



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-03-2025

CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

WP No. 23525 of 2024

and

WMP.No.25737 of 2024

1. The Union Of India

Rep. By The Secretary,

Ministry Of Defence,

South Block, New Delhi 110011

2.The Chief Of The Army Staff,

Army Headquarters,

South Block, New Delhi 110011

3.Adjutant Generals Branch/PS4(IMP-I),

Addl. Directorate General Of Personnel Service,

Integrated HQ Of MoD (Army Plot No.108 (west),

Church Road,

Braessy Avenue, New Delhi 110001.

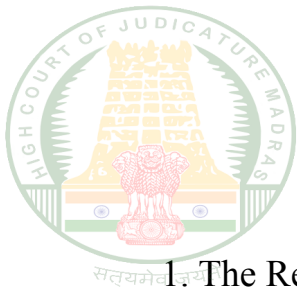
4.The Principal Controller Of Defence Account

(pensions),

Draupadi Ghat,

Allahabad 211014.

Petitioner(s)



Vs

1. The Registrar

Armed Forces Tribunal,
Rudra Road, St.Thomas Mount,
Chennai 600016.

2.Col.R.Mohan (retd),
SL 04094A, 5/306,
UKP Nataraj Nagar,
Gandhi Nagar (post), Udumalpet,
Tiruporur District 642154.

Respondent(s)

PRAYER

Call for the records dated 03.02.2023 passed in OA No.131 of 2021 on the file of the 1st respondent thereby quashing the impugned order.

For Petitioner(s): M/s.V.Balasubramanian

For Respondent(s): Mr.D.Solomon Pandian For R2
R1 - Tribunal

ORDER

(Order of the Court was made by S.M.Subramaniam J.)

Under assail is the order dated 03.02.2023 in O.A.No.131 of 2021 on the file of the Armed Forces Tribunal, Regional Bench, Chennai.

2. Union of India, Ministry of Defense is the Writ Petitioner. The 2nd respondent was commissioned as an officer in the Corps of Engineers on 17.04.1993 and superannuated from service on 30.09.2019 after rendering 26 ½



years of service. He was suffering from (i) Sensorineural Hearing Loss (Left Ear) (ii) Sensorineural Hearing Loss (Right Ear), Aggravated by Military Service @ 40% for life, (iii) Type II DM @ 20% for life and (iv) Primary Hypertension @ 30%, both not attributable to nor aggravated by military service. He was granted Disability Element of Pension @ 40% for life clubbing together the Disabilities (i) and (ii) into a single disability and denied the Disability element in respect of the disabilities, (iii) & (iv) as the IDs were not attributable to nor aggravated by military service. The 2nd respondent would submit that he had an injury while participating in Firing Competition of all Officers at BEG & Centre, Roorkee on 02.02.2016, which led to the loss of hearing in his left ear. It is not in dispute that the Medical Board conducted examination. The opinion of the Medical Board as per the records is as under,

1. Casual Relationship of the disability with service conditions or otherwise				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reasons/cause/specific conditions and period in service.
(a)B/L Sensorineural Hearing Loss	Yes	No	No	Onset of ID: Feb 2016 while serving in Roorkee (Peace). Sustained during trg event. ID is conceded as attributable by Mil Service per Para 23 of GMO's Mil Pension 2008 amended. Injury report IAFY 2006 dt 29 Dec 2017.
(b) Type II DM	No	No	No	Onset of ID: Oct 2017 while serving in Delhi (Peace). ID is a constitutional disorder not related to mil service. Hence ID conceded as neither attributable nor aggravated by military service as per Para 26 of Chapter VI of GMO's Mil pension 2008 amendment.



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1. Casual Relationship of the disability with service conditions or otherwise				
(c) Primary Hypertension	No	No	Yes	Onset of ID: Oct 2017 while serving in Delhi (Peace). There is no close time association with Fd/HAA/CI Ops tenure. Hence ID conceded as neither attributable nor aggravated by mil service as per Para 43, Chapter VI, GMO's (Mil Pension) 2008 amendment.

Note- A disability "Not connected with service" would be neither Attributable nor Aggravated by service. (This is in accordance with instructions contained in Guide to Medical Officers (Mil Pension)- 2002

3. Learned counsel for the respondent would mainly contend that even as per the guidelines of medical officers, if the Diabetes and hypertension are caused on account of the nature of duty, then the officer is eligible for disability pension. In the present case, though the 2nd respondent was granted disability pension for hearing loss, it was not extended to other two disabilities namely Primary Hypertension and Type II Diabetes. Learned counsel for the respondent relied on the judgment of the Supreme Court in the case of **Union Of India & Others Vs. Angad Singh Titaria** in Civil Appeal No.11208 of 2011 dated 24.02.2025. The Apex Court relied on the **Dharamvir Singh Vs. Union of India and Others**¹ and **Union of India Vs. Rajbir Singh** in Civil Appeal No.2904 of 2011 and granted disability pension.

4. The learned Senior Standing Counsel for the Writ Petitioner would submit that each case is to be considered based on the opinion of the medical report. Rightful claim of the 2nd respondent was not denied by the authorities.

¹ 2013 7 SCC 316



For hearing loss, disability pension has already been sanctioned and the 2nd respondent is receiving the same. In respect of other two disabilities namely Primary Hypertension and Type II Diabetes, the 2nd respondent is not eligible as per the rules. Therefore, there is no infirmity in respect of the decision taken by the competent authorities. However, the Tribunal has not considered this aspect and extended the disability pension for Type II Diabetes and Primary Hypertension, which would result in numerous claims for grant of disability pension, despite the fact that rules does not permit.

