



2024:DHC:8629-DB



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

Date of decision: 07.11.2024

+ W.P.(C) 15513/2024

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Piyush Gupta, CGSC, Mr. Prateek Gupta, Mr. Aman Malik, Mr. Kutub Singh, Mr. Padam Kumar Jain, Mr. Om Prakash, Mr. Honey Garg, Mr. Inder Mohan and Mr. Amit Sharma, Advs.
Major Anish Muralidhar (Army)

versus

EX HAV/GD SARWAN SINGH ARMY NO 4000369K

.....Respondent

Through: Mr. Ravi Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 65146/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 15513/2024 and CM APPL. 65145/2024

3. This petition has been filed by the petitioners challenging the Order dated 5.07.2023, passed by the learned Armed Forces Tribunal (in short, 'Tribunal'), Principal Bench, New Delhi in Original Application no. 2541 of 2022 titled *Ex Hav/GD Sarwan Singh vs. Union of India & Ors.*, allowing the Original Application filed by the



respondent herein under Section 14 of the Armed Forces Tribunal Act. The learned Tribunal directed the petitioners herein to grant the benefit of the disability element of pension @ 20% for life, rounded off to 50%, in view of the Judgment of the Supreme Court dated 10.12.2014 passed in Civil Appeal no. 418 of 2012 titled ***Union of India vs. Ram Avtar***, from the date of retirement of the respondent, that is 30.06.2021. The learned Tribunal further directed that the arrears shall be disbursed to the respondent within four months of the receipt of a copy of the order, failing which interest at the rate of @ 6% per annum shall accrue until the actual date of payment.

4. Some of the admitted facts in the present case are that the respondent joined the Indian Army on 22.01.2000, and had been discharged from service on 31.03.2021 due to him suffering from DIABETES MELLITUS TYPE II, with the disability assessed at 20% for life. However, in the Release Medical Board (in short, 'RMB'), it was opined that the disability suffered by the respondent was neither caused nor has been aggravated due to service conditions. He was, therefore, denied the disability element of the pension. Aggrieved of the said decision, the respondent filed the above Original Application before the learned Tribunal.

5. As noted hereinabove, the learned Tribunal allowed the Original Application filed by the respondent, and aggrieved thereof, the petitioners have filed the present petition.

6. It is contended by the petitioners that there are various typographical errors in the Impugned Order which itself shows non-application of mind by the learned Tribunal. It is further contended



that the learned Tribunal could not have, in a casual manner, interfered with the opinion of the specialist who had opined that the disability suffered by the respondent is not attributable to or aggravated by service condition.

7. On the other hand, the learned counsel for the respondent, who appears on an advance notice, has drawn our attention to the medical proceedings and the opinion of the Medical Board dated 06.05.2015, which had opined that though the disability suffered by the respondent is not attributable to service, it has been aggravated due to service conditions, as the respondent was posted in Lachhipura, Jammu & Kashmir from 20.04.2009 to 28.08.2014, that is only around one year before the disability was noticed.

8. The learned counsel for the respondent has also drawn our attention to the Medical Board proceedings dated 28.10.2015, which agreed with the earlier opinion dated 06.05.2015 of the Board. He submits that, therefore, no fault can be found in the opinion of the learned Tribunal, which stated that the decision to deny the disability element of pension to the respondent by the petitioners was incorrect.

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

10. At the outset, we would note that we are not sitting here in appellate jurisdiction against the order passed by the learned Tribunal. As far as the typographical errors in the Impugned Order are concerned, we have been informed that on an application filed by the petitioners, the learned Tribunal has corrected those typographical errors. The order passed on such application is not before us, however,



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we have no reason to doubt the submissions made by the learned counsel for the respondent in that regard.

11. Coming to the merits of the present petition, the positing profile of the respondent is as under:

S/No.	From	To	Unit	Place/Ship	Peace/Field	Part II Order No.
(a)	22 Jan 00	18 Dec 00	18 DOGRA	DRC. Faizabad	Peace	0/0100/0056/2000
(b)	19 Dec 00	01 Jun 03	18 DOGRA	North Sikkim	Field	0/0522/0080/2000
(c)	02 Jun 03	01 Dec 03	18 DOGRA	Dalap Chand(WB)	Mod Field	0/0325/0028/2003
(d)	02 Dec 03	31 May 06	18 DOGRA	Jalandhar Cantt	Peace	0/0635/0001/2003
(e)	01 Jun 06	18 Apr 09	18 DOGRA	Uri Sect (J&K)	Field	0/0266/0049/2006
(f)	19 Apr 09	18 Feb 12	18 DOGRA	Bakloh	Peace	0/0280/0007/2009
(g)	19 Feb 12	25 Aug 14	18 DOGRA	Lachhipura (J&K)	Field	0/0240/0013/2012
(h)	26 Aug 14	04 Mar 17	18 DOGRA	Hyderabad	Peace	0/0164/0028/2015
(j)	05 Mar 17	20 Aug 20	18 DOGRA	Hasimara (WB)	Mod Field	0/0198/0010/2017
(k)	21 Aug 20	Till dt	18 DOGRA	Khaprail	Peace	0/0531/0016/2020

12. In the Medical Board proceedings dated 06.05.2015, the Board of Doctors opined that the disability suffered by the respondent, that is, DIABETES MELLITUS TYPE II, surfaced on 17.04.2015, when he was posted at Hyderabad. It opined that the onset of the disability was while serving in the Field/CI Ops area and due to the close proximity in time with the military service discharged by the respondent in the Field/CI Ops area that is Lachhipura, Jammu & Kashmir, from 20.04.2009 to 28.08.2014, the disability was aggravated by the service condition. The subsequent Medical Board dated 28.10.2015 agreed with the above opinion.



13. As far as the RMB proceedings are concerned, it appears from the record that they were being influenced by the fact that as the onset of the disability was in the peace area, it could neither be stated to be attributable to or aggravated by service. It appears that the earlier opinion rendered by the Medical Boards, which have been referred to hereinabove, were not considered by the RMB. The opinion of the RMB was, therefore, rightly set aside by the learned Tribunal.

14. One of the options that the learned Tribunal could have thereafter exercised in these facts would have been to remand the case of the respondent to the Release Medical Board for a fresh opinion/consideration. However, in our view, the learned Tribunal has rightly proceeded to grant the relief to the respondent. This opinion of ours is fortified by the Medical Board proceedings dated 06.05.2015 and 28.10.2015, that have been referred by us hereinabove and where the Medical Boards have unanimously opined that though the disability suffered by the respondent cannot be said to be attributable to service, it is aggravated by the service conditions.

15. We, therefore, find no infirmity in the Impugned Order passed by the learned Tribunal. The petition is, accordingly, dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 7, 2024
SU/B/DG

Click here to check corrigendum, if any