

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

T.A. No. 251 of 2009
(arising out of CWP No. 8190 of 2009)

Gurmail Singh**Petitioner**

Vs.

UOI & & another Respondents/Defendants

ORDER
19-10-2010

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Administrative Member.**

For the petitioner (s) : None

For the respondent (s) None

Nobody appears on behalf of the parties.

In the interest of justice the matter is adjourned.

To be listed for hearing on 13-01-2011.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

19-10-2010
'dls'

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

T.A. No. 26 of 2010
(arising out of CS No. 252 of 2007)

Sardar SinghPetitioner/plaintiff

Vs.

UOI & Ors. Respondents/Defendants

ORDER
19-10-2010

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Administrative Member.**

For the petitioner (s) : None

For the respondent (s) : Ms. Urmil Gupta, CGC.

In this matter, notice has been personally served on the petitioner. Still nobody appears for the petitioner. However, the name of Mr. Ravi Badyal, Advocate is there on the file. Therefore, the matter is adjourned.

To be listed on 11-01-2011 for hearing after showing the name of Mr. Ravi Badyal, Advocate, in the cause list.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

19-10-2010
'd/s'

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

T.A. No. 743 of 2010
(arising out of CA No. 109 of 2007)

Kulwinder SinghAppellant/Petitioner

Vs.

UOI & Ors. Respondents/Defendants

ORDER
19-10-2010

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Administrative Member.**

For the petitioner (s) : None

For the respondent (s) : Ms. Urmil Gupta, CGC.

Nobody appears for the petitioner/appellant.

In the interest of justice matter is adjourned.

To be listed for hearing on 13-01-2011.

Meanwhile the office should check up the second set of the paper-book and prepare it readable being not legible in compliance with the order dated 3-08-2010.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

19-10-2010
'dls'

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

**T.A. No. 636 of 2010
(arising out of CS No. 602 of 2005)**

JagdishPetitioner/plaintiff
Vs.
UOI & Ors. Respondents/Defendants

**ORDER
19-10-2010**

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Adminisrative Member.**

For the petitioner (s) : Mr. Surinder Sheoran, Advicate for
Mr. M.S. Khandelwal, Advocate.

For the respondent (s) : Ms. Urmil Gupta, CGC for
Mr. Mohit Garg, CGC .

Since the only relief claimed in the civil suit is about the benefit of AIG cover for the disability for which this Tribunal has no jurisdiction, the case be returned to the trial Court from where it has been received.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd)

**19-10-2010
'dls'**

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

T.A. No. 568 of 2010
(arising out of CS No. 295 of 2005)

Phool Chand**Petitioner/plaintiff**

Vs.

UOI & Ors. Respondents/Defendants

ORDER
19-10-2010

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Administrative Member.**

For the petitioner (s) : None

For the respondent (s) : Ms. Urmil Gupta, CGC.

Nobody appears for the petitioner.

In the interest of justice matter is adjourned.

To be listed for hearing on 14-01-2011.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

19-10-2010
'dls'

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

**T.A. No. 624 of 2010
(arising out of CS No. 644 of 2005)**

Mewa Devi**Petitioner/plaintiff**

Vs.

UOI & Ors. **Respondents/Defendants**

**ORDER
19-10-2010**

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Adminisrative Member.**

For the petitioner (s) : None

For the respondent (s) : Ms. Urmil Gupta, CGC.

Nobody appears for the petitioner.

In the interest of justice matter is adjourned.

To be listed for hearing on 14-01-2011.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

**19-10-2010
'dls'**

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

**T.A. No. 986 of 2010
(arising out of RSA No. 1538 of 2010)**

Satwinder Singh**Petitioner/appellant**

Vs.

UOI & Ors. Respondents/Defendants

ORDER
19-10-2010

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Administrative Member.**

For the petitioner (s) : Mr. Arun Singla, Advocate.

For the respondent (s) : Ms. Renu Bala Sharma, CGC.

Learned counsel for the petitioner/appellant submits that he was his Counsel in the High Court. However, in our view, since notice on transfer of the matter to this Tribunal when sent to the petitioner, has been received back unserved with the report that the petitioner being not traceable, it would be in the fitness of things if the learned counsel files a Vakalatnama on behalf of the petitioner, more particularly also because the Vakalatnama of Mr.G.S.Chahal, Advocate, is available in the High Court file. Mr Arun Singla, Advocate, has not been shown as the lawyer engaged by the petitioner in the High Court.

