



2024:DHC:9063-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 22.11.2024***+ **W.P.(C) 16227/2024****UNION OF INDIA & ORS.**

.....Petitioners

Through: Ms.Avshreya Pratap Singh
Rudy, SPC with Ms.Usha
Jamnal and Ms.Harshita
Chaturvedi, Advs.
Maj. Anish Murlidhar.

versus

LT. COL. VIVEK MATHUR RETD

.....Respondent

Through: Nemo.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)****CM APPL. 68178/2024 (Exemption)**

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

W.P.(C) 16227/2024 & CM APPL. 68177/2024

3. This petition has been filed by the petitioners challenging the Order dated 18.05.2023 (in short, 'Impugned Order') passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short, 'AFT') in Original Application (in short, 'OA') No. 176/2019 titled ***"Lt. Col. Vivek Mathur (Retd) vs. Union of India & Ors."***
4. The learned AFT, *vide* the Impugned Order, has allowed the OA filed by the respondent herein, holding that the petitioner is



entitled to disability pension @ 30 % rounded off to 50 % for two years from the date of discharge, that is, 31.01.1998 as per Judgment of the Supreme Court in Civil Appeal No.418/2012 titled ***Union of India vs. Ram Avtar***, and further directed the arrears to be released by the petitioners within a period of four months from the receipt of the said order, failing which the arrears shall carry an interest @ 6% from the date of the said Order.

5. In reaching the above 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:

*“13. It is undisputedly proved that at the time the applicant entered into military service, this type of disease/disability did not exist. The disability accrued to him during the course of military service. So by virtue of the principle laid down in ***Dharamvir Singh's case (Supra)***, the said disability can be attributed/aggravated by military service.”*

6. 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 further submits that the opinion of the Medical Board could not have been interfered with by the learned AFT.

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

8. In the present case as well, the respondent was discharged from the service on 31.01.1998, having been placed in a Low Medical Category P2 (Permanent), and was found to be suffering from disability of *Primary Hypertension* @ 30% rounded off to @ 50 % for two years from the date of discharge. However, without any sufficient reason being supplied by the Medical Board, the same was held to be neither attributable nor aggravated by military service.

9. 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.

10. 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 22, 2024/sg/DG

[Click here to check corrigendum, if any](#)