



2025:DHC:945-DB



\$~45

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 13.02.2025*

+ W.P.(C) 1797/2025

UNION OF INDIA & ORS.

.....Petitioners

Through: Ms. Ekta Choudhary and
Mr. Ayush Kumar, Advocates.

versus

EX JWO OM NARAYAN SINGH

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****SHALINDER KAUR, J (ORAL)****CM APPL. 8620/2025**

1. Allowed, subject to all just exceptions.

W.P.(C) 1797/2025, CM APPL. 8619/2025

2. The present petition has been filed by the petitioners assailing the Order dated 08.11.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi ('Tribunal') in Original Application ('O.A') No. 70/2021 titled *Ex JWO Om Narayan Singh versus Union of India and Ors.*, whereby the learned Tribunal allowed the OA of the respondent herein and granted the disability element of pension in respect of the disability of the respondent herein viz., "*Primary Hypertension*" @ 30% for life rounded off to 50% from



2025:DHC:945-DB



the date of respondent's discharge from the service i.e. 09.09.2007.

3. The respondent was commissioned in the Indian Air Force on 04.06.1983 and was discharged from service on 09.09.2007 in the Medical Category 'A4G3 (P)'. At the time of respondent's discharge, the Release Medical Board (RMB) was constituted and he was diagnosed with disease of '*Primary Hypertension (Old)*', and *vide* its report dated 31.08.2007, assessed the respondent's disability @ 30% for two years. The RMB opined the disability as '*neither attributable to nor aggravated*' by military service.

4. The respondent was discharged from the service in the rank of Junior Warrant Officer on 09.09.2007, after rendering about 24 years and 3 months of his service in Indian Air Force.

5. Based on the recommendations of the RMB, the disability pension was denied to the respondent *vide* letter no. RO/3305/3B/Med dated 29.08.2012, and the same was communicated to the respondent *vide* letter dated 11.09.2012.

6. Subsequently, the respondent preferred the First Appeal thereagainst, on 27.04.2018, which was rejected by the Appellate Committee for the First Appeal *vide* Order dated 11.06.2018 on the ground of delay in filing the appeal.

7. Whereafter, the respondent moved the learned Tribunal *vide* OA No. 1248/2018, and *vide* Order dated 24.07.2018, it directed the petitioners herein to consider the OA of the respondent as the First Appeal. The same came to be rejected by the petitioners *vide* letter dated 14.11.2018 on the ground that the disability of the respondent is an idiopathic disorder with a strong genetic preponderance and *per se*



not attributable to service and the same cannot be conceded to have been aggravated by service as the onset of the said disability was in a peace station.

8. Being aggrieved, the respondent preferred another OA bearing No. 70/2019, seeking the following reliefs:

“a. To direct the respondents to produce all medical records of the applicant including all Medical Board and Release Medical Board conducted by the respondents for the perusal of the Court.

b. To quash the letter dated 14.11.2018, 11.06.2018 and 11.09.2012 denying disability pension to the applicant.

c. To conduct Review Medical Board of the applicant if required to assess the present disability pension to the applicant.

d. To direct the Respondents to grant disability pension to the applicant with effect from 10.09.2007 in view of the above mentioned circumstances and the settled law with regard to grant of disabilities pension.

e. To direct the respondents to grant broad banding of disability pension as per the Larger Bench in Ex Sgt Girish Kumar OA No. 1439/2016 and UOI V Ram Avtar Civil Appeal No. 418/2012.

f. To pay interest @ 12% on the arrears of pension and other benefits.

g. To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”

9. The learned tribunal *vide* Impugned Order, relying upon the decision of Supreme Court in the case of ***Dharamvir Singh v. Union of India & Ors.***, (2013) 7 SCC 316, held the respondent entitled to the grant of disability element of pension *vis a vis* disability of ‘*Primary Hypertension*’ @ 30% rounded off to 50% for life from the date of his



discharge in terms of *Union of India v. Ram Avtar*, 2014 SCC OnLine SC 1761. It had also relied upon the Judgment dated 28.11.2019 of the Supreme Court in *Commander Rakesh Pande v. Union of India*, Civil Appeal No. 5970/2019, observing that a person with disease of permanent nature is entitled to disability pension for life and cannot be restricted to a certain period of time, and thus, treated the disablement of the respondent for life as against 2 years, as held by the RMB. Moreover, as far as the arrears of payment of disability pension are concerned, the same were restricted to commence from 3 years prior to filing of the OA. The learned Tribunal also granted interest @ 6% per annum, if the petitioners herein fail to pay the same within three months from the date of their receipt of copy of the order.

