

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

TA No. 211 of 2010
(Arising out of CS No.124 of 2006)

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

ORDER
23.07.2010

Coram : Justice N. P. Gupta, Judicial Member

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

For the Petitioner ... Mr. Samarveer Singh, Advocate

For the Respondents ... Mr. Mohit Garg, CGC

This is a transferred petition, originally having been filed as civil suit in the Court of Additional Civil Judge, Senior Division, Charkhi Dadri, praying for quashing the impugned order dated 17.06.2002 issued by CCDA (P) Allahabad, refusing the disability pension to the petitioner, which was claimed with effect from 01.09.2001.

The averments of the plaintiff in the plaint are that he was enrolled in the Army on 03.12.1983 and was discharged on 31.08.2001, consequent upon being placed in low medical category, with 30% disability. According to the plaintiff, since disability was acquired while in service, it should be treated as attributable to or aggravated by Military Service and the petitioner should be granted pension. This ground has been stated in Para 7(f) and (h) of the plaint.

The suit was contested, inter-alia, contending that the disability was neither attributable to nor aggravated by military service, and that he was discharged due to non-availability of sheltered appointment. It was maintained that the Release Medical Board had opined the disability to be neither attributable to nor aggravated by military service.

The matter was going on for plaintiff's evidence, and an affidavit of DW-2 was filed, who was cross-examined and in cross-examination, he has maintained that the disability was acquired by the plaintiff due to sexual intercourse with CSW and was acquired due to mistaken act on the part of the individual himself, which cannot be said to be attributable to or aggravated by Military Service.

A look at proceedings of Release Medical Board available on record as Annexure R-1 clearly shows that in the opinion of the Board, the case of disability was due to sexual intercourse with CSW.

In that view of the matter, in our view, it cannot be said that the authorities below were in any manner in error in negating the claim of the petitioner to disability pension on the ground of disability being neither attributable to nor aggravated by Military Service.

Consequently, we do not find any force in the petition. The same is, therefore, dismissed.

[Justice N. P. Gupta]

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

July 23, 2010
RS