



2024:DHC:8178-DB



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

Date of decision: 22.10.2024

+ W.P.(C) 14784/2024

UNION OF INDIA AND ANR

.....Petitioners

Through: Mr.Shashank Garg, CGSC,
Ms.Aradhya Chaturvedi, Adv.

versus

SQN LDR SM DUBEY (RETD.)

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

CM APPL. 62113/2024 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 14784/2024 & CM APPL. 62112/2024

2. This petition has been filed by the petitioners, challenging the Order dated 25.01.2023 passed by the Armed Forces Tribunal, Principal Bench, New Delhi (in short, 'AFT') in Original Application No. 2036 of 2021 titled *Sqn Ldr SM Dubey (Retd) (20399-G) Adm v. Union of India & Ors.*, whereby, the learned AFT applied the ratio of the decision of the Supreme Court in *Dharamvir Singh v. Union of India & Ors.*, (2013) 7 SCC 316, and held as under:

"6. The law on the point of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of Dharamvir



Singh Vs. Union of India (2013) 7 SCC 316, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in the number of orders passed by the Tribunal, wherein the Apex Court had considered the question with regard to payment of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, it was held by the Hon'ble Supreme Court that an army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

7. In the light of the law already laid down with regard to the attributability/aggravation, we find that the RMB has denied the attributability/aggravation of the disability on the ground that the disability is constitutional in nature and, therefore, the applicant was not held entitled to disability element of disability pension. However, taking note of the facts and circumstances of the case, we are of the view that this reasoning given by the RMB for denying disability element of disability pension to the applicant is vague and not, convincing. The disease, Hypertension is listed in the schedule of the Entitlement Rules, 1982 (Annexure III to Appendix II) as the Diseases affected by stress and strain. It has already been observed by the Tribunal in large number of cases that the service in armed forces has associated stress and strain and the disability being permanent in nature, the benefit of



disability pension is to be given liberally to the claimants. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, live without family work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Admittedly, the applicant was enrolled in April, 1965 and the disability in question has first started after a long period of 35 years of service in the Air Force i.e. in October, 2000 for which he was placed in low medical category A4G2 permanently. There is no note of the fact that at the time of enrolment, the applicant was suffering from any disease. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of above judgment and settled law on the point of attributability/aggravation, the disability of the applicant should be held attributable to/aggravated by the military service.

8. *In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for disability element of pension in respect of disability 'Primary Hypertension'. Therefore, OA is allowed. The respondents are directed to grant disability element of pension to the applicant @20% which be further rounded off to 50% for life from the date of 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. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in Tarsem Singh's case (supra), arrears will be restricted to three years prior to the date of filing of this OA i.e. 13.09.2021."*

3. The learned counsel for the petitioners submits that the



applicant was enrolled in the Air Force on 15.04.1965, and the disability in question first started after a long period of 35 years of service in the Air Force, that is, in October, 2000, for which he was placed in Low Medical Category A4G2(P) permanently. He submits that as is evident from the Medical Board Proceedings, the disability was not due to the reasons attributable to service or as being aggravated by service. He submits that, therefore, the learned AFT erred in granting relief to the respondent.

4. We find no merit in the above contentions. The Supreme Court in ***Dharamvir Singh*** (supra), while considering the Entitlement Rules for Casualty Pensionary Awards, 1982, held as under:

“18. A disability “attributable to or aggravated by military service” is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, as shown in Appendix II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:

5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service.”

From Rule 5 we find that a general presumption is to be drawn that a member is



presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

19. *“Onus of proof” is not on the claimant as is apparent from Rule 9, which reads as follows:*

“9.Onus of proof.—The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.”

From a bare perusal of Rule 9 it is clear that a member, who is declared disabled from service, is not required to prove his entitlement of pension and such pensionary benefits are to be given more liberally to the claimants.

29. *A conjoint reading of various provisions, reproduced above, makes it clear that:*

29.1. *Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

29.2. *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 read with Rule 14(b)].*

29.3. *The 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).

29.4. 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)].

29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and

29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 — "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

5. In the present petition, the respondent was discharged from the service after being placed in the medical category A4G2 (P). The Medical Board, for its opinion that the petitioner's disability was neither attributable to nor aggravated by military service does not appear to have properly appreciated the presumption that is applicable under the Entitlement Rules for Casualty Pensionary Awards, 1982, as explained by the Supreme Court in ***Dharamvir Singh*** (supra). Applying the tests laid down in ***Dharamvir Singh*** (supra), the learned



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AFT, therefore, rightly granted relief to the respondent.

6. In any case, we do not consider this to be a fit case for exercising our powers under Article 226 of the Constitution of India to interfere with the Impugned Order, as we are not acting as an Appellate Court against the Impugned Order.

7. In view of the above, we find no merit in the present petition. Accordingly, the same is dismissed. The pending application is also dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 22, 2024/Arya/DG

Click here to check corrigendum, if any