

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

TA No. 207 of 2010
(Arising out of CA No. 24 of 2007)

Sant Lal	...	Petitioner
v.		
Union of India and others	...	Respondents

ORDER
21.07.2010

Coram : Justice N. P. Gupta, Judicial Member

Lt Gen N. S. Brar (Retd), Administrative Member

For the Petitioner	...	Mr. Lakhi Ram, Advocate
For the Respondents	...	Mr. Sandeep Bansal, CGC

This matter has come up by transfer, being Civil Appeal from the Court of District Judge, Bhiwani, arising out of dismissal of the suit of the plaintiff by the Court of Additional Civil Judge (Senior Division), Bhiwani vided judgment dated 14.02.2007.

Plaintiff filed suit on 10.03.2005 praying for the grant of disability pension with effect from 30.06.199, and for quashing the order dated 29.10.1999, whereby it was declined.

Necessary averments in the plaint are that the plaintiff was enrolled in the Army in April 1967, and was discharged on 01.05.1982 with service pension in medical category, AYE. He was re-enrolled on 16.09.1983 and was invalided out in low medical category CEE (Permanent) due to the disability of essential hypertension with more than 20% disability. However, disability

pension was declined. The plaintiff served notice under Section 80 CPC also, but with no good.

Written statement was filed and on the material aspect the stand taken is that for the earlier service the petitioner was granted pension. Then, regarding re-enrollment, it is pleaded in para 4 that being in low medical category, the plaintiff was brought before the Release Medical Board on 15.03.1991 and as per orders, the individual was discharged on his own request. The Release Medical Board recommended to release him in category CEE (P) with 20% disability for two years. Then, a stand has been taken that as per Regulations 173, 178 and 179 of Pension Regulations for the Army, 1961, persons discharged from service at their own request on extreme compassionate grounds, are not eligible to get disability pension. It is then pleaded that since the petitioner got discharged on his own request on extreme compassionate grounds, he was not entitled to disability pension and, accordingly, was not granted.

To put it in another words, only stand taken by the defendants for denying the disability pension is that the petitioner himself sought his voluntary discharge on extreme compassionate grounds, even though he was discharged with 20% disability, being that of essential hypertension.

It is not shown to us from either side as to whether any finding has been given by the Medical Board on the aspect of attributability or aggravation of the disability by the military service.

We have heard the learned counsel for the either side.

A perusal of the judgment of learned trial court also shows that the trial court has proceeded on the basis that since the

petitioner was discharged on his own request, on compassionate grounds, he was rightly denied disability pension.

In our view, this legal proposition no more holds good in view of a series of the judgments of various High Courts and Honorable Supreme Court including Punjab and Haryana High Court and a number of judgments of this Tribunal, taking the view that even in cases where a person is discharged on his own request on compassionate grounds and at that time he is suffering from disability attributable to or aggravated by military service to the extent of 20% or more, then such individuals shall be entitled to disability pension accordingly. In that view of the matter, the sole reason given by the trial Court, so also by the defendants in the written statement, does not hold good. Then, the disability is not in dispute. So far as the question of attributability or aggravation is concerned, in Appendix – II Annexure 3, hypertension is described to be treated disease due to stress and strain of military service. In that view of the matter, the question of attributability or aggravation also no more remains a matter of controversy to be gone into.

The net result is that the petition is allowed. The petitioner is held entitled to disability element of pension to be computed on the basis of his having been invalided out with 20% disability attributable to or aggravated by service.

Since the suit was filed only on 10.03.2005, despite the petitioner having been discharged way back in the year 1991, and his claim for disability pension having also been negated way back in the year 1999 itself, the entitlement is confined to commence from 10.03.2002 only, being 3 years since before filing of the suit.

The respondents are directed to make calculations and necessary payment be made to the petitioner within a period of four months from the date of receipt of certified copy of this order, failing which the amount shall carry interest @ 10%p.a. from the date the amount became due till actual payment.

It is clarified that in case the payments are not made within a period of six months from the date of receipt of the copy of the order, the further liability of interest, shall ultimately pass on to the person (s), who may be responsible for causing the delay, though in the first instance, it will be shouldered by the Government.

[Justice N. P. Gupta]

[Lt Gen N. S.Brar (Retd)]

July 21, 2010
RS