**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.**

**(225)** **CWP-26054-2024**
**Decided on:11.12.2024**

UNION OF INDIA AND ORS. .....Petitioners

Versus

EX-HFO KAMAL KUMAR VERMA [SERVICE NO. 639510] AND ANR. ...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**
**HON'BLE MS. JUSTICE KIRTI SINGH**

Argued by: Mr. Narender Kumar Vashist, Advocate for the petitioners/UOI.

Mr. Deepak Bhatt, Advocate for
Mr. Sharma Raj Kumar Mangal Sain, Advocate for respondent No.1.

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**SURESHWAR THAKUR, J(ORAL)**

1. Through the instant writ petition, the petitioner(s)/Union of India, prays for the setting aside of the orders dated 05.04.2024 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, wherebys the claim of respondent No.1 for the grant of disability pension was allowed.

**Factual Background**

2. Respondent No. 1 joined Indian Air Force on 22.04.1981 in a fit state of health. During the course of his service, he incurred the disabilities of **(1) Primary Hypertension (Old) ICD No.I10 Z-09 (2) Hypertriglyceridemia (Old) ICD No.E-78.1 Z-09 (3) Pseudophakia Both Eyes (Old) ICD No.Z96.1, Z-09 (4) Diabetes Mellitus Type-II (Old) ICD No.E11, Z-09 and (5) Avascular Necrosis of Femoral Head (Lt.) (Optd) Total HIP Replacement (Lt.) (Done) (Old) M87.0 Z-09"** and was discharged from service on 31.10.2019. At the time of

discharge, his disability was assessed @50% by the Release Medical Board. However, at the time of arguments before learned Tribunal concerned, learned counsel for the applicant (respondent No.1 herein) has restricted his claim with regard to disability No.5 i.e. *Avascular Necrosis of Femoral Head (Lt.) (Optd) Total HIP Replacement (Lt.) (Done) (Old) M87.0 Z-09.*

3. The disability element claim of the respondent was rejected by the Competent Authority, thus on the ground that the supra disabilities were neither attributable to nor being aggravated by rendition of military service.

5. Feeling aggrieved , respondent No.1 filed O.A., before the learned Armed Forces Tribunal Principal Bench, New Delhi, wherebys he cast a challenge to the afore said rejection order(s). Thereafter, he filed an application for transfer the said O.A. from Armed Forces Tribunal Principal Bench, New Delhi to Armed Forces Tribunal (Regional Bench), Chandigarh. The said O.A. became allowed vide order dated 05.04.2024. The operative part of the said order is extracted hereinafter.

> *" XXXX XXXX XXXX XXXX XXXX XXXX XXXX*
>
> *Considering the law laid down by the Hon'ble Supreme Court and also the attending circumstances, the rejection of the claim of applicant for the grant of disability element of disability pension is neither legally nor factually sustainable. The applicant, therefore, is entitled to the grant of disability element of disability pension.*
>
> *In view of the above, this application is allowed and the order under challenge is accordingly set aside and quashed. The applicant is held entitled to the grant of*

*disability element of disability pension* ***@75% as against 50% for life*** *from the day next to date of his discharge from service i.e.01.11.2019, after being rounded off in terms of the judgment of the* ***Hon'ble Supreme Court*** *in* ***Civil Appeal No.418/2012 titled Union of India Vs. Ram Avtar decided on 10.12.2014.....”***

6. 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.

**Inferences of this Court.**

7. Before proceeding to make an effective adjudication upon the present writ petition, a useful assistance for determining whether the befallment of any disease vis-à-vis any member of the defence personnel, but post his being enrolled in the army, despite at the initial stage, upon his becoming enlisted, as a member of the combatant defence establishment, rather the same remaining undetected, yet the apposite eruption, thus post enlistment hence being construable to be either congenital or being construable to become aggravated or being attributable to military service, thus is acquired, from, the principles set forth in the judgment rendered by the Hon'ble Apex Court, in case titled as ***Dharamvir Singh Vs. Union of India***, reported in ***(2013) 7 SCC 316***. The relevant paragraphs of the said verdict are extracted hereinafter.

*“29. A conjoint reading of various provisions, reproduced above, makes it clear that:*

*(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by*

*military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*

*(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].*

*(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).*

*(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].*

*(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].*

*(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and*

*(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.*

*30. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents."*

8. An incisive reading(s) of the above extracted principles, though pointedly declare, that when a disability becomes entailed upon any member of the combatant defence establishment, and which is to the extent of 20% or over, thereupon, though any such disabled member is required to be invalided from the Army, but yet he is required to be assigned the benefit of disability pension.

