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

Reserved on: 18.03.2025
Pronounced on: 01.07.2025

\+ **W.P.(C) 12380/2024, CM APPL. 51494/2024**

UNION OF INDIA AND ORS .....Petitioners

Through: Ms. Rupali Bandhopadhya, CGSC with Mr.Abhijeet Kumar, Adv. Gp Capt V Sridhar, Sgt. Manish Kumar Singh, Sgt. Mritunjay & Sgt. Pankaj Sharma, Air Force Legal Cell, DAV.

versus:

EX MWO HFO PRAMOD KUMAR TRIPATHI .....Respondent

Through: Mr. Kritendra Tiwari & Mr. Brajesh Kumar, Advs.

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

J U D G M E N T

SHALINDER KAUR, J.

1. The present writ petition has been filed by the petitioners, under Article 226 of the Constitution of India, seeking the following relief:

> *"a. Issue a Writ or Order or direction in the nature of Certiorari, setting aside the Order dated 25.01.2023 passed by the Ld. Armed Forces Tribunal, Principal Bench, New Delhi*

in Original Application No. 474 of 202 1 titled "MWO(HFO) Pramod Kumar Tripathi vs Union of India & Ors"

2. *Vide* Order dated 25.01.2023, passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, "Tribunal") in Original Application No. 474 of 2021, titled ***MWO (HFO) Pramod Kumar Tripathi v. Union of India and Others*** (hereinafter referred to as the, O.A.), the learned Tribunal held that the respondent is entitled to the disability element of pension at 30% for life for Primary Hypertension, rounded off to 50% for life. However, the arrears were restricted to three years prior to the date of filing the O.A.

3. The brief facts of the case are that the respondent was enrolled in the Indian Air Force on 09.04.1966 and was discharged from service on 31.08.2005 after attaining the age of superannuation. At the time of his discharge, the respondent was subjected to a Release Medical Board (RMB) dated 30.11.2004. The said Board assessed his disabilities as follows: Diabetes Mellitus Type II at 15-19% for life, Hypertension at 30% for life, and Coronary Artery Disease at 30% for life. The composite disability was accordingly assessed at 50%.

4. The claim of the respondent for the grant of disability pensionwas rejected by the petitioner, *vide* communication dated 24.02.2006, on the ground that the disability was found to be neither attributable to nor aggravated by military service. However, the

respondent was advised to prefer an appeal against the said rejection within a period of six months.

5. Being aggrieved by the said rejection, the respondent filed the O.A. before the learned Tribunal seeking the grant of disability pension. The respondent pressed the claim of disability pension only with regard to the disability of Primary Hypertension.

6. The learned Tribunal, *vide* the Impugned Order, held that the respondent is entitled to the grant of the disability element of pension at the rate of 30% for life in respect of Primary Hypertension (old), which was directed to be rounded off to 50% for life.

7. Dissatisfied with the Impugned Order, the petitioners have preferred the present petition invoking the writ jurisdiction of this Court.

8. The learned counsel for the petitioners submits that the learned Tribunal has erred in allowing the O.A. filed by the respondent merely by placing reliance on the judgment of the Supreme Court in ***Dharamvir Singh v. Union of India***, (2013) 7 SCC 316, without appreciating that the RMB had duly assessed the disability of the respondent and found the same to be neither attributable to nor aggravated by the service.

9. The learned counsel submitted that the rule of presumption regarding disability is no longer part of the Entitlement Rules for Casualty Pension and Disability Compensation Awards to Armed Forces Personnel (Entitlement Rules), 2008.

10. He submits that earlier, the concept of "attributable to or aggravated by military service" under the Entitlement Rules, 1982, was to be determined as per Rule 5. This Rule established a general presumption that a member is deemed to have been in sound physical and mental health upon entering service, unless any physical disabilities were noted or recorded at the time of enlistment. Furthermore, if an individual is discharged on medical grounds, it is to be presumed that their health deterioration occurred due to service.

11. He submitted that in terms of Rule 6 of the Entitlement Rules, 2008, however, there should be a causal connection between the disability or death and military service, and it is a necessary pre-condition for the award of any compensation.

12. He submits that since the respondent retired after the issue of the Entitlement Rules, 2008, it is this provision that should have been applied to his case.

13. On the other hand, the learned counsel for the respondent draws our attention to the date of his superannuation and the RMB proceeding, and submits that both of these are pre-2008, that is, before the new Entitlement Rules of 2008 came into effect. Therefore, the presumption under the Entitlement Rule of 1982 was applicable to the respondent, and the learned Tribunal had rightly relied on the decision of the Supreme Court in ***Dharamvir Singh*** (supra).

14. We have considered the submissions made by the learned counsel for the parties and perused the record.

15. At the outset, we find that the RMB of the respondent was conducted on 30.11.2004, and the respondent was discharged from service on 31.08.2005, which is prior to the Entitlement Rules, 2008, coming into force. Therefore, the benefit of presumption with regard to attributability or aggravation of disability, as provided under the erstwhile Entitlement Rules of 1982, would be applicable to the respondent.

