



2024:DHC:9974-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19.12.2024

+ W.P.(C) 14769/2024 & CM APPL. 62069/2024, CM APPL. 62070/2024

UNION OF INDIA AND ORS

.....Petitioners

Through: Mr. Ashish K. Dixit, CGSC
with Mr. Shivam Tiwari, Ms.
Urmila Sharma, Ms. Deepika
Kalra and Ms. Venni Kakkar,
Advs.

versus

CAPTAIN TS GEORGE VARUGHESE RTDRespondent

Through: Ms. Shakti Jaidwal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J (ORAL)

1. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners have filed the present writ petition, claiming the following reliefs:

“(i) Admit and allow-the present writ petition and set aside the Impugned order dated 06.10.2023 passed by the Armed Forces Tribunal, Principal Bench, New Delhi at New Delhi in O.A. No. 3065/2022 titled as 'Captain (TS) George Varughese (Retd) vs. Union of India & Ors.' and / or,

(ii) Pass such other order or orders which this Hon'ble Court may deem fit and proper in the interest of justice.”

2. Brief facts of the present petition are that the petitioner was commissioned in the Indian Navy on 16.08.1988 and was discharged from service on 28.02.2022. He was produced before a duly

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Signing Date: 27.12.2024
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W.P.(C) 14769/2024

Page 1 of 6



2024:DHC:9974-DB



constituted Release Medical Board (RMB), which *vide* its report dated 22.04.2021, opined that the respondent was suffering from disability @ 30% *Primary Hypertension* (ICD-I10.0) for life.

3. The Competent Authority after examining the case of the respondent rejected his Initial Claim for disability pension *vide* Order dated 20.07.2021, as the disability was found to be not attributable to or aggravated by the Service.

4. Thereafter, the respondent preferred a First Appeal against the rejection of the disability claim. Before the appeal was decided, the respondent approached the learned Tribunal by way of an Original Application (OA) No. 3065/2022 titled ***Captain (TS) George Varughese (Retd) vs. Union of India and other.***

5. The learned Tribunal relying upon the decision in the case of ***Dharamvir Singh vs Union of India & Ors.***, (2013) 7SCC 316, directed the petitioners herein to grant to the respondent, the benefit of disability element of pension @ 30% rounded off to 50% from the date of the retirement of the respondent. It further directed that if petitioners fail to pay arrears within four months from the date of receipt of copy of order by the petitioners herein, they shall pay interest at the rate of 6% per annum.

6. Being aggrieved by the said Order of the learned Tribunal, the petitioners have approached this Court

7. The learned counsel for the petitioners submits that the RMB is an expert body and has held the disability of the respondent as neither attributable to nor aggravated by the military service in terms of



Paragraph 43, Chapter VI, Guide to Medical Officers, 2002, as amended in 2008. Thus, the learned Tribunal ought not to have interfered with it, unless there was glaring evidence to contradict the same.

8. He submits that the RMB having examined the entire service record of the respondent, and having considered the fact that the respondent was posted in a peace area at the time of onset of his disability, concluded that his case was neither attributable to nor aggravated by the military service. He submits that the RMB examined the entire medical history and relevant records to ascertain the disability and thereupon concluded that the disability is neither attributable to nor aggravated by the military service. Thereafter, the Competent Authority also, after judiciously scrutinizing the respondent's case, rejected the claim for disability element of pension.

9. He contends that the learned Tribunal has wrongly placed reliance on the decision in the case of ***Dharamvir Singh*** (supra) as the law laid down is not applicable to the facts of the present case and the Rules applicable are Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 and not that of 1982.

10. He further contends that the respondent was always posted in peace areas and was not posted to any operational command posting.

11. *Per contra*, the learned counsel for the respondent submits that prior to joining the service, the respondent was subjected to an extensive medical examination and was in a sound medical condition and subsequent affliction of a disease/ disability has to be considered as



2024:DHC:9974-DB



attributable to or aggravated by service.

12. Learned counsel for the respondent submits that Recategorisation Board held on 09.08.2005 had conceded that the disability of Primary Hypertension of the respondent was aggravated by the stress and strain of military service. Before the respondent's retirement, he was subjected to RMB on 22.04.2021, which found him to be suffering from Primary Hypertension assessed at 30% for life, however, it recorded that the disability is neither attributable to nor aggravated by the military service, by stating that the onset of disability was during peace tenure. This, he submits, is contrary to the findings of the Recategorisation Medical Board and no reasons have been given by RMB to differ from the findings of the Recategorisation Medical Board.

