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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-629-2024
Reserved on: 25.09.2024
Pronounced on: 23.10.2024

Union of India and Ors.Petitioners

Versus

Ex Spr Nawadkar Dilip Shamrao and anotherRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Rohit Verma, Advocate
for the petitioners.

Mr. Navdeep Singh, Advocate with
Mr. Ajay Sheoran, Advocate
for respondent No. 1.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for setting aside order dated 10.05.2023
(Annexure P-1), as passed by the learned Armed Forces Tribunal
concerned, whereby, the Original Application filed by respondent No.1
has been allowed and the petitioners have been directed to constitute re-
survey medical board for conducting medical examination, upon, the
respondent.

Factual Background

2. Respondent No. 1 was enrolled in Army on 01.02.1980 and
was discharged from service on 04.12.1982 in low medical category
owing to a disability i.e. dislocation of right shoulder. Respondent No.1

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dislocated his right shoulder three times during one year and 6 month of service and was invalided out for '*Recurrent Dislocation (RT) Shoulder*'. As per the specialist opinion attached with the Invaliding Medical Board, it was observed that '*The Dislocation of right shoulder could have effectively healed surgically for which he is unwilling.*'"

3. The claim for grant of disability pension to respondent No.1 was rejected on 12.01.1983. Respondent No. 1 filed 1st appeal against the said rejection order. However, the same was rejected vide order dated 05.11.1984. Thereafter, respondent No. 1 filed petition dated 12.11.1997 for grant of disability pension, which was rejected on 02.12.1997.

4. Feeling aggrieved, after a lapse of about 41 years, the respondent filed O.A., before the learned Armed Forces Tribunal concerned, wherebys he cast a challenge to the above made rejection order. The said O.A., became disposed of vide order dated 10.05.2023.

The operative part of the said order is extracted hereinafter.

4. The application is, accordingly, disposed of with a direction to the respondents to constitute the Re- Survey Medical Board (RSMB) at a place nearest to the village of applicant for conducting his medical examination within a period of three months from today under intimation to him qua date, time and the place where the Re-Survey Medical Board has to assemble. The respondents to proceed in the matter thereafter in terms of the opinion of the Board and the applicant if still found to have incurred disability grant him disability element of disability pension with all consequential monetary benefits from due date for life within the same time in terms of the law laid down by the Hon'ble Apex Court in Dharamvir Singh Vs. UOI and others (2013) 7 SCC 316 and Sukhvinder Singh Vs. UOI and others and also as per the policy (s) in existence.

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5. Liberty to the applicant to approach this Tribunal again for redressal of his surviving grievances, if any.

5. Feeling aggrieved from the aforesaid order, as passed upon the O.A. (supra) by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

6. Though, since this Court for reasons to be assigned hereinafter is not inclined to quash the impugned order, rather when this Court may have been inclined to proceed to even set aside but in favour of the present respondent, the order (supra) passed by the learned Armed Forces Tribunal concerned. Nonetheless, when the order for the conducting of a re-survey medical board rather was required to be assailed by the respondent, who however has not assailed it, thereby the supra order may not be set aside.

7. Be that as it may, in the larger interest of justice, the hereafter made observations shall be borne in mind by the re-survey medical board, while it makes a re-survey of the disability encumbered upon the respondent.

8. There is no denial to the fact that the dislocation of the right shoulder of respondent No. 1, occurred, during his performing military service under the present petitioner nor there is any denial to the opinion of the medical board, that as such, the said disability became aggravated by or was attributable to rendition of military service. Consequently, the lacks of denial (supra) by the petitioner in the present petition, leads to an inevitable conclusion, that the apposite

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entailed disability (supra) rather was on account of rendition of military service by respondent No. 1. Resultantly, the present respondent was after his becoming invalided thus, entitled to disability pension. Though, the medical opinion also stated that the dislocation of the right shoulder of the respondent, could have been surgically thus effectively healed, but the respondent was unwilling for it. Resultantly therebys, the petitioner contends that the dislocation of right shoulder of the present respondent, could have been effectively healed, through the requisite surgical operation being undertaken by the present respondent, but since the present respondent was unwilling to undergo the apposite surgery. In sequel, it became contended that though the disability (supra) arose from rendition of military service and/or became aggravated or was attributable to military service, but only because the respondent was unwilling to undergo surgical operation, rather for alleviating the said disability, therebys, the present respondent was not entitled to seek the grant of disability pension.

