

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

**TA No. 189 of 2010
(Arising out of CS No.88 of 2008)**

Dharam Singh	...	Petitioner
Versus		
Union of India and others	...	Respondents

ORDER
11.08.2010

Coram : Justice N. P. Gupta, Judicial Member

Lt. Gen. A. S. Bahia (Retd), Administrative Member

...

For the Petitioner : Mr.Sultan Singh, Advocate

For the Respondents : Mrs.Geeta Singhwal,Sr.PC

Per Justice N. P. Gupta

This is a transferred matter, having been received from the Court of Civil Judge (Junior Division), Charkhi Dadri (Haryana), where it was filed as Civil Suit on 11.03.2008, seeking relief for grant of service pension and disability pension with effect from 01.06.1999, being the date of discharge, on completion of terms of engagement, with disability at 20%.

Before the learned trial Court, after filing of the plaint, written statement had been filed and some documents have also been filed by the respective parties. It is at that stage that the matter has come to this Tribunal by transfer.

The parties do not want to lead any further evidence, and are prepared to argue the matter on the basis of material on record, as it is.

Necessary facts are that according to the plaintiff, he was enrolled in the Army on 14.06.1984 in Defence Security Corps and was invalided out of service on 31.05.1999, on completion of terms of engagement. This was his second enrolment, inasmuch as, he was initially enrolled in Jat Regiment on 03.05.1963 and was transferred to Pension Establishment on 31.05.1978 and was receiving service pension from there. In this second spell, he was discharged on attaining the age of superannuation, after rendering 14 years and 352 days, i.e. 13 days short of 15 years. It is alleged that while so serving with DSC, attached to 6 FOD, he went to the market on 26.03.1994 to bring certain items and while coming back after shopping, he sustained head injury, as a result of which he was placed in low medical category CEE (Permanent) with effect from 31.05.1995. At the time of discharge, the Invaliding Medical Board assessed his disability as 20%. However, the Invaliding Medical Board opined it to be neither attributable to nor aggravated by military service. It is alleged that according to the defendants, since the petitioner did not complete 15 years of minimum required qualifying service with DSC, and since in the opinion of Invaliding Medical Board, disability was neither attributable to nor aggravated by military service, he was refused ordinary pension as well as disability pension, while according to the plaintiff, the period of 14 years and 352 days was required to be reckoned as 15 years, and since the injury was sustained while on duty, and his going to the market to purchase

household articles was incidental to service, the Invaliding Medical Board wrongly opined the disability to be neither attributable nor aggravated by military service and, thus, he should not have been refused service pension as well as disability pension.

In the written statement, it is pleaded, **inter-alia**, that while serving with DSC, the petitioner had earned five red ink entries, resulting into rigorous imprisonment in military custody and detention in military custody, for various terms, as detailed in Para 3 of the Preliminary Objections. Then, replying on merits, it was contended that the disability occurred because the plaintiff had gone out of Unit Line and met with an accident and, therefore, the Invaliding Medical Board rightly opined the injury to be neither attributable to nor aggravated by military service, and since the plaintiff did not complete 15 years of actual service, apart from having earned five red ink entries, ordinary pension as well as disability pension were rightly rejected.

Respective stands have been pressed by learned counsel for the parties before us. Of course, the documents on record have also been referred to.

In our view, so far as the first aspect of entitlement to service pension is concerned, we may gainfully refer to Regulation 9 of Pension Regulations for the Army, 1961, which reads as under:-

Regulation 9

“9. In calculating the length of qualifying service, fraction of a year equal to three months and above, but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service.”

A bare reading of this provision leaves no manner of doubt that for calculating length of service, fraction of year equal to three months and above, but less than six months, is to be treated as complete half year and is to be reckoned as qualifying service. Admittedly, the plaintiff had rendered more than nine months' service, rather more than ten month's service. Even if the period of non-qualifying service, being the period of detention as a punishment, were to be excluded from the qualifying service, last spell of three months forming part of fraction of the year above three months, and less than six months, has to be treated as complete half year. Thus, after the first spell of service for 14 years, second spell of period is to be taken as another complete half year, making it complete 15th year, and thus the plaintiff is clearly entitled to claim that while calculating the length of service, service is to be calculated in accordance with Regulation 9 **ibid** and it comes to 15 years of service entitling him to service pension.

So far as disability pension is concerned, we have perused the Invaliding Medical Board's report produced by the defendants as Annexure D-2, which shows that the Invaliding Medical Board has assessed disability as 20% for two years, and has opined it to be neither attributable to nor aggravated by military service, without noticing as to under what circumstances, and how injury was received by the petitioner. Secondly, it is a case of head injury. Obviously, it is distinguishable from other diseases, which suddenly and gradually surfaced and got aggravated. Of course, the respondents have also produced Exhibit D-7, being report of accidental and self-inflicted injury. The petitioner is said to have

disclosed that he had gone to the market from the Unit Line, and while returning, at the turn of the Unit, his bicycle slipped, as a result of which he fell down and received injury. The Commanding Officer had opined that the injury was sustained by him under circumstances which were beyond his control. In our opinion, when it is not shown as to how the action of the individual in going to the market outside the Unit was an unauthorized act or tantamount to any indiscipline or any action having been taken against him in that regard, his going to the market to purchase household articles and vegetables for himself while posted in Unit Line, is but required to be treated as part of routine life while on duty and if in that course, he sustained injury. The injury sustained by the petitioner/plaintiff, in our opinion, is required to be held to be attributable to service having been sustained while on duty.

Resultantly, the petition is allowed and the petitioner/plaintiff is held entitled to service pension as also disability pension, assessing his disability as 20%.

However, since the petitioner/plaintiff was discharged on 31.05.1999, and Invaliding Medical Board had assessed disability at 20% for two years, and the present suit has been filed on 11.03.2008 only, the petitioner/plaintiff cannot be granted actual financial relief for any period to start before 11.03.2005.

Accordingly, the petitioner shall be paid the above benefits with effect from 11.03.2005. It will be open to the respondents to subject the petitioner to Resurvey Medical Board for the purpose of assessing the extent of disability, and not for the purpose of attributability and then decide the extent of disability with

effect from the date of resurvey medical proceedings, and modify the amount on the basis of disability as may be certified.

The respondents are directed to make necessary calculations of the amount and make its payment to the petitioner within a period of four months from the date of receipt of a certified copy of this order, failing which the amount shall carry interest @ 10% per annum.

[Justice N. P. Gupta]

[Lt. Gen. A. S. Bahia (Retd)]

August 11, 2010
RS