9. Nonetheless, the assignment of disability pension to any member of the combatant defence establishment, who becomes entailed with a disability in a quantum of 20% or more, but imperatively requires a declaration from the Medical Board, rather candidly pronouncing that the said attained disability being attributable to or becoming aggravated by military service. The said declaration becomes enjoined by the *"Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*

10. Furthermore, though thereins a presumption is assigned *vis-à-vis* the sound physical and mental health of any member of the defence establishment concerned, especially when at the stage of his becoming enrolled, there is no note or record about his becoming beset with any disease. Moreover, though thereins there is also a further presumption, that when any deterioration theretos, thus occurs

subsequently, therebys the said happening of deterioration(s) or onsettings of any disease, rather is to be presumed to be a sequel of his rendering service as a member of the defence establishment. Imperatively, the onus for proving the non endowments qua benefits (supra) *vis-à-vis* the concerned, but is rested on the employer, and in case, the said onus remains un-discharged, thereupon, the claimant becomes entitled to receive disability pension. Moreover, all the facts and circumstances attendant to the rendition of service by the concerned, are to be closely scrutinized, thus for declaring whether the onset of any disease vis-à-vis the concerned, is a sequel qua renditions of military service and/or the same being aggravated by or being attributable to military service.

11. Be that as it may, thereins becomes also set forth a further principle(s) that yet there can be denial of disability pension to the concerned, but only upon :

a) At the time of acceptance of the concerned in military service, some notings becoming recorded by the Medical Board vis-a-vis his being beset with a disease which however, becomes concluded to be yet not rendering him unfit to become enlisted.

b) Any further deterioration thereofs, may also subsequently become concluded by the Medical Board, to not arise from rendition of military service nor being attributable to military service, rather the same being a congenital disease.

12. Further, if the medical opinion holds that the disease could not have been detected on medical examination of the concerned being made, thus prior to his becoming enlisted in service, thereupons, the same will not be deemed to have arisen during service, yet in the

situation (supra), the Medical Board is required to state the reasons for so concluding.

13. Moreover, it is also declared in supra, that it is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles".

14. Therefore, it has to be now determined whether in terms of the above principles, whether at the time of enlistment of the present respondent in the Army, thus after a preliminary medical examination being made *vis-a-vis h*is health, thus a note became recorded about some disease besetting him and/or whether some note became appended that the said disease was in a dormant stage. Moreover, it is also required to be determined, from the facts at hand, whether there is a causal nexus inter-se the eruption of the disease, and/or the onsettings thereofs, on to his person, thus post the enrollment of the present respondent taking place, *vis-a-vis* the active renditions by him of military service, wherebys, this Court may conclude that the onset of the disease but rather was a sequel of his rendering service in the Army and as such was attributable or became aggravated by his rendering military service.

15. In addition, it is also required to be gathered from the records, whether the Medical Board, did initially proceed to make a detailed incisive antecedental check, particularly appertaining to the advent of the disease, through employments of State of Art medical techniques, thus unveiling the block chain genetic connection, wherefroms, rather the disease became sourced. Moreover, if the said

employment fails. Resultantly, therebys it may become concluded qua eruptions thereof, thus subsequent to the apposite enlistment taking place, rather was not congenital but owed its origin to rendition of military service besides it being attributable to or becoming aggravated by performance of military service. Contrarily, if the supra employed techniques at the stage of apposite enlistment taking place, thus by the Medical Board concerned, leads to a conclusion, that there are rather dormant incidences of any disease, but yet the said dormant disease not prohibiting the enlistment of any personnel in the army, navy or air force. Resultantly the subsequent active detection/eruption thereofs, during the course of rendition of military service, but would naturally lead to a well conclusion by the Medical Board, that its active eruption but became sourced from an effective causal genetic connection wherebys there would be denial of disability pension.

16. However, now in the said endeavour, this Court is required to be extracting the contents of the opinion, as became recorded by the Release Medical Board, the said is extracted hereinafter:-

***OPINION OF THE MEDICAL BOARD***

| 1. Casual Relationship of the Disability with Service conditions or otherwise. | | | | |
|---|---|---|---|---|
| ***Disability*** | ***Attributable to service (Y/N)*** | ***Aggravated by service (Y/N)*** | | ***Reason/Cause/Specific condition and period in service.*** |
| PRIMARY HYPERTENSION ICD No.I10, Z-09 | NO | NO | YES | Onset in peace, a metabolic disease no delay in diag & treatment as per para 43 chap VI of GMO 2008. Hence not attributable/aggravated by service. |
| HYPERTRIGLYCERIDAEMIA (OLD). ICD No.E78.1, Z-09 | NO | NO | YES | No life style disease due to dietary indiscipline & lack of exercise. Hence not attributable/aggravated |