5. In ***Dharamvir Singh's*** case, the Hon'ble Supreme Court held that from Rule 14(b) Old Pension Regulation of the Entitlement Rules, it is clear that if the medical opinion was to hold that the disease suffered by the members of the armed forces would not have been detected prior to service, the medical board must state the reasons for saying so. Admittedly, the disability pension is a beneficial provision and to be interpreted liberally, so as to benefit those who have been sent home with disability, even before they completed their tenure in the armed forces. However, the eligibility criteria is to be fixed based on the rules and the medical records. The disability pension, even as per the ***Dharamvir Singh's*** case cannot be automatic, but subject to assessment by the Medical Board and the conditions stipulated in the rules. It is further observed by the Hon'ble Apex Court that denial of disability pension can be justified on the ground it must be affirmatively proved that the disease had nothing to do with the service. However, the burden to establish such a disconnect would lie



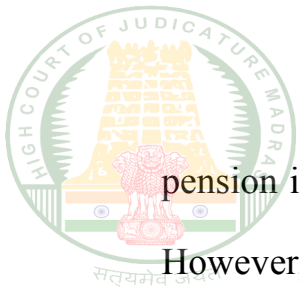
heavily upon the employer or otherwise the rule raised the presumption.

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6. Thus, the spirit of the Judgment is unambiguous. The Judgment says that if the disease had nothing to do with the services, then, the employer has to prove the factum. If the burden of proof is not discharged by the employer, then, the presumption shall go in favour of the employee. A soldier cannot be asked to prove that the disease was on account of Air Force Service or was aggravated by the same.

7. The above narration of the principles on ***Dharamvir Singh's*** case would abundantly make it clear that the disability pension is not automatic, but to be considered based on the rule as well as the medical report by the Medical Board. Even the Armed Forces Tribunal has to consider the facts with reference to the principles laid down in ***Dharamvir Singh's*** case. The presumptive factor cannot be applied in a routine manner so as to grant disability pension to all the cases. Each case is to be considered on case-to-case basis and the facts should be ascertained, whether such disability is attributable to Air Force Service or otherwise. The presumption would not give a conclusive right to get disability pension. Presumption is the principle applicable in the event of department not discharging its duty to establish that the disability is not attributable to Air Force Service.

8. At the outset, this Court is of the considered opinion that disability



pension is a welfare provision, which is to be extended to the applicable cases.

However, such disability pension cannot be granted automatically, merely based on certain presumptions and assumptions. Pension Regulation contemplates eligibility for disability element of pension and one of the condition is that the disability is attributable to military service and the burden of proof is also shifted to the employer to establish the medical report of the Medical Board.

9. As observed by the Hon'ble Apex Court in subsequent Judgments, High Court not being an expert body, cannot substitute its opinion especially in medical reports. Even, in the event of submitting an incriminating documents disputing the medical reports, the course left open to the Courts are to refer the matter to the Medical Board, and the High Court cannot substitute its opinion on the medical reports.

10. In the case of *Union of India vs. Ravinder Kumar*², the Apex Court made the following observation:

“4. This Court recently decided an identical case in Union of India v. Jujhar Singh and after reconsidering a large number of earlier judgments including Ministry of Defence v. A.V.Damodaran, Baljit Singh and ESI Corporation v. Francis De Costa, came to the conclusion that in view of Regulation 179, a discharged person can be granted disability pension only if the disability is attributable to or aggravated by military service and such a



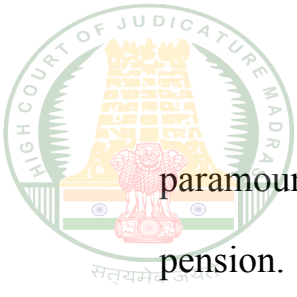
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finding has been recorded by Service Medical Authorities. In case the Medical Authorities record the specific finding to the effect that disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that Medical Board is specialised authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual. A person claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury/ailment to the person and the normal expected standard of duties and way of life expected from such person.”

11. Perusal of the medical record and report further reveals that the case of the employee who stood discharged was examined and his discharge was based on several other factors. Even in ***Dharamvir Singh's*** case itself, the procedures to be followed has been considered. Requisite information and assessment by the revised medical board in the present case would be sufficient that the case of the respondent was considered on different angles, medically.

12 Therefore, the principles in ***Dharamvir Singh's case*** cannot be applied uniformly to all the cases, and it should be decided based on the facts of the case. Disability pension would be admissible only in cases where the disability is caused due to military service. Therefore, the medical opinion is of



paramount importance for the purpose of taking a decision to grant disability pension.

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13 In the present case, in respect of hearing loss, disability pension was granted, however in respect of other two disabilities, the authorities found that those disabilities were not caused on account of military services. Therefore, this Court cannot substitute the opinion of the Medical Board, which is to be relied on for the purpose of considering the case for grant of disability pension.

14. Thus, the order of the Armed Forces Tribunal in O.A.No.131 of 2021 dated 03.02.2023 is set aside and the present Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(S.M.SUBRAMANIAM J.)(K.RAJASEKAR J.)

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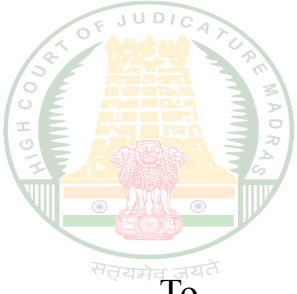
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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To
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1.The Registrar

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St.Thomas Mount, Chennai 600016.

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**S.M.SUBRAMANIAM
J.
AND
K.RAJASEKAR J.**

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