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

Date of decision: 09.12.2024

\+ W.P.(C) 17001/2024 & CM APPL. 72080/2024

UNION OF INDIA & ORS. .....Petitioners
Through: Mr. Kamal Kant Jha, SPC with
Mr. Avinash Singh, Adv.
Major Anish Muralidhar, Army.

versus

LT. COL. MANVIR SHARMA RETD. .....Respondent
Through: Mr. O.S. Punia, Adv.

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

NAVIN CHAWLA, J. (ORAL)

CM APPL. 72081/2024 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 17001/2024 & CM APPL. 72080/2024

2. This petition has been filed challenging the Order dated 11.09.2023 passed by the Armed Forces Tribunal, Principal Bench, New Delhi (in short, 'Tribunal') in Original Application (in short, 'OA') 865/2021 titled ***Lt Col Manvir Sharma vs. Union of India & Ors.*** whereby the learned Tribunal allowed the OA filed by the respondent herein with the following directions:

> *"25. The applicant is thus entitled to the grant of the disability element of pension for all the*

three disabilities assessed compositely @ 64% for life which in terms of the verdict of the Hon'ble Supreme Court in Union of India & Ors. vs. Ram Avtar in Civil Appeal No. 418/2012 dated 10.12.2014 is rounded off to 75% for life from the date of discharge.

26. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents."

3. The respondent was enrolled in the Army Postal Service on 03.01.1987, and was commissioned in service on 05.07.2003. It was the case of the respondent that in December, 2006, he was diagnosed with Recurrent Acute Pancreatitis and was placed in a low medical category S1H1A1P3(T-12)E1. He was later upgraded to Shape-1A category on 02.10.2007. Thereafter, while being posted at Dinjan, he was diagnosed as suffering from Recurrent Acute Pancreatitis, Hypertriglyceridemia, and Diabetes Mellitus, and was again placed in a low medical category P-3(T-24), in January, 2009. He was later found to be suffering from Diabetes Mellitus Type-II on 25.09.2012 and with primary hypertension in January, 2013, while being posted at Udhampur (J&K), which is a field area. His repeated medical boards opined that the disability suffered by him was aggravated by service. In fact, in the Medical Board proceedings dated 04.10.2012, it was further categorically opined that the Recurrent Acute Pancreatitis suffered by the respondent was due to an infection contracted in service. In spite of these repeated medical board proceedings, the

Release Medical Board, in its report dated 22.11.2019, opined that while the disabilities of Diabetes Mellitus and Primary Hypertension are aggravated by service, the disability of Recurrent Acute Pancreatitis is not. The case of the respondent was thereafter processed by the petitioners themselves for release of the disability pension to the respondent for Diabetes Mellitus and Primary Hypertension, aggregating to 44% for life. It appears that there were some jurisdictional issues between the Principal Controller of Defence Accounts (in short, 'PCDA') (Pensions) and the Army Headquarters in the Adjutant General's Branch, because of which the disability pension of the respondent even to this limited extent was not released. Aggrieved thereby, the respondent approached the learned Tribunal *inter alia* not only seeking the release of disability pension for Diabetes Mellitus and Primary Hypertension but also for Recurrent Acute Pancreatitis, which he claimed was aggravated due to military service.

4. As noted hereinabove, the learned Tribunal has allowed the OA filed by the respondent herein.

5. The learned counsel for the petitioners submits that the learned Tribunal has erred in relying upon the Judgment of the Supreme Court in ***Dharamvir Singh vs. Union of India & Ors.*** (2013) 7 SCC 316, to grant relief to the respondent therein for the disease of Recurrent Acute Pancreatitis. He submits that the Medical Board proceedings cannot be interfered with by the learned Tribunal unless it is shown that the same suffers from any procedural irregularity or arbitrariness. He further submits that in the present case, the Release Medical Board

had considered the service profile of the respondent before rejecting his claim for disability pension on account of the disability of Recurrent Acute Pancreatitis.

