



2024:DHC:8581-DB



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

Date of decision: 04.11.2024

+ W.P.(C) 15363/2024
UNION OF INDIA & ORS.

.....Petitioners

Through: Mr.Hemant Kumar Yadav,
SPC.

versus

EX JWO UDAIVEER GAUTAM (686502-S)

.....Respondent

Through: Nemo.

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

NAVIN CHAWLA, J. (Oral)

CM APPL. 64426/2024 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 15363/2024 & CM APPL. 64425/2024

2. This petition has been filed by the petitioners challenging the Order dated 30.05.2023 (hereinafter referred to as 'Impugned Order') passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short, 'AFT') in Original Application (in short, 'OA') No. 251/2019 titled "*Ex JWO Udaiveer Gautam (686502-S) vs. Union of India & Others*".

3. The learned AFT, *vide* the Impugned Order, has allowed the



OA filed by the respondent herein, holding that the respondent herein is entitled to disability element of pension qua primary hypertension @ 30% for life, rounded off to 50%, with effect from the date of his discharge. In reaching the said conclusion, the learned AFT, while placing reliance on the judgment of the Supreme Court in ***Dharamvir Singh v. Union of India & Ors.***, (2013) 7 SCC 316, held as under:

*“10. In view of the guiding parameters laid down vide the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India & Ors.***(Supra) and the factum that the non-existence of the ID of Hypertension at the time when the applicant joined military service is not refuted by the respondents, the contention of the respondents that the disability of hypertension assessed by the Release Medical board to be 30% as not being aggravated nor being attributable to military service, cannot be accepted.”*

4. The learned counsel for the petitioners submits that the Medical Board in the present case had opined that the disability of the respondent was *“neither attributable to nor aggravated by military service.”* He submits that the opinion of the Medical Board could not have been interfered with by the learned AFT.

5. We find no merit in the above contention. The Supreme Court in ***Dharamvir Singh*** (supra), while considering the Entitlement Rules for Casualty Pensionary Awards, 1982, has 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*



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Principles”, including Paras 7, 8 and 9 as referred to above (para 27).”

6. In the present case as well, the respondent was discharged from the service on 30.09.2006 having been placed in a Low Medical Category A4G2 (P). The Medical Board, in its opinion, stated that the respondent’s disability of “Mitral Value Prolapse with Mild Mitral Regurgitation” is neither attributable to nor aggravated by military service. However, in reaching this conclusion, it is not shown if the Medical Board took into account the service conditions of the petitioner. Applying the tests laid down in ***Dharamvir Singh*** (supra), the learned AFT, therefore, rightly granted relief to the respondent.

7. 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, since we are not acting as an Appellate Court against the Impugned Order.

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

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 4, 2024/rv/DG

Click here to check corrigendum, if any