10. Dissatisfied by the Impugned Order of the learned Tribunal, the petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India.

11. The learned counsel for the petitioners submits that the respondent is not entitled to the relief claimed by him since the RMB, being an expert body, found the disability to be '*neither attributable to nor aggravated by military service*', and the learned Tribunal has erred in granting the disability element of pension by misplacing reliance on the case of *Dharamvir Singh* (supra). She submits that the opinion of the Medical Board could not have been interfered with by the learned Tribunal.

12. We have considered the submissions made on behalf of the petitioners and perused the record including the Impugned Order as



well as the findings of RMB.

13. At the outset, it would be apposite to note that the Supreme Court in *Dharamvir Singh* (supra), while considering the Entitlement Rules for Casualty Pensionary Awards, 1982, held as under:

“18. A disability “attributable to or aggravated by military service” is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, as shown in Appendix II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:

5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service.”

From Rule 5 we find that a general presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

19. “Onus of proof” is not on the claimant as is apparent from Rule 9, which reads as follows:

“9. Onus of proof.—The claimant shall not



be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.”

From a bare perusal of Rule 9 it is clear that a member, who is declared disabled from service, is not required to prove his entitlement of pension and such pensionary benefits are to be given more liberally to the claimants.

29. *A conjoint reading of various provisions, reproduced above, makes it clear that:*

29.1. *Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

29.2. *A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].*

29.3. *The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

29.4. *If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)].*

29.5. *If no note of any disability or disease*



was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and

29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 — "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. From the record, it is evident that prior to joining the service, the respondent was subjected to an extensive medical examination and was found fit for enrolment in the Indian Air Force and the disability of '*Primary Hypertension*' was detected in March, 2007. During his entire service period of nearly 24 years in the Indian Air Force, the respondent was posted at different stations and, therefore, it cannot be ruled out that his disability may have been caused or aggravated by the service conditions.

15. It is further to be noted that the Medical Board Proceedings specifically observed that the disability did not exist before joining the service. However, the RMB has opined that the disability has occurred while the respondent was in service, identifying the on-set on 28.03.2007, and simplicitor noted that the disability of the respondent is '*neither attributable to nor aggravated*' by service.

16. The Supreme Court in *Union of India & Ors. v. Angad Singh*



Titaria, (2015) 12 SCC 257, has held as below:

"16. xxxxxx

Moreover, simply recording a conclusion that the disability was not attributable to service, without giving a reason as to why the diseases are not deemed to be attributable to service, clearly shows lack of proper application of mind by the Medical Board. In such circumstances, we cannot uphold the view taken by the Medical Board."

17. In the present case, the respondent was discharged from service, having been placed in the Low Medical Category, that is, A4G3 (P) *vis a vis* his disability of 'Primary Hypertension', however, the RMB has simply discarded the presumption applicable under the Entitlement Rules for Casualty Pensionary Awards, 1982 and as elaborated by the Supreme Court in **Dharamvir Singh** (supra). Moreover, in the absence of any cogent reasons shown by the petitioners to negate the attributability of the respondent's disability to service, it emerges that the petitioners have proceeded on the presumption that the respondent's initial disability was not service-related. Consequently, the petitioners have manifestly failed to discharge the burden incumbent upon them to substantiate the grounds for denying the respondent's entitlement to the Disability Pension. The learned Tribunal rightly applied the test enunciated in **Dharamvir Singh** (supra) and granted the relief to the respondent.

18. In light of the above, we find no merit in the contentions of the petitioners and find no infirmity in the Impugned Order passed by the learned Tribunal.

19. In any event, no case is made out to warrant interference with



2025:DHC:945-DB



the Impugned Order in exercise of our powers under Article 226 of the Constitution of India. Needless to state, this Court is not acting as an appellate court against the Impugned Order.

20. Accordingly, the petition, along with the pending application, is dismissed.

SHALINDER KAUR, J

NAVIN CHAWLA, J

FEBRUARY 13, 2025
KM /SU/VS

Click here to check corrigendum, if any