6. On the other hand, the learned counsel for the respondent, who appears on advance notice, submits that the learned Tribunal has rightly directed the petitioners to release the disability pension to the respondent, including for the disease of Recurrent Acute Pancreatitis. He has drawn our attention to the repeated Medical Board proceedings conducted year after year, which had consistently opined that the disability of Recurrent Acute Pancreatitis was aggravated by service.

7. We have considered the submissions of the learned counsels for the parties.

8. In the present case, as is evident from the above, the disability of the Recurrent Acute Pancreatitis suffered by the respondent was discovered in 2006, when he was posted at Delhi. Thereafter, he was placed in a low medical category, however, his medical category was later upgraded to Shape-1A. The disability again resurfaced in the year 2009, when the respondent was posted at Dinjan, which is a counter insurgency operational area. Thereafter, year after year, the Medical Boards have opined that the disabilities suffered by the respondent, including Recurrent Acute Pancreatitis, were aggravated by service.

9. We reproduce the relevant findings of the Medical Boards as under:

Dated 05.02.2010:

"17. Is the disability attributable to service – No.

18. If not directly attributable to service, was it aggravated by service – YES – due to stress and strain of military service."

Dated 26.07.2010:

"17. Is the disability attributable to service? (Y/N):– As per initial AFMSF-15.
18. If not directly attributable to service, was it aggravated by service? (Y/N): If so, please explain. As per initial AFMSF-15."

Dated: 08.01.2011

"17. Is the disability attributable to service? (Y/N):– As per initial AFMSF-15.
18. If not directly attributable to service, was it aggravated by service? (Y/N): If so, please explain. As per initial AFMSF-15."

Dated: 04.10.2012

"17. Is the disability attributable to service? (Y/N) If so, please explain:– Dis 1 – No.
Dis 2 – Yes, due to infection contracted in service.
18. If not directly attributable to service, was it aggravated by service? (Y/N): If so, please explain.
Dis 1 – Yes, the offer has served in CIOPS area with the dis.
Dis 2 – NA."

Dated: 23.07.2015

"17. Is the disability attributable to service? (Y/N) If so, please explain:– No for dis (a). As per initial medical board proceedings for other dis (b) & (c).
18. If not directly attributable to service, was it aggravated by service? (Y/N): If so, please explain. Yes for dis (a) - due to stress and strain of service in Fd/CIOPS Area. Initial medical board proceedings for other dis (b) &

(c)."

Dated: 07.10.2016

"17. Is the disability attributable to service? (Y/N) If so, please explain. No for (a) & (b) - Metabolic disorder
No for (c) & Etilogy hypertrigly ceridemia as per spl opinion.
18. If not directly attributable to service, was it aggravated by service? (Y/N): If so, please explain.
Yes for (a) – onset in Field (para 43, GMO 2008)
Yes for (b) – onset in Field (para 26, GMO 2008)
Yes for (c) – onset in Field (para 59, GMO 2008)"

10. The Release Medical Board, however, in its report dated 30.12.2019, opined as under:-

*"**PART VII***
OPINION OF THE MEDICAL BOARD

(a) Please endorse diseases/disabilities in chronological order of occurrence

Disability	*Attributable to service (Y/N)*	*Aggravated by service (Y/N)*	*Detailed Justification*
(a) RECURRENT ACUTE PANCREATITIS	*N*	*N*	*Onset of disability during Jan 2009 at Dinjan(CI-Ops). On scrutiny of all old medical documents & spl opinions, there is no evidence of etiology of disability being cholelithiasis, infection, post surgery sequelae, post (ERCP) or due to drugs. The dis is hypertriglyceridemia included, hence NANA vide para 59 Chapter VI of GMO 2008.*
(b) TYPE II DIABETES MELLITUS (ICD E-11.9)	*N*	*Y*	*Onset of disability during Sep 2012 at Udhampur (CI Ops). The disability occurred while serving in CI-Ops area, hence aggravation is conceded vide Para 26, Chapter VI of GMO 2008.*
(c) PRIMARY	*N*	*Y*	*Onset of disability during Jan*

