

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT
CHANDIMANDIR**

T.A. No.226 of 2009
(arising out of CWP No.7207 of 2008)

Ex. Hav. Shamsher Singh Vs U.O.I & ors

ORDER

Present: For the applicant: Mr. G.S. Dhaliwal, Advocate
For the respondents: Dr. Amarpreet Sandhu, CGC

JUSTICE GHANSHYAM PRASAD

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

This petition has been filed for grant of disability pension.

The petitioner was enrolled in the Army on 7-12-1977. In the year 1992 he was down-graded to the category of 'CEE (Permanent)'. The petitioner had suffered 90% disability as a result of **B.C. Amputation (RT) Old N 919-922, Primary Hypertension (401) and (3) Nidom 250 (B) (Diabetese)**. Ultimately, he was discharged from the service on his own request on 30th September, 2001.

Later on, the petitioner approached the Military Authorities for grant of disability pension which was denied vide Annexure P-4 dated 27-06-2003 on the sole ground that before the completion of service limit, the petitioner was discharged on compassionate grounds at his own request.

Learned counsel for the petitioner submits that the issue involved in the case has already been settled by the Apex Court and other High Courts. It has been held that military personnel, who was placed in 'lower medical category' as a result of injury attributable to or aggravated due to military service and was released from service at his own request, shall be deemed to be invalided out from service in terms of paragraph 173 of Pension Regulations read with rule 4 annexed with Appendix-II of the Entitlement Rules, 1982. Therefore, the person, who is invalidated out from service at his own request, is also entitled to get disability pension. In this regard, the decision rendered in **Mahavir Singh Narwal Vs. U.O.I and ors.** by the Division Bench of Delhi High Court is relevant. The Union of India preferred SLP against the aforesaid decision of Delhi High Court, which was ultimately dismissed and the said decision was affirmed by the Apex Court vide order dated 04-01-2008 passed in SLP (Civil) No. 24171 of 2004.

In view of the facts and circumstances and the law laid down by the Apex Court, we allow this application. The respondents are directed to assess and release the disability pension in favour of the petitioner from the date of invalidation within three months from the date of receipt of this order or certified copy thereof. The petitioner is also entitled to get arrears, but the same shall be confined to a period of

three years prior to the date of this application. Interest @ 12% per annum is also allowed on the arrears.

(Justic Ghanshyam Prasad)

(Lt Gen H S Panag(Retd)

02-02-2010
'dls'