



2024:DHC:8747-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 12.11.2024***

+ W.P.(C) 15709/2024

UNION OF INDIA & ORS.Petitioners

Through: Mr. Piyush Gupta, Adv.

versus

EX LEM R JAIDEEP NO 210711 RRespondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)****CM APPL. 65946/2024**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 15709/2024, CM APPL. 65947/2024, CM APPL. 65948/2024

3. This petition has been filed challenging the Order dated 29.05.2024 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short "Tribunal") in Original Application ("OA") No. 600/2020, titled ***Ex. LEM (R) Jaideep versus Union of India and Ors***, allowing the said application filed by the respondent with the following directions:

"14. Therefore, in view of our analysis, the OA 600/2020 is allowed and the Respondents are directed to grant the benefit of the disability element of pension @ 20% for life (for Seizure



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Disorder) rounded off to 50% for life in view of judgment of the Hon'ble Supreme Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e. 31.07.2019.

15. The corrigendum PPO be issued to the applicant accordingly and the arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

4. The respondent had filed the above application before the learned Tribunal *inter alia* praying for the grant of disability element of pension and challenging the Order dated 16.07.2019 by which the same had been denied to him by the petitioners.

5. As a brief background, the respondent was enrolled in the Indian Navy on 22.07.2004 and was discharged from the Naval service on 31.07.2019 in Low Medical Category S3A2 (P). The Release Medical Board, dated 11.04.2019, held that the respondent was fit to be discharged from service in the Low Medical Category for the disability of Seizure Disorder assessed @ 20% for life, however, it further opined that the disability was neither attributable to nor aggravated by the Military service. Based on the medical opinion, the claim of the respondent for disability pension was rejected *vide* Order dated 16.07.2019 by the Competent Authority. The appeal filed by the respondent there against was also rejected by an Order dated 27.07.2020. The respondent filed the above OA challenging the same.

6. The learned counsel for the petitioners submits that the learned Tribunal has erred in placing reliance on the Judgment of the Supreme Court in *Dharamvir Singh v. Union of India & Ors.*, (2013) 7 SCC 316, and *Union of India v. Rajbir Singh*, (2015) 12 SCC 264. He



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further submits that the sanction of disability pension, in case of a disability at the time of discharge from service is based on the fulfilment of essential conditions as laid down under Regulation 101 and Regulation 105-B of the Navy (Pension) Regulations, 1964 and the medical opinion observing that the disability suffered was not attributable to or aggravated by Naval service, cannot be interfered with by the learned Tribunal based on presumptions.

7. We have considered the submissions made by the learned counsel for the petitioners, however, find no merit in the same.

8. In the present case, the learned Tribunal has placed reliance on paragraph 33 of the Guide to Medical Officers (Military Pensions), 2002 (in short, 'GMO'), as amended in 2008. The learned Tribunal has also observed that, although at the time of the onset of the disease, the respondent was on annual leave at New Delhi, however, from his posting profile, it was apparent that the respondent was on afloat service / field posting prior to the onset of the disease from 29.07.2011 to 01.11.2011-onboard INS Shakti, that is, a field posting just 9 days prior to the onset of the said disability. The learned Tribunal also noted that the respondent was posted in afloat/field posting from 13.11.2005 to 11.05.2008, and 12.05.2008 to 30.06.2010, at INS Nirrekshak and INS Jyoti, respectively. The learned Tribunal, therefore, relying upon Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces, 2010 held that the disability suffered by the respondent was attributable to and aggravated by the Military service.

9. We find no infirmity in the opinion formed by the learned



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Tribunal. We also remind ourselves that we are not sitting in an Appellate jurisdiction against the order passed by the learned Tribunal. We, therefore, do not find this to be a fit case to interfere with the order passed by the learned Tribunal.

10. The petition along with pending applications is, accordingly, dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 12, 2024/ss/sk/DG

Click here to check corrigendum, if any