HYPERTENSION (ICD I-10)			*2013 at Udhampur (CI Ops). The disability occurred while service in CI-Ops area, hence aggravation is conceded vide Para 43, Chapter VI of GMO 2008.*
Note: 1. A detailed justification regarding the board's recommendations on the entitlement for each disease/disability must be provided sequentially especially in NANA cases as per enclosed Appendix 'A'. *2. In case of multiple disabilities or inadequate space, do not paste over the opinion, an additional sheet should be attached instead, providing a detailed justification, which is authenticated by the President and all members of the Medical Board.* *3. In case the medical board differs in opinion from the previous medical board, a detailed justification explaining the reasons to differ should be brought out clearly.* *4. A disability cannot simultaneously be both attributable to or aggravated by military service, only one or neither of which will apply*			

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3. What is present degree of disease/disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows): 5%, 10%, 15% and thereafter in multiples of ten from 20% to 100%. (Composite percentage should be rounded off to the nearest multiple of 10)					
Disease/Disability (As numbered in Para 1 Part IV)	*Percentage of disablement*	*Corresponding para of GMO-2008*	*Composite assessment for all disabilities (Max 100%) with duration*	*Disease /Disability Qualifying for Disability Pension with duration.*	*Net Assessment Qualifying for Disability Pension (Max 100%) with duration*
(a) RECURRENT ACUTE PANCREATITIS	*30%*	*Para 22(d) of chapter VII of GMO 2008*	*64% for all disabilities for life.*	*44% for disability (b) & (c) for life.*	*44% for disability (b) & (c) for life*
(b) TYPE II DIABETES MELLITUS	*20%*	*O/O DGAFMS letter No 16036/DGAFMS/MA (Pens)/Policy dt. 22 Jul 12*			
(c) PRIMARY HYPERTENSION	*30%*	*Para 21 (f) of chapter VII of GMO 2008*			
Note: Assessment of disabilities not mentioned in the Guide to Medical Officers (Mil Pens) is to be done on the basis of best available medical evidence					
4. Is the individual in need of further treatment and, if so, of what nature and for how long is it likely to be required?: ***Yes for Life***					
5. Does the individual require constant attendant? If so how long?: ***No***					

11. From the above, it would be apparent that while the Release Medical Board opined that the respondent is entitled to grant of disability pension for Diabetes Mellitus and Primary Hypertension,

aggregating to 44% for life, it rejected the claim of the respondent for disability pension for Recurrent Acute Pancreatitis, thereby disagreeing with the consistent contrary view of the earlier Medical Boards. The learned Tribunal, therefore, in our opinion, rightly held that the Release Medical Board has wrongly denied the benefit of disability pension to the respondent for the disability of Recurrent Acute Pancreatitis suffered by him, which had repeatedly been opined as having been aggravated by service condition.

12. The learned counsel for the respondent submits that, in fact, post the order of the learned Tribunal and during the proceedings of execution, the petitioners have now rejected the claim of the respondent even for the disabilities of Diabetes Mellitus and Primary Hypertension.

13. We are totally unable to appreciate how the petitioners can be rejecting the claim of the respondent for disability pension even for Diabetes Mellitus and Primary Hypertension, after having accepted the report of the Release Medical Board and issuing instructions for release of the disability pension on basis thereof. They cannot change their stand merely because the respondent succeeded before the learned Tribunal in establishing his claim for disability pension even for Recurrent Acute Pancreatitis. We are also disheartened to note that the petitioners have not brought this to our notice. In fact, there is no challenge to the order of the learned Tribunal, which had granted the disability pension claim of the respondent, taking all three disabilities into account. We can only hope that the petitioners would not make its officer run around in circles and in courts to avail of his legitimate

dues. If the court finds the petitioners indulging in such vexatious exercise, it would have no option but to take a stern view of such conduct.

14. We, therefore, find no merit in the present petition and the same is accordingly dismissed. The pending application is also disposed of.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

DECEMBER 9, 2024
ab/SJ

Click here to check corrigendum, if any