



2024:DHC:9497-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 05.12.2024

+ W.P.(C) 1995/2024 & CM APPL. 8298/2024
UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Farman Ali, SPC with Ms.
Usha Jamnal and Mr. Krishan
Kumar, Advs.

versus

SL-3939F COL MPC RAO (RETD.)

.....Respondent

Through: Mr.K.R.Verma, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed challenging the order dated 28.04.2022, passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi, in Original Application No. 909/2019, allowing the original application filed by the respondent herein with the following direction:-

“(a) Disability Element of Pension @ 30% rounded off to 50% be paid to the Applicant wef 01.09.2012

(b) The payment of arrears shall be restricted prior to three years from the date of filing of OA (OA filed on).

(d) The Payment shall be made within 12 weeks of receipt of this order. The arrears to be paid within the stipulated time frame,



failing which the Respondents shall pay interest at 8% p.a .”

2. It is the case of the petitioner that the learned Tribunal has wrongly placed reliance on the Judgment of the Supreme Court in ***Dharamvir Singh v. Union of India and Others***, (2013) 7 SCC 316, for allowing the Original Application and drawing a presumption in favor of the respondent. The learned counsel for the petitioners submits that the medical board proceedings could not have been interfered with by the learned Tribunal.

3. On the other hand, the learned counsel for the respondent has drawn our attention to the medical board proceedings and submits that based on a report from a specialist, the medical board had earlier opined that the disability, namely, CAD (TVD) (OPTD) CABG, suffered by the respondent was aggravated by service due to stress and strain in military service. The said opinion, however, was disagreed with by the Headquarters, and the medical board was directed to provide justification for the opinion. The medical board was directed to change the opinion, which it subsequently did, now stating that the disability was not aggravated by service. He submits that, in fact, this itself smacked of mala fide.

4. We tend to agree with the submission made by the learned counsel for the respondent.

5. In the present case, the medical board had clearly opined, based on the opinion of an expert and having perused the 14-day charter of duties of the officer, that the disability suffered by the respondent was



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aggravated by service. It was changed only at the direction of the Headquarters, this time without assigning any reason and merely stating that as the occurrence had taken place in a peace area and due to biological factors, it could not be stated to have been aggravated by service. The Medical Board should not have acted at the dictate of an administrative body. This itself made the order denying disability pension to the respondent, illegal.

6. The learned Tribunal has also discussed the case of the respondent at length before allowing the Original Application. We do not see any reason to interfere with the said finding.

7. Accordingly, we do not find any merit in the present petition. The same is dismissed. Pending application is also dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 5, 2024/rv/VS

Click here to check corrigendum, if any