



2025:DHC:743-DB



\$~33

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

Date of Decision: 06.02.2025

+ W.P.(C) 8434/2024, CM APPL. 34830/2024

UNION OF INDIA ORS & ORS.Petitioners

Through: Mr. Kushagra Kumar, SPC

versus

COL MANISH MIDHA RETDRespondent

Through: Mr. Chaitanya Agarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J (ORAL)

1. This petition has been filed challenging the order dated 29.08.2023 passed by the learned Armed Forces Tribunal (AFT), Principal Bench, New Delhi in Original Application (O.A.) No. 41/2022 titled ***Col Manish Midha (Retd.) vs. Union of India & Ors.*** *vide* which the learned AFT has allowed the O.A. filed by the respondent and directed the petitioners herein to grant the disability element of pension to the respondent @ 30% rounded off to 50% with effect from the date of his discharge.

2. The Release Medical Board dated 28.08.2020 had opined that the disability of Primary Hypertension (I-10) suffered by the respondent was discovered in a peace area at Jodhpur in August 2012 and, therefore, not related to the service condition and was neither



2025:DHC:743-DB



attributable to nor was aggravated by his service, as per Para 43 of Chapter VI of Guide to Medical Officers, 2008.

3. The learned counsel for the petitioner submits that instead of relying on the categorical finding of the Release Medical Board, the learned AFT, merely by relying upon the judgment of the Supreme Court in *Dharamvir Singh vs. Union of India & Ors.*; (2013) 7 SCC 316, has granted the relief of disability pension to the respondent.

4. On the other hand, the learned counsel for the respondent submits that prior to the Release Medical Board, the respondent was also assessed by a Categorization Medical Board dated 07.09.2012. He submits that this Categorization Medical Board Proceedings had opined that though the onset of the disease is at a peace station, however, its course can be associated with close time association to the Field/Counter Insurgency Conditions as the respondent was posted in Jammu & Kashmir and Assam from June 2007 to August 2011, that is, immediately prior to his posting in a peace area and onset of the disability. The Categorization Medical Board, therefore, opined that the disability is attributable to his service condition and aggravated thereby.

5. He further submits that the Release Medical Board had also initially opined that the disability suffered by the respondent is aggravated by service and it was only on the instructions from the Head Quarters Medical Corps that the Release Medical Board changed its opinion by interpolating on its own Board proceedings. He has also handed over the original copy of the Release Medical Board



2025:DHC:743-DB



Proceedings, copy whereof was supplied to the respondent.

6. We have considered the submissions raised by the learned counsels for the parties.

7. On perusal of the original Release Medical Board proceedings, which have been placed before us, not only by the learned counsel for the respondent but also by the learned counsel for the petitioners, it is apparent that there is an interpolation in the Release Medical Board proceedings inasmuch as there is a pasting in Part 7 (*"opinion of the Medical Board"*) which records that the respondent is not entitled to disability element of pension as the disability suffered by him is neither attributable to nor aggravated by service. The learned counsel for the respondent has also handed over a communication dated 08.10.2020, which clearly shows that this interpolation was done on the instructions issued by the Head Quarters Medical Corps.

8. We are dismayed at the manner in which the Medical Board proceedings are being conducted by the petitioners and the legitimate claims of its officers being denied at the whims and fancies of certain officers.

9. The Release Medical Board proceedings do not even advert to, leave alone give reasons for disagreeing with the Categorization Medical Board proceedings dated 07.09.2012, which have been referred by us hereinabove.

10. For the above reasons, no reliance can be placed on the Release Medical Board Proceedings inasmuch as it has held that the disability suffered by the respondent is neither aggravated by nor attributable to



2025:DHC:743-DB



service.

11. We, therefore, find no infirmity in the Impugned Order passed by the learned AFT.

12. The writ petition, along with, pending application is dismissed.

13. As the Impugned Order is dated 29.08.2023 and the present writ petition was filed after a delay of almost one year, we further direct that the arrears of the disability pension shall be paid to the respondent along with the interest @ 9% p.a., as was also directed by the learned AFT in the impugned order.

14. The petitioners shall also pay cost of Rs. 50,000/- to the respondent for unnecessarily dragging the respondent to this Court.

15. A copy of this order will also be brought to the notice of the Secretary, Ministry of Defence as also to the Chief of Army Staff, for issuing necessary directions in this regard so that such instances are not repeated in the future.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 6, 2025
SU/FRK/VS

Click here to check corrigendum, if any