13. He further submits that the Competent Authority has accepted the findings of the RMB without assigning any reasons thereof.

14. He contends 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 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 the military service.

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

16. We may note that the Recategorisation Medical Board



2024:DHC:9974-DB



proceedings held on 09.08.2005 in Part 5 provided the opinion of the Medical Board which is reproduced as under:-

MEDICAL BOARD PROCEEDINGS
(CATEGORISATION/RE-CATEGORISATION/SICK LEAVE)
PART-I

1. Name G VARGHESE	2. Service No 70318-N	3. Rank CDR	4. Unit/Ship INS VENDURUTHY /ASW SCHOOL
5. Service Army/Navy/Air Force	6. Arms/Corps/Branch/Trade EDUCATION	7 Age 37 Yrs Ht 185 Cm Sex(M/F) Wt 81 Kgs	
8. Address on Leave, if Applicable NA	9. Record Office with Add NHQ, NEW DELHI	10 Ceased duty on 04/08/05	
11. Past History NIL RELEVANT	12. Present Med Cat SIA1 wef	13 Sd/xxxx Sig of Indl Date: 09/08/05	

PART-II

13. Principal disabilities with medical category PRIMARY HYPERTENSION ICD No. I 10.0	Date and Place of Origin AUG 2005 at KOCHI
14. Other disabilities with medical category NIL	Date and Place of Origin NA
15. Date and Place of Previous Medical categorization Board , if any NA	
16. Specialist Opinion: Attach the clinical summary sheet containing a brief history and present condition, after page 2 without any folds. No part of the sheet should protrude out of the form- Attached	
17. Was the disability contracted in service? (Y/N): YES	
18. Was it contracted under circumstances over which he had no control? (Y/N): YES	
19. Is the disability attributable to service (Y/N)? NO If so, Please Explain? & NA	
20. If not directly attributable to service, was it aggravated by service (Y/N)? YES Due to Stress & Strain of Military Service	

17. From the above, we may note that the said board had opined that disability was contracted in military service and also under the circumstances over which the respondent had no control. Further, it was also held that the said disability was aggravated due to stress and strain of service.

18. The opinion of RMB opinion is reproduced as under:

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Signing Date: 27.12.2024
20:11:07

W.P.(C) 14769/2024

Page 5 of 6



2024:DHC:9974-DB



5. Please indicate the disability/condition in chronological order of occurrence.

Disability	Attributable to Service (Y/N)	Aggravated by Service (Y/N)	DETAILED JUSTIFICATION
PRIMARY HYPERTENSION, CD 110.0	NO	NO	IN THE INSTANT CASE, THE ONSET OF DISABILITY WAS IN PEACE TENURE. HENCE, DISABILITY IS CONSIDERED NOT ATTRIBUTABLE, NOT AGGRAVATED BY SERVICE IN TERMS OF PARA 43 CHAPTER VI (C) (I) (M) 2009/2020/2021

Note: 1. A detailed justification regarding the learned's recommendations on the onset and for each disability must be provided.
2. In case of multiple disabilities, the onset date for each disability should be mentioned in the justification, which is substantiated by the President and all members of the Medical Board.
3. In case the medical board offers an opinion from the previous medical board, a detailed justification explaining the reasons to differ should be brought to the court.
4. A disability cannot simultaneously be both attributable to or aggravated by military service, only one or neither of which will apply.

19. Relevantly, the RMB opined that the onset of respondent's disability occurred during a peace tenure, therefore, his disability could not be considered as attributable to or aggravated by military service.

20. There is a glaring contradiction in the opinions of the two medical boards. Needless to say, that on the sole ground that the onset of the disability was during the peace tenure, the opinion of the Recategorisation Medical Board could not have been brushed aside, without even elaborating on the observations.

21. In these peculiar facts, therefore, the learned Tribunal did not err in setting aside the opinion of the RMB and directing grant of disability element of pension to the respondent.

22. We, therefore, find no infirmity in the Impugned Order passed by the learned Tribunal.

23. The petition, along with the pending applications, 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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W.P.(C) 14769/2024

Page 6 of 6