



2024:DHC:8739-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12.11.2024

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W.P.(C) 15493/2024 & CM APPL. 65033/2024

UNION OF INDIA AND ORS.

.....Petitioners

Through: Ms.Anubha Bhardwaj, CGSC
with Cdr. Siddharth Sharma, IN

versus

CDR AK SRIVASTAVA (RETD.)

.....Respondent

Through: Counsel (appearance not given)

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed challenging the Impugned Order dated 27.02.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short, 'AFT') in OA 1483/2021, titled ***CDR AK Srivastava (Retd) v. Union of India and Ors.*** allowing the Original Application filed by the respondent and granting the reliefs as under:

"11. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to grant benefit of disability element of pension @ 30% for life for PRIMARY HYPERTENSION; rounded off to 50% in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra). However, the arrears shall be restricted to three years prior to the date of filing of this OA which is 09.07.2021. The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest



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@ 6% p.a. till the actual date of payment.”

2. The learned counsel for the petitioner contends that the learned AFT has wrongly placed reliance on the Judgments of the Supreme Court in *Dharamvir Singh v. Union of India & Ors.*, 2013 (7) SCC 316 and in *Union of India & Ors. v. Ram Avtar*, 2014 SCC OnLine SC 1761, in granting the relief to the respondent. The learned counsel for the petitioner submits that a considered decision had been made by the Competent Authority, denying the disability pension to the respondent, and the said decision has been interfered with by the learned AFT without appreciating the facts of the present case.

3. On the other hand, the learned counsel for the respondent, who appeared on advance notice, submits that the consistent medical opinion on the case of the respondent was that the disability suffered by the respondent was aggravated by naval service. The said opinion of experts was interfered with only on the financial advice and without any medical opinion to the contrary.

4. We have considered the submissions made by the learned counsels for the parties.

5. It is an admitted case of the parties that the respondent was enrolled as Sailor in the Indian Navy on 06.07.1981. He was commissioned as Sub-Lieutenant in the Indian Navy on 01.04.1995. In the Review Medical Board held on 14.09.2017, the Medical Board opined as under:



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PART V
OPINION OF THE MEDICAL BOARD

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)	Reason / Cause / Specific condition/s in service
(1) PRIMARY HYPERTENSION CD NO. 110.0	NO	YES	NO	Onset of individual disease was in 1971, while he was posted port blr (Active service area). The disability is considered to be aggravated by service as per Para 43, Chapter VI of GMO 2008.

Note: A disability not connected with service would be neither Attributable nor Aggravated by service. It is recommended with reservation contained in Guide to Medical Officers (M) Periodic-2002.

6. However, in spite of the above opinion, the claim of the respondent for the disability pension in terms of paragraph 43 Chapter 6 of the Guide to Medical officers (Military Pensions), 2002, as amended in 2008, was rejected by the petitioner by a letter dated 12.12.2019, observing as under:

"1. I have been directed to state that Competent Authority has examined your Medical documents. Medical Board has considered the disability namely Primary Hypertension as Aggravated by Naval Service. However, post examination, the Competent Financial Authority ((PIFA (N)) has turned down the case stating that above mentioned disability is Neither Attributable to Nor Aggravated by Service in terms of Para 43, Chap VI of GMO 2008. Therefore, your case for grant of disability pension can not be acceded to at this stage.

2. You may, if so desire, prefer first appeal with Appellate Committee on First Appeal (ACFA) against the decision within six months from the date of receipt of this letter. The appeal may be addressed to the Capt (P&A), Dte of Pay & Allowances, Room No. 108, Naval Headquarters Annex, Talkatora Stadium, New Delhi 110004."

7. From a reading of the above, it would be apparent that the claim



of the respondent was not rejected on any medical opinion but merely on an objection raised by the Financial Authority. It is not shown to us whether the Financial Authority was guided by any medical opinion which was contrary to the opinion of the Review Medical Board referred hereinabove. In fact, the learned counsel for the respondent has drawn our attention to an earlier opinion of the Medical Board dated 14.01.2016 as well, which also records as under:

“18. If not directly attributable to service, was it aggravated by service? If so, please explain?”

Yes, onset of individual's disease was on Apr 2011 and the officer was posted at HQNAVC, Andaman & Nicobar (remote area) at that time, hence the disease is aggravated service.”

8. There were, therefore, consistent medical opinion that the disability suffered by the respondent had been aggravated by the service conditions. The said medical opinions were ignored by the Financial Authority without any cogent material and the claim of the respondent was rejected only for financial considerations, which cannot be accepted.

9. We are dismayed with the manner in which the claim of the respondent has been dealt with. This mistake of the petitioner was not realised at the stage when the respondent filed its First Appeal, which was rejected by an Order dated 06.10.2020, or at the stage of decision of his Second Appeal, which was decided *vide* Order dated 07.06.2021, both by cryptic and unreasoned Orders and without making any reference to the opinion of the Medical Boards. The mistake was again not realised when the respondent was forced to



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challenge the above decision before the learned AFT, and in fact, the petitioner has challenged the decision of the learned AFT before this Court in a casual manner *inter alia* contending that the Medical Board opinion has been ignored by the learned AFT.

10. Accordingly, we do not find any merit in the present petition. The same is, therefore, dismissed with cost quantified at Rs.50,000/- to be paid by the petitioners to the respondent within a period of four weeks from today.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 12, 2024/Arya/VS

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