



2024:DHC:9536-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 09.12.2024

+ W.P.(C) 16938/2024
UNION OF INDIA AND ORSPetitioners
Through: Mr.Siddhartha Shankar Ray,
CGSC with Mr.Shubham
Sharma, Adv.

versus

EX SGT ANIL SHARMA (RETD)Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

NAVIN CHAWLA, J. (Oral)

CM APPL. 71756/2024 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 16938/2024 & CM APPL. 71755/2024

2. This petition challenges the Order dated 07.11.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal'), in Original Application (in short, 'OA') No. 1616/2017, titled ***Ex SGT Anil Sharma v. Union of India and Others***, allowing the OA filed by the respondent herein with the following directions:

"15. In view of the above observations, the prayer made through the present OA seeking the grant of disability element of pension in relation to the disability of Type II Diabetes Mellitus in the circumstances of the instant



*case in view of the Me D letter 20.07.2012 granted concurrence on 12.05.2023 of the DGAMFS Letter, is directed to be assessed@ 20% for life from the date of discharge of the applicant which is directed to be broad banded to 50% for life from the date of discharge in terms of the verdict of the Hon'ble Supreme Court in **UOI & Ors. vs Ram Avtar** in Civil Appeal 418/2012 decided on 10.12.2014.*

*16. However, in view of the present OA having been instituted with much delay on 11.09.2017, with the applicant having since been discharged on 3 1.10.2007, in terms of the verdict of the Hon'ble Supreme Court in **Union of India and others vs. Tarsem Singh** (2008) 8 sec 648, the arrears of the grant of the disability element of pension shall commence to run from a period of three years prior to the institution of this OA.*

17. The respondents are directed to issue the necessary corrigendum PPO, and to make the payments of the arrears as directed herein above within a period of three months from the date of this order and on failure thereof the applicant would be entitled to the interest at the rate of G% per annum, till the date of payment."

3. The learned counsel for the petitioners submits that the learned Tribunal has erred in not appreciating that the Release Medical Board of the respondent clearly opined that the disease, that is, Diabetes Mellitus (Type-II), is constitutional in nature and, therefore, is neither attributable nor aggravated by service. He submits that the learned Tribunal has erred in drawing a presumption that such a disease can be attributed to service, or the stress and strain attached to the duties.
4. In the peculiar facts of the present case, we are unable to accept the submission of the learned counsel for the petitioners.



2024:DHC:9536-DB



5. In the present case, apart from placing reliance on the Judgment of the Supreme Court in *Dharamvir Singh v. Union of India & Ors.*, (2013) 7 SCC 316, the learned Tribunal has taken note of the service profile of the respondent; paragraph 26 of the GMO Military Pension, 2008, and opined that the disability suffered by the respondent can be said to be attributable to the stress and strain attached to the service, especially where the respondent was performing duties as a ground training instructor.

6. Keeping in view the peculiar facts of this case, we do not deem it fit to interfere with the finding of the learned Tribunal in exercise of our power under Article 226 of the Constitution of India.

7. Accordingly, the present petition along with the pending application is dismissed.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

DECEMBER 9, 2024/rv/DG

Click here to check corrigendum, if any