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

Date of Decision: 24.02.2025

\+ W.P.(C) 2355/2025

UNION OF INDIA & ORS. .....Petitioners

Through: Ms. Avshreya Pratap Singh Rudy, SPC with Ms. Usha Jamnal, Ms. Harshita Chaturvedi & Mr. Siddhant Nagar, Advs.
Major Anish Muralidhar, Army.

versus

COL. AMITA JAIN RETD .....Respondent

Through: Mr. SS Pandey and Mr. Roshan Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J (ORAL)

CM APPL.11200/2025

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 2355/2025 & CM APPL.11199/2025

3. The present petition has been filed by the petitioners, challenging the Order dated 27.09.2024 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (Tribunal), in Original

Application (OA) No.1008/2023, titled ***Col. Amita Jain (Retd.) vs. Union of India & Ors.,*** allowing the original application filed by the respondent herein with the following directions: -

> *"17. In view of the aforesaid judicial pronouncements and the parameters referred to above, O.A. No. 1008 of 2023 is allowed to the extent that the applicant is entitled for the disability element of pension in respect of the two disabilities i.e. Bronchial Asthma @ 20% and Primary Hypertension @ 30% and the composite assessment of same is being calculated as per MoD letter No. 16036/RMB/IMB/DGAFMS/MA (Pens) dated 14.12.2009 as under:*
> *Disability-Primary Hypertension = 30% (disability with maximum percentage)*
> *Disability-Bronchial Asthma (100-30) = 70 x 20/100 = l4%*
> *Composite Assessment = 30+14 = 44%*
> *18. The respondents are directed to grant the disability element of pension to the applicant @ 44% for life which is directed to be rounded off to 50% for life, with effect from the date of retirement in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India vs. Ram Avtar (Civil Appeal No.418/2012) decided on 10.12.2014.*
> *19. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment."*

4. It is the case of the petitioners that the learned Tribunal has erred in finding that the disabilities suffered by the respondent, that is,

Bronchial Asthma and Primary Hypertension are attributable to or aggravated by service. It is submitted that the Release Medical Board, though had found the disability of Bronchial Asthma to be aggravated by service, for Primary Hypertension, the consistent finding was that it is neither aggravated nor attributable by service. The Competent Authority, however, disagreed with the opinion of the Release Medical Board as far as Bronchial Asthma being aggravated by service is concerned. The disability pension for the two disabilities was therefore, rejected. The respondent, being aggrieved of the same, preferred the first appeal, which stood rejected by an Order dated 13.05.2022. The second appeal thereagainst was also rejected *vide* Order dated 28.12.2022.

5. The learned counsel for the petitioners submits that, therefore, the learned Tribunal has erred in finding that the above disabilities were aggravated by service, by merely placing reliance on the Judgment of the Supreme Court in ***Dharamvir Singh vs. Union of India and Ors.,*** 2013 (7) SCC 316.

6. On the other hand, the learned counsel for the respondent, who appears on advance notice of this petition, submits that the respondent only for the sake of bringing about the finality to the dispute, is not pressing the disability element of pension for the disability of Primary Hypertension. The respondent confines his claim only against the rejection of the disability element of the pension for Bronchial Asthma.

7. He submits that as far as Bronhial Asthma is concerned, the opinion of the Medical Board of it being aggravated by service, was disagreed with by the Secretarial Department of the respondent, whih had no authority to do so, not being expert in the medical field.

8. He submits that the petitioners have already accepted that the third disability, that is, "*Fracture at the base of the 5th Metatarsal (LT)"* is attributable to service and has been assessed as 10%. He submits that the Release Medical Board had computed the composite net assessment qualifying for disability pension as 28%-30% for life for the disability of Bronchial Asthma and Fracture at the base of the 5th Metatarsal (LT). Therefore, the petitioner, is entitled to grant of disability pension even ignoring the disability of Primary Hypertension.

9. We have considered the submissions made by the learned counsels for the parties.

10. It is not disputed that the Release Medical Board in its report dated 09.02.2021, as confirmed by the "Confirming Authority", had opined that the Bronchial Asthma and Fracture Base of 5th Metatarsal, suffered by the respondent, to be aggravated by service condition. We quote the findings of the Medical Board as follows:

"PART VII
OPINION OF THE MEDICAL BOARD

1. Please endorse diseases/dis in chronological order of occurrence:

Disabilities	*Attributable to service (Y/N)*	*Aggravated by service (Y/N)*	*Detailed Justification*
(a) BRONCHIAL ASTHMA (J45.901)	*No*	*Yes*	*Onset of ID in Apr 2016 while serving in MH*

			Meerut (UP) peace area. ID is conceded as aggravated due to stress and strain of mil service as per para 5, Chapter VI of GMO (Mil Pensions) 2008.
(b) PRIMARY HYPERTENSION (110)	*No*	*No*	*Onset of ID in Aug 2018, while serving in Base Hosp Delhi Cantt (Peace Area). ID is conceded as neither attributable nor aggravated by mil service as per Para 43 of Chapter VI of GMO's (Mil Pension), 2008.*
(c) FRACTURE BASE OF 5TH METATARSAL (LT) (S92,352A)	*Yes*	*No*	*Injury sustained by indl on 20 Nov 2020 while serving in Base Hosp Delhi Cantt (Peace Area). ID is conceded as attributable to service as epr injury report (IAFY-2006) dt 11 Jan 2021.*

(Emphasis supplied)

