



2024:DHC:9750-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17.12.2024

+ **W.P.(C) 5075/2024 & CM APPL. 20845/2024**

UNION OF INDIA & ORS.

.....Petitioners

Through: Ms.Manisha Agrawal Narain,
CGSC, Mr.Chandandeep Singh,
Mr.Sandeep Singh Somaria,
Advs. with Major Anish
Muralidhar

versus

COL KAILASH CHANDRA VERMA (RETD)Respondent

Through: Mr.Amit Singh Rathore,
Mr.Ajay Singh, Ms.Vineeta
Rathore, Ms.Reena Kumari,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner, challenging the Order dated 05.10.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short, 'AFT') in O.A. 2097/2018, titled *Col Kailash Chandra Verma (Retd.) v. Union of India & Ors.*, whereby the Original Application filed by the respondent herein was allowed with the following directions:

"7. The OA is thus allowed granting the disability element of pension for the disability



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*of Primary Hypertension @ 30% for life. The applicant's disabilities of (i) Primary Hypertension assessed @ 30% for life and (ii) Cervical Spondylosis assessed @ 30% for life has a composite assessment of 50% which is to be rounded off to 75% for life with effect from the date of his discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar** (Civil Appeal No. 418/2012), decided on 10.12.2014.*

8. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of the copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of the copy of the order by the respondents."

2. It is an admitted position that the respondent herein was commissioned in the Indian Army on 01.08.1984. In 2011, when the respondent was posted at Gwalior, he was found to be suffering from primary hypertension. In the Categorization Medical Board Proceeding conducted on 07.10.2011, the Medical Board opined that the said disability was aggravated by military service. The said report was confirmed by the Approving Authority and by the Perusing Authority, *vide* their remarks dated 11.10.2011 and 20.11.2011 respectively. The Release Medical Board also, in its initial report dated 31.05.2016, opined that the disability of primary hypertension suffered by the respondent was aggravated by military service, and observed as under:



“(i) PRIMARY HYPERTENSION

Aggravation granted by initial med bd(07 Oct 2011) under the provision of Para 43 of Chapter VI of GTMO-2008 2000 and taking into consideration the circumstances and nature of duties performed by tile officer having compromised health status(labile hypertension).Relevant letters dated 12 Oct 2011 and 03 Oct 2011 attached with the Initial med bd proceedings.”

3. The said report was again approved by the Approving Authority and the Confirming Authority, however, by an Order dated 16.08.2016 passed by the Adjutant General's Branch, the said report was rejected only on the ground that the onset of the disability of primary hypertension suffered by the respondent was in a peace area and that the respondent thereafter continued to serve in a peace area.

4. Based on the above said observation, a new Release Medical Board was constituted, which by its report dated 14.09.2016, rejected the claim of the respondent by observing as under:

“AFMSF-16 dt 31 May 2016 of 174 MH returned by IHQ of MoD (Army)vide their letter No PC to MR-05685N/MPRS (O) dt 16 Aug 2016 with the obsn that Primary Hypertension not considered attributable or aggravated since the onset was in peace stn & offr continued to service in peace (Para 43 of Chp VI of GMO (Mil Pension) 2008).”

5. The learned counsel for the petitioners submits that the Medical Board having examined the entire service record of the respondent, including the fact that the respondent was posted in peace area when the onset of primary hypertension was noticed, concluded that the disability could not have been said to be aggravated by service, and



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the learned AFT could not have disregarded the Medical Board opinion and proceeded to grant disability pension to the respondent even for the said disability of primary hypertension, which is mainly a lifestyle disease.

6. The learned counsel for the petitioners submits that the respondent had already availed of his remedies of First Appeal and Second Appeal, which also had been considered and rejected by the Competent Authorities.

7. On the other hand, the learned counsel for the respondent submits that the Categorization Medical Board proceedings since 2011 have opined that the disability of primary hypertension suffered by the respondent was aggravated by military service. The Release Medical Board, in its initial report dated 31.05.2016 agreed with the above opinion and again opined that the disability was aggravated by military service. The same was approved by the Approving Authority and also by the Confirming Authority. The Adjutant General's Branch, however, only because of the reason that the onset of the disability was in a peace area, denied the benefit of disability pension to the respondent and constituted a new Medical Board so as to get an opinion which is unfavourable to the respondent. He submits that the learned AFT has, therefore, rightly interfered with this opinion and granted the disability pension to the respondent.

8. We have considered the submissions of the learned counsels for the parties.

9. As is evident from the above, the Categorization Medical Boards right since 2011 have opined that though the onset of the



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disability of hypertension was while the respondent was posted in a peace area, it was aggravated by service due to his condition of work. The Release Medical Board agreed with this opinion and, therefore, recommended the release of the disability pension to the respondent. The said opinion was also approved by the Approving Authority and the Confirming Authority.

10. The Adjutant General's Branch, however, only relying on the fact that the respondent was posted in a peace area when the onset of the disability was noticed, rejected the opinion of the Medical Boards, which had been confirmed and approved by the higher authorities. In fact, it was the Adjutant General's Branch, which without a justified reason, disagreed with the concurrent Medical Board's opinion. It was only on the direction of the Adjutant General's Branch that a new Medical Board was constituted and an opinion obtained so as to deny the legitimate relief to the respondent. The learned AFT has, therefore, rightly set aside this second medical opinion of the re-constituted Medical Board and has proceeded to grant the benefit of disability pension to the respondent even for the disability of primary hypertension.

11. We have also perused the orders passed on the First Appeal and the Second Appeal filed by the respondent and find no specific reason being given in the said orders, except stating that the onset of the disability was in a peace area and generally stating that primary hypertension is an idiopathic disorder with a strong genetic preponderance and is *per se* not attributable to service. We find both these reasons to be not worthy of acceptance, given the peculiar facts



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of the present case as detailed hereinabove.

12. We, therefore, find no infirmity in the Order dated 05.10.2023 passed by the learned AFT. Accordingly, the present petition along with the pending application is dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 17, 2024/Arya/SJ

Click here to check corrigendum, if any