9. However, as stated (supra), the above aspect neither became considered nor became adjudicated upon by the learned Armed Forces Tribunal. Contrarily, directions in terms of the verdict rendered by the Apex Court in case titled as '**Dharamvir Singh Vs. UOI and Others (supra)**' become passed rather for making re-assessment(s) of the disability, if any, as became encumbered upon the respondent.

10. Tritely, it appears that the present respondent became discharged from military service, only on account of his unwillingness

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to undergo the alleviating surgery appertaining to the disability (supra). The said refusal is not supported by any signed unwillingness becoming made by the present respondent. Therefore, *prima facie*, for want of any signed refusal becoming made by the present respondent, for his undergoing the alleviating surgery, thus *prima facie* ill led the medical board to conclude, that the disability could have been effectively alleviated, in case the present respondent underwent the requisite surgery. As such, the said ground appears to be made most surmisingly. Moreover, when it also ultimately led to the present respondent becoming discharged. Therefore, the said discharge is, *prima facie* vitiated, despite the disability encumbered upon the respondent becoming declared to become aggravated or becoming attributable to rendition of military service by the present respondent, whereas, disability pension becoming denied to him.

11. Be that as it may, even if the said disability was amenable to become alleviated through the present respondent undertaking surgery, yet there was a requirement qua the makings of a detailed reasoning by the medical board, that the alleviating surgery would evidently render fully functional, thus the disabled or dislocated right shoulder, wherebys, he could effectively perform service as a combatant in the Armed Forces. The absence of the above detailed reasons, also to the objective mind of this Court, could not have further led to an ill conclusion, that the said disability was fully and effectively remediable through the present respondent undergoing surgery, which however

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became refused, but since the said refusal for reasons (supra) when is not supported by any signed endorsement being made by respondent No. 1, thereby, reiteratingly the said purported refusal also appears to be surmisingly made the plank for the denial of disability pension.

12. In summa, if the said dislocation of right shoulder was stated to become effectively rather surgically healed, and when there is no evidence on record that the present respondent on his own undertook, to effectively heal the same, through his undertaking surgery. Therefore, also for want of the above evidence, rather pronouncing that the said dislocation of the right shoulder, thus has been fully set in place, whereby, it has become effectively and optimally functional, thus for thereby, enabling the present respondent to post his discharge hence perform any other employment. Therefore, the lack of or the want of the above evidence, thus, leads this Court to draw an adverse inference against the petitioners, besides also leads this Court to conclude, that the above extracted operative part in the impugned order rather was made without the said evidence becoming adduced on record. As such, *prima facie*, the operative part of the order impugned before this Court is made most summarily and with the grossest non application of mind.

13. Be that as it may, the observations (supra) though do *prima facie*, vitiate the operative part of the impugned order, but since there is no challenge at the instance of the present respondent, to the above

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extracted operative portion of the impugned order. Therefore, the said order cannot be set aside. Contrarily, it is required to be affirmed, as it has been challenged at the instance of the Union of India and the said challenge has failed.

14. However, in the larger interest of justice, the re-survey medical board shall be convened within a period of three weeks from today and bearing in mind the above observations, it shall proceed to draw a well recorded reasoned order, whereafters, accordingly disability pension be computed and be forthwith released to the respondent.

Final Order of this Court.

15. In aftermath, with observations and directions aforesaid, the instant writ petition is disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

23.10.2024
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No