



CWP-31850-2024

[1]

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

(128)

CWP-31850-2024**Reserved on: 27.11.2024****Pronounced on: 29.11.2024**

UNION OF INDIA AND ORS.

.....Petitioners

*Versus*NO. 796103-T EX SGT PAWAN KUMAR
AND ANR.

...Respondents

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

Argued by: Mr. Arihant Goyal, Senior Panel Counsel
for the petitioners/UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner(s)/Union of India, prays for the quashing/setting aside of the order dated 23.05.2023 (Annexure P-3), as passed by the learned Armed Forces Tribunal concerned, whereby 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 05.08.1999 in a fit state of health in medical category AYE (A4G1) and was discharged from service on 31.08.2019. During the course of his service, he incurred the disabilities i.e. **(i) Pseudophakia Left Eye @ 11-14% and (ii) Dyslipidemia@1-5%** and compositely it was assessed @ 15-19% for life.

3. The disability element claim of the respondent was rejected by the Competent Authority, thus, on the ground that the supra



CWP-31850-2024

[2]

disabilities were neither attributable to nor being aggravated by rendition of military service.

4. Feeling aggrieved, respondent No.1 filed O.A., before the learned Armed Forces Tribunal concerned, wherebys he cast a challenge to the afore said rejection order(s). Furthermore, the learned Tribunal concerned was passed an order on 26.05.2022, which is extracted hereinafter:-

“The Simple prayer of the learned counsel for the applicant is this that the applicant is still suffering with the same disease with the higher degree of disablement which he was suffering at time of his discharge from service, so the respondents may be directed to hold the Re-Survey Medical Board (for short RSMB) of the applicant.

In view of the above submission of the learned counsel for the applicant, the respondents are directed to hold the RSMB of the applicant within three months from the date of receipt of the copy of this order and submit their report on or before the date fixed.

List this matter for hearing on 29.09.2022.

Copy of this order be given dasti to the learned counsel for the respondents for compliance.”

5. In compliance to the aforesaid order, Re-assessment of respondent No.1 was held by the Re-Survey Medical Board, who reassessed the disability incurred upon respondent No.1 as **20% for life**.

6. Moreover, the said O.A., became allowed vide order dated 23.05.2023. The operative part of the said order is extracted hereinafter:-

“XXXX XXXX XXXX XXXX XXXX XXXX XXXX

*For all the reasons, hereinabove, this application succeeds and the same is accordingly allowed. The applicant is held entitled to the **disability pension (Service element and***



*disability element) both @20% from the day next to date of his Re-assessment Medical Board i.e. 25.03.2023 for life after being rounded off @50% as per the ratio of the judgment of the Supreme Court in Civil Appeal No.418/2022 titled **Union of India Vs. Ram Avtar** decided on 10.12.2014”*

7. 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.

8. 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.”

9. 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.

10. 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).

11. 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, thereby the said happening of deterioration(s) or onsettings of any disease, rather is to be presumed to be a sequel of his



CWP-31850-2024

[6]

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.

12. Be that as it may, therein 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 thereof, 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.

13. 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.



CWP-31850-2024

[7]

14. 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".

15. 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* his 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 thereof, 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.

16. 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, wherefrom, rather the disease became sourced. Moreover, if the said employment fails. Resultantly, therebys it may become concluded qua



CWP-31850-2024

[8]

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 thereof, 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 whereby there would be denial of disability pension.

17. However, in the said endeavour, this Court is required to be extracting the contents of the opinion, as became recorded by the Release Medical Board. In the said regard, paragraph no.7 of the impugned order, is extracted hereinafter:-

“XXXX XXXX XXXX XXXX XXXX XXXXXXXX

7. In compliance to the aforesaid order, learned Senior Panel counsel has placed on record the proceedings of Re-assessment Medical Board which has reassessed the disability incurred upon by the applicant as **20% for life**. Although as per the proceedings of the Board, the disability incurred upon is neither attributable to nor aggravated by military service however, without assigning any reason in support of such opinion. As a matter of fact, the opinion of the Board has to record reasons in support thereof. The same are, however, missing in this case.”



18. 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.

19. However, a reading of opinion (supra), discloses that it has been recorded in a stereo typed form and no reasons have been recorded



CWP-31850-2024

[10]

presumption (supra) has been led by the petitioner, thereby, this Court is constrained to give no weightage to the opinion of the medical board, as extracted (supra). Conspicuously, thereby no credence can be assigned to the supra ill informed reason, besides thereby 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.

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**, wherein, 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, thereby, 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

CWP-31850-2024

[11]

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

29.11.2024
ANJAL

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No