

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

T.A. No 264 of 2010

(arising out of RBT 4387 of 2004)

Suraj Bhan Singh ... **Applicant**

Vs

Union of India and others ... **Respondents**

ORDER

15 -07-2010

Coram : **Justice Ghanshyam Prasad, Judicial Member.**

Lt Gen H S Panag (Retd), Administrative Member.

For the Applicant (s) : Mr. Samarveer Singh ,Advocate.

For the respondent(s) : Mr. Sandeep Bansal ,C.G.C.

Justice Ghanshyam Prasad

This suit has been filed for declaration to the effect that the plaintiff is entitled to disability pension as well as service pension of both the services; military service from 21.12.65 to 31.12.1980 and Defence Security Corps w.e.f. 11.10.1983 to 30.11.1991 as well as disability pension.

However, in the course of submission, the learned counsel for the plaintiff confined his argument only with regard to the entitlement of disability pension while he was in Defence Security Services.

Written statement has also been filed and the evidences have been adduced.

The admitted facts of the case is that the petitioner was enrolled in the Indian Army on 21.12.1965 in Raj Rifle Group and he was

prematurely retired from the Army on 31.12.1980. Thereafter, he got pensionary benefits as per his entitlement. Later on, he was enrolled in the Defence Security Corps(DSC) on 11.10.1983 after being medically examined and found to be fit in all respect.

Later on the plaintiff became patient of **“HYPERTENSION”** due to duties of field service. He was placed in Low Medical Category “CEE” temporary and later on he was placed in Medical Category ‘BEE’ permanent. The plaintiff/petitioner sought for premature retirement being placed in Low Medical Category and on the basis of that he was boarded out from Defence Security Service (DSC) w.e.f. 30.11.1991. Before that he was produced before the Release Medical Board. The Release Medical Board found the plaintiff suffering from the disease of **“HYPERTENSION”** and the disability was assessed as 20%. However, its attributability or aggravation was not conceded.

The plaintiff/petitioner approached the authority for grant of disability pension which was ultimately rejected. Thereafter, he filed this suit.

It is submitted by the learned counsel for the petitioner that apparently the petitioner is entitled to get the disability pension in terms of Para 173 of the Pension Regulations for the Army 1961. He was found to suffer from **“HYPERTENSION”** which was assessed as 20% for five years. It is further submitted that at the time of enrollment in Army and DSC, the plaintiff was medically examined and he was found medically fit. The onset of disease was detected after 7 years of DSC service and therefore in view of Rule 14 of the Entitlement Rule 1982, it is deemed to be attributable or aggravated as a result of military service.

It is further submitted that in written statement, paragraph 7 of the statement of case and para 4 of the reply on merit the defendant have admitted that the plaintiff was placed in Low Medical Category w.e.f 05.09.1988 due to diagnosis of **“HYPERTENSION”** and the disability was assessed as 20% for five years by the Release Medical Board

It is further submitted that it is true that the plaintiff was boarded out of the serviced on his own request for premature retirement but this is not the ground for rejection of disability pension as the matter has already been settled by the Hon'ble Supreme Court in Mahavir Singh Narwal Vs. Union of India and Others decided by Delhi High Court on 05.05.2004 and affirmed by the Supreme Court in SLP(Civil No 24171/ 2004 decided on 04.12.2008.

The learned counsel for the defendant/respondents objected to the grant of disability pension in favour of the petitioner and it is submitted that since plaintiff was boarded out from service on his own request, he is not entitled to get the disability pension. It is further submitted that the onset of the disease was not found to be aggravated or attributable to the military service. Therefore, the plaintiff is not entitled to get disability pension.

Considered the submission of the learned counsel for both the parties and perused the pleadings including written statement filed by the defendant/respondents as also the decision passed by the Delhi High Court and Apex Court in the case of Mahavir Singh Narwal. The objections raised by the learned counsel for the defendant/respondents have no leg to stand. The petitioner was found to suffer from **“HYPERTENSION”** after 7

years of service in DSC. At the time of enrollment, he was not found to suffer from such disease. Therefore, the natural presumption would be that the disease was attributable to or aggravated as a result of military service. The other question raised by the learned counsel for defendant that plaintiff/petitioner being discharged on his own request, is not entitled to get disability pension, deserves no merit in view of the decisions rendered by Delhi High Court in Mahavir Singh Narwal Vs Union of India & Ors case and subsequently affirmed by the Apex Court mentioned above.

Thus, having regard to the facts and circumstances of the case as well as the law in this regard, we are of the view that the petitioner is entitled to get the disability pension from the date of his discharge from DSC service. Accordingly this suit is decreed as mentioned above. The defendant/respondents are directed to assess and release the disability pension in favour of the petitioner for 20% disability within six months from the receipt of copy of this order. The petitioner is entitled to get arrears of disability pension, however, it shall be restricted to a period of three years prior to filing of this suit with interest @ 6% per annum.

There shall be no order as to costs.

It is made clear that respondents are free to hold the Resurvey Medical Board in order to grant the disability pension in future after intimation to the plaintiff/petitioner.

(Justice Ghanshyam Prasad)

[Lt Gen H S Panag(Retd)]