

**Ex Major Rakesh Tomar Versus Union of India and Others**

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**Court :** Armed forces Tribunal AFT Principal Bench New Delhi

**Decided On :** Apr-16-2010

**Judge :** A.K. Mathur, Chairperson & Honourable Lt. Gen. M.L. Naidu, Member

**Appeal No. :** T.A. No. 507 of 2010 [W.P. (C) No. 771 of 2009 of Delhi High Court]

**Judgement :**

1. The present petition has been transferred from Honble Delhi High Court to this Tribunal on its formation.
2. Petitioner by this petition has prayed to quash the order of the respondents to treat his disability only aggravated by military service. It is also prayed that by virtue of para 2 of the policy dated 30.08.2006, he may be given the benefit of service element in cases of the officers released from service before 30.08.2006 for being ultra virus to the Constitution of India as well as contrary to the settled legal position. In alternative, he prayed that respondents may be directed to grant him service element of disability pension with effect from 30.08.2006.
3. Brief facts which are necessary for the disposal of present petition are that petitioner was selected for grant of short service commission in Indian Army after he qualified by the written test conducted by the Union Public Service Commission and interview. Thereafter, on exhaustive and thorough medical checkup and having been found medically fit, he was sent to undergo training for 11 months. On successful completion of said training, he was granted short service commission in

the Corps of Artillery on 04.09.1987 and he was posted in 143 Field Regiment, an Artillery unit which was deployed at Darpuk in a high altitude area at about 14000 feet ahead of Leh in Jammu and Kashmir. In 1990, his unit moved to Talbet in Madhya Pradesh where he participated in various training activities including practice camp at Mahajan Range from time to time. He remained with 143 Field Regiment till 1992 and participated in all the activities of the Unit. In December 1992, he was transferred to 202 Sata Battery which was also an Artillery unit. He was released from service after completing the 10 years of service on 03.09.1997 and was finally struck of strength from Army on 01.11.1997. He was examined by a release medical board in 1997 before his release from service. He was informally told by the President of the Medical Board that his disability has been assessed as 20% and also that he is entitled to disability pension. After waiting for about 6 months, when he did not receive disability pension, he approached the PCDA (P) Allahabad to find out the reasons for the delay in processing of his case. Ultimately, after about 8 years of his release, respondents finally granted sanction to pay the disability pension for 20% disability to him by treating his disability as aggravated by Military service instead of treating the same as attributable to Military service. He received an intimation to the effect by the letter of the respondents dated 25.08.2005. He was instructed to submit the necessary documents to PCDA (P) Allahabad for issue of pension payment order so that his disability pension would be released. Ultimately, respondents issued the PPO granting 20% of disability element of disability pension but service element of disability pension was not granted to him. Therefore, he made a representation but without any result. Ultimately, he approached the Hon'ble Delhi High Court by filing present writ petition which was transferred to this Tribunal on its formation.

4. Learned counsel for the petitioner submitted that the disability pension was issued on 30.08.2006 but without service element. This is discriminatory and arbitrary. Learned counsel alternatively submitted that even if it is not given retrospectively it may be given from 30.08.2006. In this connection reference may be made to relevant letter dated 30.08.2006, which reads as under:-

2. Service element of disability pension in respect of non-regular commissioned officers retired before the date of issue of these orders shall be revised

prospectively in accordance with these orders. In the case of aggravation, the benefit of service element as per these orders will be applicable only to those who retired on or after the date of issue of this letter. Past cases will not be re-opened.

5. This order shows that the Authorities though made this order on 30th August, 2006 effective from the date of issuance, however, they qualified that past cases of aggravation will not be opened.

6. Learned counsel for the petitioner submitted that there is no rationale for distinguishes persons who incur disability either attributed or aggravated by the Military service, an artificial distinction cannot be made in cases of attributable, cases will be reopened and they will be given a benefit from the date of issuance of this order. This artificial distinction does not hold good. Disability may be incurred by way of attribution or by way of aggravation, there cannot be discrimination on that count. The attribution factor is Military service which has either attributed or aggravated, therefore, the service is the cause for the disability. Once the disability is caused, may be attributed or aggravated by the Military service then they must stand on same footing and no artificial distinction can be made. Therefore, this distinction sought to be made is without any basis. All the persons who have incurred disability to the extent of 20% then they must be treated at par be it by way of aggravation or by way of attribution. We find the distinction Past cases will not be reopened in case of aggravation is totally arbitrary, illegal and violation of Article 14 of the Constitution, therefore, we struck down the following expression Past cases will not be reopened and direct that case of the petitioner may be reopened and he may be considered for grant of service element of disability pension from the date of issuance of this order.

7. Petition is allowed. No order as costs.

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