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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 19.12.2024***+ **W.P.(C) 14636/2024 & CM APPL. 61441/2024****UNION OF INDIA & ORS.****.....Petitioners****Through: Mr. Shankar Kumar Jha, Adv.  
Major Anish Muralidhar, Army****versus****COL SHASHANK SIHORKAR RETD****.....Respondent****Through: Mr. I.S. Yadav, Adv.****CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****SHALINDER KAUR, J (ORAL)**

1. Mr. Shankar Kumar Jha, learned counsel for the petitioners submits that his appearance was not recorded in the Order dated 09.12.2024.
2. In view of the submission made, in the Order dated 09.12.2024 the appearance of Mr. Shankar Kumar Jha shall be deemed to be duly recorded as appearing for the petitioners.
3. The present petition has been filed by the petitioners to assail the Order dated 01.11.2023 (Impugned Order) passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (Tribunal) in Original Application (O.A) No. 90/2020 titled ***Col. Shashank***

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***Sihorkar (Retd.) vs. Union of India and Others***, whereby the learned Tribunal granted disability element of pension in respect of the disability of the respondent herein viz., “*Primary Hypertension*” @ 30% for life rounded off to 50% from the date of respondent’s discharge from the service.

4. On 11.06.1988, the respondent was commissioned in the Indian Army and retired from service on 31.01.2017, upon attaining the age of superannuation.

5. The Release Medical Board (RMB) was constituted at the time of his retirement on 25.08.2016, and *vide* its report dated 21.09.2016, opined that the respondent was suffering from disability @ 30% *Primary Hypertension* (ICD-I10.0) for life. It opined that his medical condition was aggravated by service and was connected with service. It opined that though the onset of said medical condition occurred in peace area but after its onset, he had served in a Counter-Insurgency Operations (CI ops) area. However, the Competent Authority, rejected the respondent's claim for disability pension *vide* Order dated 21.11.2016, observing that the disability did not fulfill the eligibility condition as per existing rules/provisions.

6. Thereafter, the first appeal of the respondent against the rejection of his claim for disability element of pension was rejected *vide* Order dated 18.04.2019.

7. Being aggrieved by this, the respondent preferred his second appeal, which also came to be rejected *vide* Order dated 20.02.2020, observing that the onset of disability was in peace station and there is



no evidence of exceptional stress and strain of service in the instance case. Hence, it was held that the disability is neither attributable to nor aggravated by military service in terms of the Paragraph 43, Chapter VI, Guide to Medical Officers, 2002, as amended in 2008.

8. The respondent challenged the said findings by the petitioners before the learned Tribunal and claimed disability element of pension.

9. The learned Tribunal, relying upon the decision in the case of ***Dharamvir Singh vs Union of India & Ors.***, (2013) 7 SCC 316 and quoting the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, concluded that the petitioner is entitled for the grant of disability element of pension in respect of disability “*Primary Hypertension*” for life which is rounded off to 50% for life with effect from the date of his discharge and further granted interest @ 6% per annum, if petitioners fails to pay arrears within three months from the date of receipt of copy of order by the petitioners herein. This has led to filing of the present writ petition by the petitioners.

10. The learned counsel for the petitioners contends that the grant of disability element of pension is not governed by the eligibility conditions as per Regulation 81(a) of Pension Regulations for the Army, 2008 (Part I), since the respondent is not invalidated out of service, but rather he had superannuated.

11. He further submits that the assessment made by the RMB is only recommendatory in nature and the same is subject to review by the Competent Medical Authority. In the present case, the Competent



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Authority has overruled the opinion of the RMB and thus, the disability claim of the respondent was rejected on the ground that the disability was neither attributable to nor aggravated by military service. He submits that the learned Tribunal has wrongly placed reliance on the decision in the case of ***Dharamvir Singh*** (supra) as the law laid down therein is not applicable to the facts of the present case. The learned counsel further submits that it does not sound to reason that without a disability being attributable to the service, it can be said to have been aggravated by service, which in this case was opined by the RMB.

12. Learned counsel for the petitioners, thus, submits that the learned Tribunal could not have granted disability pension, by brushing aside the orders of the Competent Authority, the First and the Second Appellate Authorities, and by merely relying upon the observations made by the RMB.

