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

Date of decision: 28.11.2024

+ W.P.(C) 15375/2024 & CM APPL. 64457/2024
UNION OF INDIA & ORS.

.....Petitioner

Through: Mr.Jivesh Kumar Tiwari, SPC
with Ms.Samiksha, Adv. along
with Major Anish Muralidhar,
Army.

versus

COLONEL BK CHHIMWAL RETIRED IC 390431

.....Respondent

Through: Mr.K.R. Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the Order dated 15.09.2022, passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi, (in short, 'AFT') in Original Application (in short, 'OA') No. 918/2019, titled ***Colonel B.K. Chhimwal (Retd) v. Union of India and Others***, allowing the said OA filed by the respondent herein, and setting aside the Orders dated 08.06.2012, 27.05.2013 and 27.11.2014, by which the respondent had been denied the benefit of the disability element of pension and further, directing the respondent to be granted disability element of pension for the disabilities of CAD TVD CABG and Primary



Hypertension.

2. The respondent herein had approached the learned Tribunal contending therein that he had been commissioned as a Lieutenant in the Army Corps of Electronics and Mechanical Engineers in Shape-1, and retired on 31.05.2012.

3. The Release Medical Board (in short, 'RMB') of the petitioners herein was held at the Military Hospital, Jabalpur, which recommended a 50% composite disability for the diseases CAD TVD CABG, Primary Hypertension, and Open Angle Glucoma in both eyes. Initially, the RMB had opined that the first disability, that is, CAD TVD CABG, has been aggravated by service. However, this opinion was later changed on the ground that the same had occurred in a peace area and had no connection or relationship to any physical exertion on duty.

4. Aggrieved thereby, the respondent had made representations, which stood rejected by the orders impugned by the respondent before the learned AFT.

5. The learned AFT, on a detailed analysis of the submissions and the documents produced before it, allowed the claim of the respondent by observing as under:-

"18. According to Learned Counsel for the Applicant, the disease Hypertension was first detected in 2001 when he was posted in Leh (J&K), a High-Altitude Area and was subject to stress and strains of service. The Hypertension which he developed at that time was aggravated through the 'years of service and resulted In heart problem which ultimately was aggravated to the extent that in the year 2005, he had to undergo bypass surgery.



19. Paragraph 43 of Chapter VI of Guide to Medical Officers, 2008 which provides guidelines to Medical Officers relating to the assessment of the aggravation and attributability of the disability viz., Hypertension clearly provides that while "Primary Hypertension" is to be considered as aggravated if it occurs while serving in the field areas, high altitude areas operational areas or prolonged afloat service, it does not rule out attributability or aggravation of the disability. "Hypertension" to service when a person is posted in peace area. A duty is cast on the medical officer to ascertain as to whether the service compulsions have caused aggravation of the disability "Hypertension" occurred to a person while he was serving in peace areas.

20. In the instant case, the RMB in its proceedings dated 16th November 2011 Initially opined the first disability CAD TVD CABG as aggravated by military service. However, thereafter, It was scored and then opined that since the individual was posted in peace area, therefore, it had no relationship to military service. So far as Primary Hypertension is concerned, it was simply mentioned that it occurred in peace area and therefore, not related to military service.

21. The question whether a disability acquired by the Applicant while serving in peace area would entitle him to disability pension has been deliberated by Hon'ble Supreme Court in Dharamvir Singh (supra) and relevant Para 33 of the judgment is reproduced as under: -

"33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability



or death occurred in an area declared to be a field service/active service area or under normal peace conditions. Classification of diseases have been prescribed at Chapter IV of Annexure 1; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions.”

22. The Hon'ble Apex Court in Dharamvir Singh's (supra) has opined that when a person was found to be physically fit and free from any disability at the time of entry into service, the disability while in service is to be treated as either attributable to or aggravated by service, unless the Respondents give cogent reasons otherwise. In Rajbir Singh vs. UOI & Ors. (supra), the Hon'ble Apex Court, reiterating the said principle, has also casual connection to the conditions of his service, such disability has to be taken as either attributable to or aggravated by service.

23. In the instant case, having regard to the nature of duties required to be discharged by the Applicant and also since the RMB has failed to record any cogent reason or to consider the relevant factors under Para 43 of Chapter VI of the Guide to Medical Officers, 2008, we are of the considered opinion that the Applicant's disability has to be taken as attributable to the Military Service. The Applicant, therefore, is entitled to the Disability Element of Pension, composite percentage of which was assessed at 50%. The Applicant would also be entitled to the benefit of the broad banding of the same to 75% in view of the order passed by the Hon'ble Supreme Court on 10.12.2014 in Union of India and others Vs. Ram Avtar (supra).”



6. The learned counsel for the petitioners contends that the learned AFT has erred in disregarding the opinion of the Medical Board without any material to the contrary being available before it. He submits that the opinion of the Medical Board is final and could not have been interfered with by the learned AFT.

7. On the other hand, the learned counsel for the respondent submits that, in the present case, the Medical Board in its initial opinion had opined that at least one of the disabilities suffered by the respondent had been aggravated due to service conditions. He submits that merely because the respondent was later posted at a peace station, that is, Ambala, it could not have been the reason to deny the Disability Element of the Pension to the respondent, especially keeping in view the nature of duties that the respondent was performing at that station.

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

9. In the present case, the Release Medical Board proceeding shows that there was an initial opinion given that at least one of the disabilities has been aggravated due to service. The said opinion was thereafter changed only because the respondent at that time was posted in a peace area. As rightly observed by the learned AFT, this could not have been the only reason for changing the opinion. The Medical Board should have taken into account the service conditions of the respondent and its proximity to the onset of the disability. The detailed reasons given by the learned AFT have been reproduced by us



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hereinabove. We find no reason to disagree with the same.

10. Accordingly, we find no merit in the present petition. The same stands dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 28, 2024/rv/DG

Click here to check corrigendum, if any