



2024:DHC:8954-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 13.11.2024***

+ W.P.(C) 15762/2024

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Vivek Kumar Goyal, Adv.

versus

EX JWO CHANDRA KUMAR DIXIT

.....Respondent

Through: Nemo.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)****CM APPL.66151/2024**

1. Allowed, subject to just exceptions.

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2. This petition has been filed challenging the Order dated 31.07.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short, 'AFT') in Original Application (in short 'OA') No.1836/2019 titled ***EX JWO Chandra Kumar Dixit vs. Union of India & Ors.***, allowing the said Original Application filed by the respondent with the following directions:

"Therefore, in view of our analysis, the OA 1836/2019 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 Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e. 31.03.2019. 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."

3. The respondent herein had filed the OA before the learned AFT, contending therein that he was enrolled in the Indian Air Force on 30.03.1987 and was discharged from service on 31.03.2019. The Release Medical Board (in short, 'RMB') held on 08.05.2018, found the respondent fit to be released in Low Medical Category, that is, A4G4 (P), for the disabilities of Organic Mood Disorder assessed @ 40% and Seizure Disorder assessed @ 20% for life, however, it also opined that the disability was neither attributable to nor aggravated by the military service. The claim of disability pension of the respondent was, therefore, rejected *vide* letter dated 30.10.2018, communicated to the respondent *vide* letter dated 22.11.2018.

4. The respondent claimed that though he filed an appeal against the said order, he did not receive any response thereto. He also addressed a legal notice to the petitioners, in response to which, by a letter dated 27.09.2019, his claim for disability pension was rejected, compelling the respondent to file the abovementioned OA before the learned AFT.

5. The learned AFT, on considering the submissions made by learned counsels for the parties, and relying upon Regulations 423(a) of the Regulations for the Medical Services of the Armed Forces



2010, allowed the OA of the respondent.

6. The learned counsel for the petitioners contends that the learned AFT had merely drawn a presumption in favour of the respondent that the disability was neither attributable to nor aggravated by service, and has wrongly relied upon the Judgment of the Supreme Court in *Dharamvir Singh v. Union of India & Ors.*, (2013) 7 SCC 316. He submits that the said Judgment is not applicable to the facts of the present case.

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

8. In the present case, the respondent had been diagnosed with a case of Seizure Disorder on 17.12.2008 and was discharged from service on 31.03.2019, having been found to be suffering from Organic Mood Disorder assessed @ 40% and Seizure Disorder assessed @ 20% for life. The petitioners while rejecting the claim of the respondent did not take into account his service profile and the fact that he has been suffering from this disease since 2008. The learned AFT, relying on the Entitlement Rules for Casualty Pensionary awards 2008, and the Regulations for the Medical Services of the Armed Forces 2010, held that the petitioner was discharged from service in low medical category on account of medical diseases/disability which must be presumed to have arisen in the course of service, as also noted by the Release Medical Board.

9. In view of the peculiar facts of the present case, we find no infirmity in the above opinion of the learned AFT and do not find this to be a fit case for any interference in exercise of our powers under



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Article 226 of the Constitution of India.

10. The petition, along with the pending application, is accordingly dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 13, 2024/ab/sk/VS

Click here to check corrigendum, if any

Signature Not Verified

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By: NEELAM
Signing Date: 20.11.2024
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