Put up this case for hearing on 13-01-2011.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

19-10-2010

‘dls’

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

T.A. No.322 of 2010
(arising out of CS No. 205 of 2009)

Ramesh Kumar**Petitioner/plaintiff**

Vs.

UOI & Ors. Respondents/Defendants

ORDER
19-10-2010

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Administrative Member.**

For the petitioner (s) : Mr. N.S.Vijayrania, Advocate.

For the respondent (s) : Ms. Renu Bala Sharma, CGC.

Learned counsel for the respondents has filed reply today.

The same is taken on record.

Learned counsel for the petitioner wants time to file rejoinder.

The matter be put up for hearing on 10-01-2011.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

19-10-2010
'd/s'

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

**T.A. No. 240 of 2009
(arising out of CWP No.17123 of 2009)**

Hoshiar Singh

.....Petitioner

Vs.

UOI & Ors.

..... Respondents

**ORDER
19-10-2010**

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Administrative Member.**

For the petitioner (s) : Mr. Surinder Sheoran, Advocate for
Mr. Rajvir Singh, Advocate.

For the respondent (s) : Ms. Renu Bala Sharma, CGC.

Both the learned Counsel for the parties submit that the controversy involved in the present case is pending adjudication before the Hon'ble Supreme Court in SLP No. 2993 of 2009 titled as Union of India & ors vs. Gurmail Singh.

Accordingly, this matter is adjourned sine die.

To be listed after some material outcome of the Supreme Court in the aforesaid SLP, intimation whereof shall be given to the Registry by the either side.

Today learned counsel for the respondents has filed reply, which is taken on record.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

**19-10-2010
'dls'**

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

**T.A. No. 869 of 2010
(arising out of CWP No. 7586 of 2009)**

Mohinder Singh**Petitioner**

Vs.

UOI & Ors. **Respondents**

**ORDER
19-10-2010**

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Adminisrative Member.**

For the petitioner (s) : Mr. Neeraj Bhutani, Advocate, for
Mr. V.P. Singh, Advocate.

For the respondent (s) : Ms. Renu Bala Sharma, CGC.

Mr. Neeraj Bhutani, Advocate, appears for the petitioner and
prays for time on the ground that the arguing Counsel is not available.

This matter be put up for hearing on 11-01-2011.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd)

**19-10-2010
'dls'**

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

**T.A. No. 304 of 2009
(arising out of CWP No. 18330 of 2009)**

Sunita Devi**Petitioner**

Vs.

UOI & Ors. **Respondents**

**ORDER
19-10-2010**

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Adminisrative Member.**

For the petitioner (s) : Mr. Surinder Gandhi, Advocate.

For the respondent (s) : None.

Request for an adjournment has been received by the petitioner from the side of the respondents. The learned Counsel for the petitioner has not objection.

The matter be listed for hearing on 10-01-2011.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

**19-10-2010
'dls'**

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

**T.A. No. 184 of 2010
(arising out of CS No. 537 of 2008)**

Zile SinghPetitioner/plaintiff
Vs.	
UOI & Ors. Respondents/Defendants

**ORDER
19-10-2010**

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Adminisrative Member.**

For the petitioner (s) : Mr. Surinder Sheoran, Advocate.

For the respondent (s) : Ms. Urmil Gupta, CGC.

Per JUSTICE N.P. GUPTA:

This matter has come to this Tribunal by transfer which was originally filed as regular civil suit in the Court of Additional Civil Judge (Senior Division), Charkhi Dadri, on 18-12-2008 praying for grant of disability pension with effect from 02-09-1994 taking disability to be 20% (rounded off 50%).

Though it appears from the order of the trial Court that on 14-10-2009 the issues were framed and the case was fixed for 23-02-2010 for plaintiff's evidence, but at that stage it was transferred. However, after perusal of the written statement, as filed, we find that the matter can be disposed of at this stage itself finally and, therefore, the matter has been heard.

**T.A. No. 184 of 2010
(arising out of CS No. 537 of 2008)**

According to the plaint averments, the plaintiff was enrolled in Army on 29-11-1960 with 100% disability attributable to military service and was granted disability pension. From time to time, he was subjected to Re-survey Medical Board and the Re-survey Medical Boards successively went on reducing the extent of disability. Inasmuch as for the period from 11-04-1983 to 10-04-1985 it was assessed at 20% and thereafter also it was assessed at 20% on 03-01-1995. But then CCDA (P), Allahabad, re-assessed the percentage of disability at less than 20% (15 to 19%) for five years. Then on 02-01-2000 the Medical Board assessed the percentage of disability at 20% and this time also, the CCDA (P) re-assessed it 15 to 19% and then on 03-11-2008 the CCDA (P) considered the disability to be neither attributable to nor aggravated by military service and discontinued the disability pension.

