



W.P.No.5166 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2025

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CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

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1. Union of India
represented by the Secretary
Government of India
Ministry of Defence
Room No.227 B Wing
Sena Bhawan, New Delhi 110 011
2. The Chief of Army Staff
Army Headquarters
Integrated Headquarters DHQ Post South Block
New Delhi 110 001
3. The Principal Controller of Defence Account (Pensions)
Draupadi Ghat
Allahabad 211 014
4. The Chairman, SACP
Second Appellate Committee on Pension
ADGPS-4 (Imp-II)
Room No.435
Integrated HQ of MoD (Army)
DHQ Post, New Delhi 110 011



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5. The Senior Record Officer
Bengal Engineer Group Records
Roorkee 247 667
Uttarakhand State

.. Petitioners

v.

Mr.G.Madavan
JC 219537E Ex Sub G Madavan

.. Respondent

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order dated 03 March 2022 in OA No.127 of 2020 on the file of the Armed Forces Tribunal (Regional Bench), Chennai and thereby quashing and setting aside the impugned order.

For Petitioners :: Mr.G.Ilangovan

For Respondent :: Mr.K.Mohamed Hussen

ORDER

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

Under assail is the order dated 03.03.2022 passed by the Armed Forces Tribunal, Regional Bench at Chennai in O.A.No.127 of 2020.

2. The respondent instituted original application claiming disability element of pension @ 50% duly broadbanding it to 75% w.e.f. 01.04.2017



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along with arrears and interest.

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3. The respondent was enrolled in the Indian Army on 24.12.1990 and discharged from service on 31.03.2017 on completion of 27 years, 3 months and 8 days. It is not in dispute that the respondent is in receipt of service pension. On 10.10.2016, the Release Medical Board assessed the disability of the respondent (i) Obesity @ 1-5% (ii) Type II Diabetes Mellitus @ 20% (iii) Non Alcoholic Fatty Liver disease @ 1-5% and (iv) Coronary Artery disease @ 30% with composite assessment @ 50% for life and opined that the disability was neither attributable to nor aggravated by military service. The respondent's representation for grant of disability pension was rejected on 01.04.2017 by the competent authority stating that the disability is neither attributable to nor aggravated by military service. The appellate authority also rejected his appeal on 10.06.2019.

4. Question arises whether the respondent is eligible to claim disability element of pension along with service pension under Regulation 37 of the Pension Regulations for the Army?



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5. The learned Senior Panel Counsel appearing for the petitioners stated that the case of the respondent is not falling under the eligibility criteria contemplated under Regulation 37 of the Pension Regulations for the Army and therefore his case was rejected in consonance with the provisions. He would continue to say that the Tribunal has not considered the eligibility criteria contemplated under Regulation 37 and thus the Union of India preferred the present writ petition before this Court.

6. Regulation 37 of the Pension Regulations for the Army denotes disability element in addition to retiring pension to officer retired on attaining the prescribed age of retirement, which reads as under:-

“37. (a) An officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more.

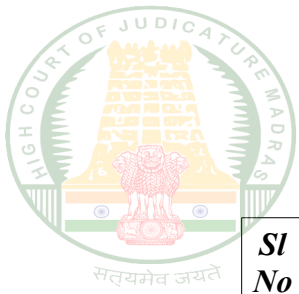


(b)”

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7. The above provision in clear terms indicates that a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be taken into consideration for grant of disability pension. In the case of the respondent, the disability and the reasons recorded by the competent authority read as under:-

<i>Sl No</i>	<i>Disability(s)</i>	<i>Reason(s)</i>
(i)	Obesity	The ID is a lifestyle disease due to unhealthy dietary habits and lack of physical exercise. Hence the ID is conceded as neither attributable to nor aggravated by military service.
(ii)	DM Type-II	In the instant case, onset was in a peace station and the applicant continued to serve in Peace Station till his discharge. Hence the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 26, Chap VI of GMO 2002, amendment 2008 and ER 2008.
(iii)	Non-alcoholic Fatty Liver Disease	The ID is characterised by excessive fat storage in hepatocytes in people with little or no alcohol consumption. In the instant case obesity and diabetes mellitus are both not related to service factors and accordingly, non-alcoholic. Hence the ID is conceded as neither attributable to nor aggravated by military service.
(iv)	CAD	Onset of ID was in peace station at the time of onset and his 14 days charter of duties does not reflect any exceptional stress and strain. The ID is held aggravated if an individual serves in field/HAA/C1