13. To conclude, the learned counsel submits that the case of the respondent had been duly considered by the First and the Second Appellate Authorities which had, in concurrence, rejected the claim of the respondent. Therefore, the Order of the learned Tribunal, granting disability pension to the respondent, is liable to be set aside.

14. *Per contra*, learned counsel for the respondent submits that prior to joining the service, the respondent was subjected to an extensive medical examination and was found fit for enrolment by placing him in the Medical Category–Shape I. The disability of Primary Hypertension was detected in February, 2005, and the



respondent was placed in the Low Medical Category with a 30% disablement for life. He contends that during his entire service period of nearly 30 years in the Indian Army, the respondent was posted at different places and, therefore, it cannot be ruled out that his disability may have been caused or aggravated by service conditions. Accordingly, the RMB has correctly opined that his disability was aggravated by military service.

15. He submits that the reliance by learned Tribunal on the decision of ***Dharamvir Singh*** (supra), is not misplaced as it clearly holds that when a member of Armed Forces is discharged from service on account of the medical disability/disease, the disability must be presumed to have arisen in the course of service and in the absence of any reason recorded by the Medical Board to the contrary, it has to be presumed to be attributable to or aggravated by military service. In fact, the Competent Authority, the First, and Second Appellate Authorities erroneously failed to appreciate the said decision. He submits that the learned Tribunal, therefore, has rightly interfered with the opinion presented by the Competent and the Appellate Authorities and has correctly granted the disability element of pension to the respondent.

16. We have considered the submissions made on behalf of the parties and perused the record.

17. We may note that the RMB proceedings held on 25.08.2016, in Part 5 provided the opinion of the Medical Board, which is produced as under:-



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PART V  
OPINION OF THE MEDICAL BOARD  
that is to be communicated to the Individual

| 1. Causal Relationship of the Disability with Service conditions or otherwise. |                               |                             |                                  |                                                                                       |
|--------------------------------------------------------------------------------|-------------------------------|-----------------------------|----------------------------------|---------------------------------------------------------------------------------------|
| Disability                                                                     | Attributable to service (Y/N) | Aggravated by service (Y/N) | Not Connected with Service (Y/N) | Reasons / Cause / Specific condition and period in service                            |
| (a) PRIMARY HTN ICD NO - I10.0                                                 | NO                            | YES                         | NO                               | YES NIDE PARA 43 CD SE GMP DYS DUE TO ONSET IN PEACE BUT SERVED IN C1 EPS AFTER ONSET |
| (b)                                                                            |                               |                             |                                  |                                                                                       |
| (c)                                                                            |                               |                             |                                  |                                                                                       |
| (d)                                                                            |                               |                             |                                  |                                                                                       |
| (e)                                                                            |                               |                             |                                  |                                                                                       |

Note: A disability "Not connected with service" would be neither Attributable nor Aggravated by service