Though the records of the subsequent Re-survey Medical Boards have not been produced before us, we find from the reply (written statement) that in para No. 8 of the preliminary objections, the facts given by the petitioner in this regard have not been disputed, rather admitted. While replying on merits also, those very facts have not only been admitted, rather reiterated in paras 3,4 and 5 of the written statement.

Since the factual aspect of the matter is not in controversy, the only question survives for consideration is as to whether the disability (its extent and its attributability) as opined by the competent Medical Boards could be upset by the CCDA (P) or PCDA (P).

**T.A. No. 184 of 2010
(arising out of CS No. 537 of 2008)**

In our opinion, this question is no more res integra as it has repeatedly been propounded by the Hon'ble Supreme Court that the opinion of the Medical is to be accepted and is entitled to be given primacy. In that view of the matter, since admittedly, (as admitted in the written statement), the disability has been assessed at 20% and obviously it was found to be attributable right from 1969, it stands to no reasons, except arbitrariness on the part of the CCDA (P) to upset it, for which it has no authority and this act being arbitrary in nature cannot be said to be justified.

As a result of aforesaid discussion, we are constrained to allow this suit holding that the petitioner is entitled to get restored the disability pension. However, since the suit was filed on 19-12-2008, the arrears would be payable to the petitioner from 19-12-2008. At the same time since it is writ large that the petitioner has been made to suffer solely on account of arbitrary action on the part of CCDA (P), Allahabad, going to the extent of upsetting the attributability of disability after more than two decades so as to deprive the petitioner of the benefit altogether, it is a fit case, where the petitioner is required to be adequately compensated by way of costs, which we quantify to be the extent of the amount which would have been payable to the petitioner by way of disability pension from the date of its discontinuation till 18-12-2008.

**T.A. No. 184 of 2010
(arising out of CS No. 537 of 2008)**

The respondents are directed to make calculations of the arrears of the disability pension for 20% disability from the date of its discontinuation as above and the payment be made to the petitioner within three months from the date of receipt of a copy of this order by the learned Counsel for the respondents, failing which the amount shall carry interest @ 10% per annum till actual payment.

It is clarified that though the claim has been made by the petitioner for rounding off, but since the controversy about the entitlement of rounding off to pre 1996 retirees is already subjudice, we leave it unadjudicated. However, it will be open to the petitioner to agitate his claim before the appropriate forum at appropriate time as he may stand advised.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

19-10-2010

‘dls’

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

**T.A. No. 903 of 2010
(arising out of CWP No. 12027 of 2009)**

Gurdev Singh

.....Petitioner

Vs.

UOI & Ors.

..... Respondents

**ORDER
19-10-2010**

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Administrative Member.**

For the petitioner (s) : Mr. R.N. Ojha, Advocate.

For the respondent (s) : Ms. Renu Bala Sharma, CGC.

Per JUSTICE N.P. GUPTA:

This is a transferred matter which was originally filed as writ petition before the Punjab and Haryana High Court on 10-08-2009, claiming release of disability pension by quashing Annexure P-1 dated 11-10-1982, Annexure P-2 dated 21-02-1986 and Annexure P-3 dated 15-04-1989.

According to averments in the writ petition, the petitioner was enrolled in Army on 04-02-1963 in the trade of Radio Operator and in 1977 he felt pain in the right arm while writing which spread and became intense within a year, and the petitioner lost the nerves control in his right arm. Consequently, he was admitted in the Military Hospital for

**T.A. No. 903 of 2010
(arising out of CWP No. 12027 of 2009)**

treatment and finally he was invalided out on 12-05-1982. The claim of his disability pension was rejected vide order dated 11-10-1982 (Annexure P-1) and appeals were dismissed in succession vide Annexures P-2 and P-3.

A perusal of Annexure P-1 shows that the petitioner's claim for disability pension was rejected on the ground that the pension sanctioning authority found that the disability was neither attributable to nor aggravated by military service, and this has been upheld.

Reply has been filed contesting the claim of the petitioner. However, along with reply, a copy of the proceedings of the Invaliding Medical Board has been annexed which contains the medical history (summary of case also) and it records about the petitioner being an old case of **Occupational Neurosis** manifested in writer's cramp, and its onset was in early 1979, and he was advised to use left hand more, and was found to be totally unable to carry out his duties as Radio Operator, which involves a lot of writing. The Medical Board opined the disability to be aggravated by military service, and was assessed at 40% for a period of two years.