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<i>Sl No</i>	<i>Disability(s)</i>	<i>Reason(s)</i>
		Ops following the onset, which was not the case here. Hence the ID is conceded as neither attributable to nor aggravated by military service in terms of Para 47, Chap VI of GMO 2002, amendment 2008 and ER 2008.

8. When the medical disability, as stated above, would not fall under any of the criteria as contemplated under Regulation 37 of the Pension Regulations for the Army, this Court is of the considered opinion that the Tribunal has not considered the spirit of Regulation 37 for grant of disability element of pension in addition to the retiring pension to the respondent.

9. The Tribunal, while granting relief in favour of the respondent, relied on the judgment of the Hon'ble Supreme Court in the case of *Dharamvir Singh v. Union of India and others*, (2013) 7 SCC 316. In the said case, the Supreme Court, in paragraph 32, reiterating the principles that each case and its facts ought to be considered with reference to the nature of



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disability and with reference to the medical evidence available on record,

observed as follows:-

“32. Para 1 of Chapter II -- “Entitlement: General Principles” specifically stipulates that certificate of a constituted medical authority vis-a-vis invalidating disability, or death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and dispute. For the said reasons the Medical Board was required to examine the cases in the light of etiology of the particular disease and after considering all the relevant particulars of a case, it was required to record its conclusion with reasons in support, in clear terms and language which the Pension Sanctioning Authority would be able to appreciate.”

10. In the case before the Supreme Court, the Medical Board had not

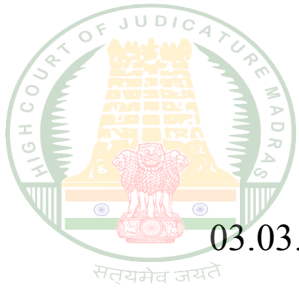


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given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant therein at the time of acceptance for military service. However, in the present case, medical records are considered along with the nature of disability suffered by the respondent. Therefore, the case relied on by the respondent is of no avail since the facts are incomparable.

11. The disability reasons stated in the case of the respondent specifically reveal that the respondent served in Peace Station till his discharge. Hence, Release Medical Board has properly held the disability as neither attributable to nor aggravated by military service. When the medical assessment per se would indicate that the respondent is ineligible for disability pension, the observations of the Hon'ble Supreme Court in Dharamvir Singh's case would be of no assistance to the respondent to secure the relief from the hands of the Tribunal.

12. In view of the above facts and circumstances, the order impugned passed by the Armed Forces Tribunal, Regional Bench, Chennai dated



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03.03.2022 in O.A.No.127 of 2020 is quashed and the writ petition stands

allowed. Consequently, W.M.P.No.5772 of 2024 is closed. No costs.

Index : yes

(S.M.S.,J.) (K.R.S.,J.)

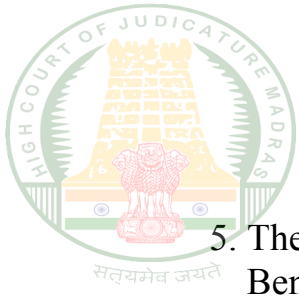
Neutral citation : yes

04.02.2025

SS

To

1. The Secretary to Union of India
Ministry of Defence
Room No.227 B Wing
Sena Bhawan, New Delhi 110 011
2. The Chief of Army Staff
Army Headquarters
Integrated Headquarters DHQ Post South Block
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5. The Senior Record Officer
Bengal Engineer Group Records
Roorkee 247 667
Uttrakand State

6. The Registrar
Armed Forces Tribunal
Rudra Road
St.Thomas Mount
Chennai 600 116



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AND

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