

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

**T.A. No. 171 of 2010
(arising out of CWP No. 8048 of 2009)**

Surjit Singh**Petitioner**

Vs

Union of India and others**Respondents**

**O R D E R
23-12-2010**

Coram : **Justice Ghanshyam Prasad, Judicial Member.**
 Lt Gen H S Panag (Retd), Administrative Member.

For the Applicant (s) : Mr. Navdeep Singh, Advocate.

For the respondent(s) : Ms. Anjali Kukkar, CGC.

JUSTICE GHANSHYAM PRASAD:

This case has been received on transfer from Hon'ble Punjab and Haryana High Court and has been treated as application under Section 14/15 of the Armed Forces Tribunal Act, 2007.

This application has been filed for grant of disability pension as well as second service pension for DSC service.

The facts of the case are that the petitioner was enrolled in the Army Service Corps on 12-08-1971. He was discharged from service on completion of service limits with service pension. He had put in total

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qualifying service of 17 years and 19 days with colours and 2 years as Reserve. He was discharged from service on 31-08-1988. After four years of his discharge from the Army service, he was re-enrolled in DSC and opted to get service pension from the previous Army service. While in service and on duty, the petitioner on 24-08-1999, fell down and was evacuated to nearest Civil Hospital, Dehradun, where a Medical Board was held, which diagnosed the disease of the petitioner as “**PRIMARY HYPERTENSION**”. Subsequently, he was placed in low medical category. Ultimately, the petitioner was discharged from service on attaining the age of 55 years being in low medical category on 30-09-2006. No extension in service was granted to the petitioner as he was in low medical category. In all, the petitioner had put in 14 years 6 months and 20 days of service in DSC. The petitioner was denied disability pension as well as service pension on the ground that his disease is not attributable to or aggravated by military service. Both the first and second appeals preferred by the petitioner were rejected. On 20-10-2007 the petitioner made a representation requesting the authorities for payment of separate service pension from DSC as he has more than 14 years and six months of service to his credit after condoning the deficiency in service. However, no reply has been received by the petitioner till filing of the petition.

Written statement has been filed on behalf of the respondents. It has been stated that the petitioner was discharged from

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DSC service w.e.f. 30-09-2006 on attaining the superannuation age of 55 years. His discharge was not because of being in low medical category. Since the petitioner did not fulfill the requisite medical criteria for extension of service, he was not given extension for two years. It is further averred that the medical fitness of the petitioner at the time of his enrolment does not ipso facto makes all the disabilities suffered during service as attributable to military service. The disability should have some connection with the service rendered by him in the Army, which is determined by the medical experts of the Medical Board. The case of the petitioner was not covered under Regulation 173 of Pension Regulations for the Army, 1961. The Release Medical Board has rendered the expert opinion that the disability of the petitioner is neither attributable to nor aggravated by military service and it is constitutional disease not connected with service. Therefore, the petitioner is not eligible for grant of disability pension.

It is further averred that the Primary Hypertension is a common and constitutional disorder and related to various aspects such as congenital, hereditary and individual's life style of living. He was always on guard duty. No arduous kind of duties are involved in the performance of guard duties. The disability assessed by the Release Medical Board was 30% for life and not 65% as averred by the petitioner. Photo copy of the proceedings of the Release Medical Board is Annexure R-1.

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It is further averred that there was no representation received from the petitioner for grant of service pension for second spell of the service. The petitioner is not eligible for condoning the deficiency in his qualifying service for the purpose of grant of second service pension for the service rendered in the DSC. Hence prayed for dismissal of this application.

Heard the learned counsel for both the parties and perused the records.

Two points are involved in this case. The first is regarding grant of disability pension and the second is grant of second service pension for the service rendered in DSC.

R-1 is Release Medical Board proceedings dated 24-04-2006. The Release Medical Board held that the disability of the petitioner i.e. **Primary Hypertension** is not attributable to or aggravated by military service, rather it is a constitutional disease. The percentage of the disability has been given as 30% (Permanent).

It is submitted by the learned counsel for the petitioner that the matter has already been settled by this Bench, as well as the various Hon'ble High Courts and Supreme Court that the Primary Hypertension normally arises as a result of stress and strain of the military service. In this case, the said disease has arisen after more than 14 years of DSC service. At the time of enrolment in the DSC, no Note to this effect was

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recorded by the medical authorities. Therefore, in view of Rule 14 (b) of Entitlement Rules, 1982, it is deemed to be attributable to military service. In support of his contention, the learned counsel for the petitioner has relied upon a decision of Hon'ble Punjab and Haryana High Court dated 28-08-2008 rendered in **CWP No.5551 of 2006 (Ex. Subedar Raj Kumar Dhinga vs. U.O.I. & Ors)**. SLP No. 14858 of 2010 filed against the judgment of Hon'ble High Court filed by the Union of India was also dismissed by Hon'ble Supreme Court vide order dated 01-10-2010. Therefore, the case of the petitioner squarely falls under Rules 173/179 of Entitlement Rules, 1982 and he is entitled to get disability pension for 30% disability.

It is further submitted by the learned counsel for the petitioner that according to Regulation 125 of Pension Regulations for the Army, 1961, the authority is competent to condone the short fall of six months in qualifying service for grant of service pension. There is no such rule which debars for grant of condonation for second spell of the service. In this behalf, he has placed reliance upon a decision of this Bench dated 11-11-2010 passed in **OA No. 763 of 2010 (Ex. Naik Shamsheer Singh vs UOI & Ors)**. This decision is based on a decision of Hon'ble Punjab and Haryana High Court in **LPA No. 755 of 2010 dated 5th July, 2010 as well as the decision of the Hon'ble Delhi High Court dated 31-08-2006 and decision of Jaipur Regional Bench of Armed Forces Tribunal dated 25-02-2010 passed in TA No. 23 of 2010 (Mangej**

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Singh vs. Union of India and others). In page 3 of the judgment of this Bench, it has been held as follows:-

“Having heard learned counsel we are of the considered view that the letter dated 26-11-1962 (R-5) would not come to the rescue of the appellant-Union of India because firstly the letter written by the Adjutant General cannot make any amendment in the Pension Regulations framed by the statutory authorities. The Adjutant General is a persona non grata and not competent to alter Regulation 125 of the Pension Regulations. Moreover, a strict interpretation of the communication dated 26-11-1962 (R-5) would show that the benefit of Regulation 125 is not to be extended for enhancement of pension. There is no question of any enhancement in the present case but the question pertains to earning of pension for the service rendered by the petitioner respondent from 25-05-1984 to 31-07-1999 (a period of 94 days was not considered as qualifying period as he had overstayed the leave. Consequently, we are of the view that there is no merit in the appeal.”

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The admitted position is that the shortfall for grant of service pension is less than six months. Therefore, the petitioner is entitled to get condonation of deficiency of service as per Regulation 125 of Pension Regulations for the Army, 1961. Consequently, he is entitled to get service pension for second spell of service in the DSC.

For the reasons stated above, we are of the view that this application deserves to be allowed. The petitioner is entitled to get disability element as well as service pension as prayed for.

Accordingly, this application is allowed. The respondents are directed to assess and release the disability element as well as service pension in favour of the petitioner from the date of his discharge within six months from the date of receipt of this order. The petitioner is also entitled to get arrears, but the same shall be restricted to a period of three years prior to filing of this application with interest @ 10% per annum.

(Justice Ghanshyam Prasad)

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

**23-12-2010
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