According to the reply, vide Annexure R-2 service element of disability pension was already sanctioned to the petitioner by way of one time lump-sum payment.

Further as per the stand taken in the reply, the Invaliding Medical Board, of course, found the disability to be aggravated by military service, but it was neither attributable to nor aggravated by

**T.A. No. 903 of 2010
(arising out of CWP No. 12027 of 2009)**

military service.

In our view, as noticed above, copy of the proceedings of Invaliding Medical Board, which have been produced by the respondents on record, shows otherwise state of affairs. According to the reply, the Medical Adviser while scrutinizing the medical record and documents found that the disability was neither attributable to nor aggravated by military service and consequently the claim of the petitioner for disability pension was rejected.

Admittedly, it is not the case that the petitioner was examined by the said Medical Adviser. The result is that it comes to be over-ruling the opinion of the competent Medical Board by the PCDA (P) simply on basis of his consultation with the Medical Adviser, on papers only, which course, has repeatedly been not approved by the Hon'ble Supreme Court. Obviously, therefore, the impugned orders cannot be sustained, and the petitioner is rightly entitled to get disability pension, as his disability was found to be aggravated by military service, to the extent as certified by the Medical Board.

Accordingly, this petition is allowed. The impugned orders are set aside. The petitioner is entitled to get disability pension taking the disability to be 40%. At the same time, the fact remains that the petitioner was discharged from service way back in 1982 and the impugned orders relate to the year 1989, while as noticed above, the writ petition has been filed on 10-08-2009. In that view of the matter, the

**T.A. No. 903 of 2010
(arising out of CWP No. 12027 of 2009)**

actual arrears of disability pension payable to the petitioner, are restricted to commence from 10-08-2006 only. It is clarified that it will be open to the respondents to subject the petitioner to Re-survey Medical Board, but only for the purpose of assessing the extent of disability. In case it is found to be changed either ways, necessary consequences will flow prospectively. The respondents are directed to make necessary calculations of the disability pension and the payment be made to the petitioner within three months from the date of receipt of a copy of this order by the learned counsel for the respondents, failing which the amount shall carry interest @ 10% per annum.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

**19-10-2010
'dls'**

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

O.A. No. 662 of 2010

Ex. Sub. Azad Singh & Ors

.....Petitioners

Vs.

UOI & Ors.

..... Respondents

**ORDER
19-10-2010**

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Adminisrative Member.**

For the petitioner (s) : Mr. Surinder Gandhi, Advocate.

For the respondent (s) : Dr. Amarpreet Sandhu, Sr. Panel Counsel

Per JUSTICE N.P. GUPTA:

Both the learned counsel are at one to the effect that the controversy involved in this case is covered by the judgment of the Punjab and Haryana High Court passed in Jai Narayan Jakhar Vs. Union of India being CWP No. 15400 of 2006 decided on 14-01-2008 which judgment has been affirmed by the Hon'ble Supreme Court vide order dated 21-11-1008 in SLP No.15128 of 2008 and which has been followed by this Tribunal in its judgment dated 2-02-2010 passed in O.A. No. 44 of 2010 – Mahavir Singh & Ors vs. Union of India & Ors.

In that view of the matter, reply need not be awaited and this petition is allowed for the same reasons and granting the same relief subject to the same conditions.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd))

**19-10-2010
'dls'**

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

O.A. No. 661 of 2010

Ex.L/NK Mangtu Ram

.....Petitioner

Vs.

UOI & Ors.

..... Respondents

**ORDER
19-10-2010**

**Coram: Justice N.P. Gupta, Judicial Member
Lt Gen AS Bahia (Retd), Administrative Member.**

For the petitioner (s) : Mr. Surinder Gandhi, Advocate.

For the respondent (s) : Dr. Amarpreet Sandhu, Sr. Panel Counsel

Per JUSTICE N.P. GUPTA:

Both the learned counsel are at one to the effect that the controversy involved in the present case is covered by the judgment of this Tribunal dated 04-08-2010 passed in O.A No. 329 of 210 titled as Lt Gen vijay Oberoi Vs Union of India & Ors.

Accordingly, this petition is also allowed for the same reasons and the petitioner being post -1996 retiree is held entitled to rounding off as per the Government of India order dated 31-01-2001 as modified by the said judgment.

(Justice N.P. Gupta)

(Lt Gen A S Bahia (Retd)

**19-10-2010
'dls'**

