioner becomes entitled, i.e. the date of his discharge, till actual payment.

[Justice N. P. Gupta]

[Lt Gen H. S. Panag (Retd)]

July 01, 2010

RS