16. Furthermore, the RMB in its opinion did not assign any reasons for denying attributability or aggravation of the disability to military service. The relevant portion of the RMB proceedings is reproduced as under:-

"OPINION OF THE MEDICAL BOARD

(Not to be communicated to the individual)

1. Casual Relationship of the Disability with Service Conditions or otherwise				
Disability	***Attributable to service (Y/N)***	***Aggravated by service***	***Not Connected with service (Y/N)***	***Reason/Cause /Specific condition and period in service***
(a) DIABETUS MELLITUS TYPE II	*NO*	*NO*	*YES*	*Disability is Constitutional in nature*
(b) HYPERTENSION	*NO*	*NO*	*YES*	*Disability is Constitutional in nature*
(c) CORONARY ARTERY DISEASE	*NO*	*NO*	*YES*	*Disability is Constitutional in nature*
(d)				
(e)"				

17. Rule 5 of the Entitlement Rules, 1982, which provided for the rule of presumption, is reproduced as under:

> *"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."*

18. At this stage, it becomes relevant to note the decision in ***Dharamvir Singh*** (supra), which, while relying on the Entitlement Rules of 1982, has held as under:

> *"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 invalidated 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 or aggravated by military service to be determined under "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 r/w Rule 14(b)].*
>
> *29.3 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. [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.[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 (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above (para 27).”*

19. Furthermore, the Entitlement Rules of 1982 were also analysed by the Supreme Court in ***Union of India v. Rajbir Singh,*** (2015) 12 SCC 264, where it was held as under:-

> *“10. From a conjoint arid harmonious reading of Rules 5, 9 and 14 of Entitlement Rules (supra) the following guiding principles emerge;*
> *i) 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;*
> *ii) in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;*
> *iii) the disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the Individual's acceptance for military service; and*
> *iv) if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated."*

20. In view of the above, as the respondent was discharged from service on 31.08.2005, that is, while the earlier Entitlement Rules of 1982 were in force, we find that the learned Tribunal rightly extended the benefit of presumption to the respondent, while placing reliance on the decision in ***Dharamvir Singh*** (supra). It has been rightly held that Force personnel shall be presumed to have been in sound physical and mental condition at the time of enrolment, except in cases where any physical disability is noted or recorded at the time of entry into service. Consequently, if such a person is discharged from service on medical grounds, any deterioration in his health is to be presumed as having occurred due to service conditions.

21. The onus of proof, therefore, lies on the Department to establish that the disease in question is neither attributable to nor aggravated by military service. The petitioners have failed to discharge this onus, by

merely stating that the disabilities are constitutional in nature and not giving cogent reasons. In this regard, it is apposite to note the observations of the Supreme Court in ***Union of India v. Manjeet Singh,*** (2015) 12 SCC 275, the relevant portion of which reads as under:

> *" **20.** A conjoint reading of these provisions, unassailably brings to the fore, a statutory presumption that a member of the service governed thereby is presumed to have been in sound medical condition at the entry, except as to the physical disability as recorded at that point of time and that if he is subsequently discharged from service on the ground of disability, any deterioration in his health has to be construed to be attachable to his service. Not only the member in such an eventuality, could not be called upon to prove the conditions of his entitlements, he would instead be entitled to any reasonable doubt with regard thereto.*
>
> *xxx*
>
> ***20.6.** The burden to disprove the correlation of the disability with the Army service has been cast on the authorities by the Regulations, Rules and the General Principles and thus, any inchoate, casual, perfunctory or vague approach of the authorities would tantamount to non-conformance with the letter and spirit thereof, consequently invalidating the decision of denial. Though the causative factors for the disability have to be the rigour of the military conditions, no insensitive and unpragmatic analysis of the relevant facts is envisaged so as to render any of the imperatives in the Regulations, Rules and General Principles otiose or nugatory. To the contrary, a realistic, logical, rational and purposive scrutiny of the*

service and medical profile of the member concerned is peremptory to subserve the true purport and purpose of these provisions.

20.7. *To reiterate, invaliding a member from the service presupposes truncation of his normal service tenure thus adjudging him to be unsuitable therefor. The disability as well has to exceed a particular percentage.* ***The bearing of the Army service as an aggravating factor qua even a dormant and elusive constitutional or genetic disability in all fact situations thus cannot be readily ruled out. Hence the predominant significance of the requirement of the reasons to be recorded by the Medical Board and the recommendations based thereon for boarding out a member from service.*** *As a corollary, in absence of reasons to reinforce the opinion that the disability is not attributable to the Army service or is not aggravated thereby, denial of the benefit of disability pension would be illegal and indefensible."*

(emphasis supplied)

22. In view of the foregoing, we do not find any merit in the present petition. The same is, accordingly, dismissed. The pending application also stands disposed of as being rendered infructuous.

SHALINDER KAUR, J

NAVIN CHAWLA, J

JULY 01, 2025/SK

Click here to check corrigendum, if any