11. As noted hereinabove, the said report was even accepted by the Confirming Authority, however, *"the Competent Authority"* which is only an administrative body, rejected the opinion of the Medical Board. Aggrieved thereof, the respondent preferred a first appeal, which was also stood rejected by an Order dated 13.05.2022, wherein as far as the disability of Bronchial Asthma is concerned, it was opined as under:

> *"As per the documents perused, the officer presented with complaints of breathlessness for the first time in Apr 2016. She was posted*

at MH Meerut at that time. Officer was evaluated and diagnosed as a case of Bronchial Asthma and started on medication. She was placed in LMC and followed up thereafter. There was no evidence of residual lung damage. The officer was stable on medication. Bronchial Asthma is essentially an allergic condition. Asthmatics are very sensitive to both climate and locality but the effects are so variable in patients that no general rule can be laid down. Sudden exposure to cold or occupations involving inhalation of vapours e.g. drivers, cooks, bakers, rubber workers may bring on an attack. While increased susceptibility to allergens and exciting factors may result from exacerbations of asthma occasioned by service factors, such manifestations in service would not automatically be regarded as necessary amounting to permanent or persistent aggravation. Each case must be considered on its own merits and the question of persistence of aggravation can only be determined by previous history, nature and length of exposure to service factors, the effect of treatment, subsequent employment and progress of disease. However, presence of residual lung signs such as (rhonchi, prolonged expiration) hyper inflated emphysematous lungs, pigeon chest deformity and impaired lung function tests are useful guides to chronicity of the disease. In the ibid case, the officer was provided medical assistance at the earliest and was given sheltered appointment as per the disability. There was no evidence aggravation in the form of residual lung damage and pulmonary function tests were satisfactory with medication. The disability was well controlled with medication. Hence, disability is conceded as neither attributable nor aggravated by military service as per Para 5 Chap VI, GMO 2002/2008."

12. Therefore, though it was conceded in the order rejecting the first appeal, that "*increased susceptibility to allergens and exciting factors may result from exacerbations of asthma occasioned by service factors"*, in the present case, only because there was no evidence of aggravation in form of residual lung damage and the pulmonary function test of the respondent was found satisfactory *"with medication"*, the claim of disability pension was denied to the respondent. The petitioner, therefore, placed a negative burden on the respondent and rejected his claim of disability pension by drawing an assumption against him rather than in his favour, which is impermissible under the extant rules.

13. The second appeal there against was also dismissed by giving the following reasons:

> *"The disability Bronchial Asthma is held as neither attributable to nor aggravated by military service as it does not fulfil the conditions laid down as per Para 5, Chap VI, GMO 2002/2008."*

14. The learned Tribunal, has rightly placing reliance on the Judgment of the Supreme Court in ***Ex. Sapper Mohinder Singh vs. Union of India & Ors.*** in (Civil Appeal No.164/1993), decided on 14.01.1993, has held that the administrative authority/higher formation cannot sit over the opinion of the Medical Board. In the present case, since the Medical Board had already opined that the disability of Bronchial Asthma was aggravated by service condition, it

was not for the Competent Authority to overrule this opinion only on the basis of certain presumptions and deny the disability element of pension for the same to the respondent. We quote from the finding of the learned Tribunal as follows:

> *"12. It is an undisputed fact that the RMB has opined the applicant's disabilities 'Bronchial Asthma' as 'aggravated by military service' and 'Fracture Base of 5th Metatarsal (Lt)' as 'attributable to military service' due to stress and strain of service as is evident from the RMB proceedings i.e. Part-VII Opinion of the Medical Board. However, the said opinion of the RMB has been overruled by the competent authority of the respondents and denied the disability pension to the applicant. The issue in question is no more res integra. The same is squarely covered by the decision of the Hon'ble Supreme Court in the case of Ex Sapper Mohinder Singh vs. Union of India & Ors.{Civil Appeal No.104 of 1993} decided on 14.01.1993, wherein the Hon'ble Apex Court has observed that without physical medical examination of the patient, the administrative authority/higher formation cannot sit over the opinion of a medical board. The observations made in the judgment in the case of Ex Sapper Mohinder Singh (supra) being relevant is quoted below:*
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> > *"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was*

subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

15. In view of the above, the finding of the learned Tribunal, insofar as it grants the disability element of the pension to the respondent for Bronchial Asthma, assessed at 20%, is not interfered with. However, as far as the finding and direction regarding the grant of disability element of the pension to the respondent for Primary Hypertension is concerned, the same having already been conceded by the learned counsel for the respondent is, therefore, set aside.

16. The petitioners shall now release the disability element of pension to the respondent in accordance with the opinion of the Release Medical Board, which we have mentioned and quoted hereinabove.

17. The percentage at which the disability element of the pension is to be released to the respondent, shall be calculated by the Competent Authority of the petitioners, and the necessary Pension Payment Order shall be issued within a period of four weeks from today. It is clarified that in case the respondent is entitled to the claim of broad banding of

the percentage in terms of the Judgment of ***Union of India vs. Ram Avtar*** (Civil Appeal No.418/2012), the same shall also be extended to the respondent.

18. The payment of arrears upon the issuance of the revised pension payment order shall be released to the respondent within a period of four weeks thereafter. In case of delay in release of the arrears beyond the period granted, the petitioner shall pay to the respondent, interest at the rate of 6% per annum.

19. The petition, as well as the pending application, stands disposed of in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 24, 2025/ab/sk/DG

Click here to check corrigendum, if any