



W.P.No.2817 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2025

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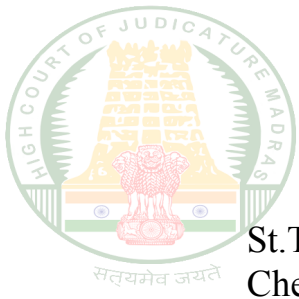
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.P.No.2817 of 2024

1. The Union of India
represented by the Secretary
DESW Government of India
Ministry of Defence
South Block, New Delhi 110 011
 2. The Chief of the Army Staff
Integrated HQ of MoD (Army)
South Block, New Delhi 110 011
 3. Officers Record Room
Adjutant Generals Branch IHQ MOD
West Block RK Puram, New Delhi 110 011
 4. Principal Controller of Defence Accounts (Pension)
Draupadi Ghat Allahabad
Uttar Pradesh 211 014
- .. Petitioners

v.

1. The Registrar
Armed Forces Tribunal
Rudra Road



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St.Thomas Mount
Chennai 600 116

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2. Col Chellappa (Retd)

S/o late SK Sundaram Pillai

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for records relating to the 1st respondent's order in OA No.48 of 2022 with MA No.81 of 2022 dated 03.02.2023 and quash the same.

For Petitioners :: Major Prashanth K.Mukundan

For Respondents :: No appearance 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 passed by the Armed Forces Tribunal, Regional Bench at Chennai in O.A.No.48 of 2022.

2. Though notice has been served on the contesting second respondent and his name is printed in the daily cause list uploaded by the Registry, none appeared and therefore, this Court heard the petitioner/Union of India.



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3. The second respondent instituted original application claiming disability element of pension @ 30% w.e.f. 31.05.2013 for life duly broadbanded to 50% along with arrears.

4. The second respondent was initially recruited on 13.10.1976 and commissioned in the Indian Army on 01.10.1988 and superannuated from service on 31.05.2013 after rendering 36 years, 7 months and 24 days including pre-commissioned service. It is not in dispute that the second respondent is in receipt of service pension vide PPO dated 09.04.2013. The second respondent continued to be medically fit till November, 2011, when he was diagnosed with primary hypothyroidism and diabetes mellitus type 2 at MH, Shillong and downgraded to S1H1A1P2E1 and superannuated in low medical category.

5. Question arises whether the second 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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6. Major Prashanth K.Mukundan presented the case on behalf of the

Union of India. He articulated the case of the Union of India by stating that the case of the second 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.

7. 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)”

8. 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 second respondent, the disability and the reasons recorded by the competent authority read as under:-

<i>Sn</i>	<i>Disabilities</i>	<i>Reason(s)</i>
a.	Primary Hypothyroidism	The ID is conceded attributable when there is evidence of iodine deficiency, drug-induced Hypothyroidism or radio ablation. Aggravation is also conceded when the onset occurs in Fd/C1 Ops/HAA or if the individual is posted to such areas after onset, due to the sub-optimal dietary intake of iodine. You served in Peace Station from Oct 1988 till your retirement. Hence, RMB has appropriately held the disability as neither attributable to nor aggravated by military service.
b.	Diabetes Mellitus Type-II	ID is a disease of idiopathic origin and therefore of attributable service. Aggravation is conceded when it occurs in Fs/CI Ops/HAA prolonged afloat service or if the individual is posted to such areas after onset. You served in Peace Station from Oct 1988 till your retirement. Hence, RMB has appropriately held the disability as neither attributable to nor aggravated by military service.



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9. 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 second respondent.

10. The Tribunal, while granting relief in favour of the second 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 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



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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.”

11. In the case before the Supreme Court, the Medical Board had not 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 second respondent. Therefore, the case relied on by the second respondent is of no avail since the facts are incomparable.



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WEB COPY 12. The disability reasons stated in the case of the second respondent specifically reveal that the second respondent served in Peace Station from October, 1988 till his retirement. Hence, Release Medical Board has properly held the disability as neither attributable to nor aggravated by military service. Regarding diabetes mellitus type II, the authorities found that the disability is neither attributable to nor aggravated by military service. When the medical assessment per se would indicate that the second 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 second respondent to secure the relief from the hands of the Tribunal.

13. In view of the above facts and circumstances, the order impugned passed by the Armed Forces Tribunal, Regional Bench, Chennai dated 03.02.2023 in O.A.No.48 of 2022 is quashed and the writ petition stands allowed. Consequently, W.M.P.No.3081 of 2024 is closed. No costs.



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14. Before parting with the case, this Court places on record its appreciation for the way in which Major Prashanth K.Mukundan argued the case on behalf of the Union of India, which is impressive to this Court and therefore directs the entry of appreciation in his service records and due credit shall be given for his future career.

Index : yes

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

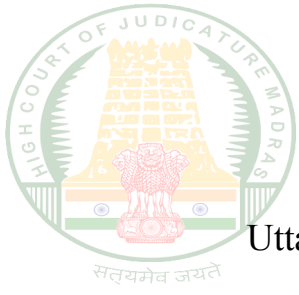
Neutral citation : yes

04.02.2025

ss

To

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DESW Government of India
Ministry of Defence
South Block, New Delhi 110 011
2. The Chief of the Army Staff
Integrated HQ of MoD (Army)
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