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|---|---|---|---|---|
| | | | | by service. |
| PSEUDOPHAKIA BOTH EYES (OLD) ICD NO.Z96.1,Z-09 | NO | NO | YES | Onset in peace, a constitutional disease no delay in diag & treatment as per para 13 chap VI of GMO 2008. Hence not attributable/aggravated by service.. |
| D. DIABETES MELLITUS TYPE-II (OLD). ICD NO.E11, Z-09 | NO | NO | YES | Onset in peace, a metabolic disease no delay in diag & treatment as per para 26 chap VI of GMO 2008. Hence not attributable/aggravated by service. |
| AVASCULAR NECROSIS OF FEMORAL HEAD (LT) (OPTD). TOTAL HIP REPLACEMENT (LT) (DONE) (OLD). M87.0,Z-09 | NO | NO | YES | It is a constitutional disease idiopathic onset and no h/o trauma or infection related to service. Hence not attributable/aggravated by service. |

17. A reading of the records reveals that at the time of the apposite enlistment taking place rather no note became made in terms of the principles (supra) declared by the Hon'ble Apex Court in case titled as ***Dharamvir Singh Vs. Union of India (supra)*** by the Medical Board, that some disease which however, did not forbid the present respondent, to become enlisted in the Army, did make its preliminary onsettings. If so, the declaration of law in judgment (supra) that therebys there is a presumption that the incurring of the said disease was a sequel of rendition of service, is required to be favourably endowed vis-a-vis the respondent. Though the said presumption is rebuttable but the onus to lead evidence to rebut the said presumption became cast upon the petitioner. However, the said cast evidence adducing discharging onus vis-a-vis the respondent, rather for cogently rebutting the said presumption, but naturally also did cast an onerous duty also upon the Medical Board, to engage itself in the endeavour of

unearthing, through employments of the State of Art block chain genetic causal connection technique(s), wherebys it may became unraveled that the onsetting of the disease onto the army personnel, became sourced from antecedental genetic family history. Moreover, therebys it was also required to be stated in the medical opinion, that the disease but for a well formed reason rather was a congenital disease and became neither aggravated by nor became attributable to military service.

18. However, a reading of opinion (supra), discloses that it has been recorded in a stereo typed form and no reasons have been recorded to the extent (supra). Reiteratedly, since no evidence to rebut the presumption (supra) has been led by the petitioner, therebys, this Court is constrained to give no weightage to the opinion of the medical board, as extracted (supra). Conspicuously, therebys no credence can be assigned to the supra ill informed reason, besides therebys the onsetting of the disease cannot be said to be a sequel of antecedental genetic family history. Contrarily, it is required to be declared to arise from rendition of military service. In addition, it is required to be declared to be attributable or becoming aggravated by rendition of military service by the present respondent.

19. Moreover, though it is stated thereins that the disease(s) occurred while service became performed by the defence personnel rather in a peace area, but since there is no express mandate in the relevant regulations, which makes the onsettings of the disease(s) in a peace area, to not beget a further sequel that as such, it's onsettings did not arise from the rendition of military service nor it became aggravated

by rendition of the military service. In consequence, the lack of the said express mandate in the regulations, does constrain this Court to conclude, that even if the onsettings of the said disease(s) upon the present respondent thus occurred in a peace area, thereby, the said onsettings are to be declared to become aggravated by or being attributable to rendition of military service.

20. Further, since in terms of the judgment rendered by the Apex Court, in case titled as ***'Union of India Vs. Ram Avtar'***, *reported in* ***2014 SCC Online 1761,*** whereins, a declaration is made to the extent, that the benefit of rounding off, rather has to become endowed to the concerned. Resultantly also thereunders an indefeasible right became vested in the present respondent for his seeking qua the apposite roundings off being made in his favour.

21. Even otherwise since the declaration of law made in verdict (supra) makes the said declaration to be an expostulation of law in rem, therebys, the expostulation of law in rem, as made in verdict (supra) also makes the thereunders conferred benefits vis-a-vis the defence personnel concerned, to, *prima facie*, also entitle the concerned, thus to at any time seek the granting of the endowments as made thereunders, and that too, in the fullest complement, as spelt thereunders, besides irrespective of the bar, if any, of delay and laches.

22. Therefore, the granting of the benefit of the apposite roundings off, in terms of the verdict (supra) rendered by the Tribunal concerned, also does not suffer from any illegality and is required to be upheld.

**Final Order of this Court.**

23. In aftermath, this Court finds no merit in the writ petition and with observations above, the same is dismissed.

24. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.

25. Disposed of alongwith all pending application(s), if any.

**(SURESHWAR THAKUR)**
**JUDGE**

**(KIRTI SINGH)**
**JUDGE**

**11.12.2024**
ANJAL

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