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|                                                                                                                                                                                                                                           |                           |                                                                  |                                                         |                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------------------------|
| 2. Did the disability exist before entering service? (Y/N/Could be) NO                                                                                                                                                                    |                           |                                                                  |                                                         |                                                                           |
| 3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry? NA                                                      |                           |                                                                  |                                                         |                                                                           |
| 4. In case of disability awarded Aggravation, whether the effects of such aggravation still persist? If Yes, whether the effects of aggravation will persist for a material period. YES LIFE LONG                                         |                           |                                                                  |                                                         |                                                                           |
| 5. (a) Was the disability attributable to the individual's own negligence or misconduct? NO, NA If Yes, in what way?                                                                                                                      |                           |                                                                  |                                                         |                                                                           |
| (b) If not attributable, was it aggravated by negligence or misconduct? NO, NA If so, in what way and to what percentage of the total disablement?                                                                                        |                           |                                                                  |                                                         |                                                                           |
| (c) Has the individual refused to undergo operation / treatment? NO, NA If so, individual's reasons will be recorded                                                                                                                      |                           |                                                                  |                                                         |                                                                           |
| Note :- In case of refusal of operation/treatment a certificate from the individual will be attached                                                                                                                                      |                           |                                                                  |                                                         |                                                                           |
| (d) Has the effect of refusal been explained to and fully understood by him / her, viz, a reduction in, or the entire withholding of any disability pension to which he/she might otherwise be entitled? NO, NA                           |                           |                                                                  |                                                         |                                                                           |
| (e) Do the Medical Board consider it probable that the operation / treatment would have cured the disability or reduced its percentage? NA                                                                                                |                           |                                                                  |                                                         |                                                                           |
| (f) If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment? NA                                                                                           |                           |                                                                  |                                                         |                                                                           |
| (g) Do the Medical Board consider the operation to be dangerous to life? NA                                                                                                                                                               |                           |                                                                  |                                                         |                                                                           |
| (h) Do the Medical Board consider individual's refusal to submit to operation / treatment reasonable? Give reasons in support of the opinion specifying the operation/treatment recommended. NA                                           |                           |                                                                  |                                                         |                                                                           |
| 6. What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows): 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%. |                           |                                                                  |                                                         |                                                                           |
| Disability (As numbered in Question 1 Part IV)                                                                                                                                                                                            | Percentage of disablement | Composite Assessment for all disabilities with duration max 100% | Disability quality for disability pension with duration | Net Assessment qualifying for disability pension (max 100%) with duration |
| (a) PRIMARY HTN ICD NO - I10.0                                                                                                                                                                                                            | 30% (THIRTY PERCENT)      | 30% (THIRTY PERCENT)                                             | 30% (THIRTY PERCENT) LIFE LONG                          | 30% (THIRTY PERCENT) LIFE LONG                                            |
| (b)                                                                                                                                                                                                                                       |                           |                                                                  |                                                         |                                                                           |
| (c)                                                                                                                                                                                                                                       |                           |                                                                  |                                                         |                                                                           |

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| 7. Is the individual in need of further treatment and, if so, of what nature and for how long is it likely to be required?<br>As per specialist opinions    |
| 8. Does the individual require an attendant?<br>If so, (a) Whole / or part time (b) Permanently or temporarily: (c) If temporarily, for how long?<br>NO, NA |
| Invalidment / Release in Medical Category <input checked="" type="checkbox"/> SHAPE-2X, P2(PMT) Primary HTN, ICD<br>NO - I 10.0                             |

18. The Medical Board Proceedings further specifically noted that the disability did not exist before entering the service. However, the aggravation of the disability, which existed at the time of examination, was opined to be lifelong and he was further opined to be released in the Medical Category SHAPE-2X,P2(PMT) Primary HTN, ICD No-I 10.0.

19. The Competent Authority, that is the Adjutant General's Branch, however, decided that the disability from which the respondent was found to be suffering at the time of RMB does not fulfill the eligibility condition as per the existing rules/provisions for the grant of disability. Consequently, the claim of the respondent was not approved.

20. We have also perused the orders passed by the First and Second Appellate Authorities. The reasons assigned by the First Appellate Authority for rejecting the claim of the respondent is as follows:-

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*“Primary Hypertension is idiopathic in origin and is per se not attributable to service. In the instant case, onset of the ID was in peace area. There was no documented service related stress and he performed routine duties as expected from his trade. Hence, as per extant policies the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 43, Chap VI, GMO 2002, amendment 2008”.*

21. Needless to say, the First Appellate Authority generally observed that the disease of Primary Hypertension is idiopathic in origin and there was no document to support that the service condition of the respondent caused stress to the respondent. However, it failed to consider the medical condition of the respondent on its own merits and that whether, in respondent's case, the disability of Primary Hypertension could be attributable to or aggravated by with his service conditions.

22. On the other hand, the Second Appellate Authority relied solely on the fact that the respondent was posted in peace area when the onset of disability occurred and that there was no evidence of exceptional stress and strain of service, thus, it declined to interfere with the findings of the First Appellant Authority.

23. It appears that even the Second Appellate Authority probably did not consider the case of the respondent in its entirety and disagreed with the Medical Board by primarily hinging its opinion on the fact that the onset of the disability was in a peace station. Needless to say, that only on the said ground, the opinion of the RMB could not have been brushed aside, without even elaborating on the observations that no evidence of stress and strain of service was found.



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24. We, therefore, find no infirmity in the Impugned Order passed by the learned Tribunal. The petition, along with the pending application, is dismissed in the above terms.

**SHALINDER KAUR, J**

**NAVIN CHAWLA, J**

**DECEMBER 19, 2024**  
**SU/SK/VS**

*Click here to check corrigendum, if any*

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