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

Date of decision: 28.11.2024

\+ W.P.(C) 15708/2024 & CM APPL. 65943/2024
UNION OF INDIA & ORS. .....Petitioners

Through: Mr. R. Venkat Prabhat, SPC with Mr. Abhinav M. Goel, Advs.

versus

EX SGT KUNDAN KUMAR (SERVICE NO 746913)
.....Respondent

Through: Ms. Deepika Sheoran, 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 petitioners challenging the Order dated 23.02.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short, "Tribunal") in Original Application (in short, "OA") No.75/2020 titled ***Ex SGT Kundan Kumar (Service No.746913) vs. Union of India & Others,*** whereby, the learned Tribunal has allowed the OA filed by the respondent with the following directions:

> *"11. Therefore, in view of our analysis, the OA is allowed and the respondents are*

directed to grant benefit of disability element of pension @ 40% for life for Somatoform Autonomic Dysfunction; rounded off to 50% in view of judgment of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e. 30.11.2018. The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment."

2. The learned counsel for the petitioners submits that the learned Tribunal has erred in applying the Judgment of the Supreme Court in ***Dharamvir Singh v. Union of India & Ors.*** (2013) 7 SCC 316**,** which had no application to the facts of the present case. He submits that in the present case, the respondent was posted in Mumbai, which is a peace station, and was discovered with the disability of Somatoform Autonomic Dysfunction assessed @40% for life in February, 2017. The petitioner was subjected to the Release Medical Board, where the Board of Doctors opined that the disability suffered by him can neither be stated to be attributed to nor aggravated by the service. He submits that the medical opinion of the Release Medical Board could not have been brushed aside by the learned Tribunal merely on a presumption drawn by it.

3. On the other hand, the learned counsel for the respondent submits that the respondent had been posted in a field posting at least three times during his career. Even at Mumbai, he was performing strenuous duties and therefore, only because the respondent was posted in a peace area, that is, Mumbai, when his disability was discovered, it could not have been a ground for the Release Medical

Board to opine that the disability was not attributed to or aggravated by service conditions.

4. We have considered the submissions made by the learned counsel for the parties.

5. In the present case, the Release Medical Board in its "clinical assessment" has recorded as under:

> *"History:*
> *(a) Location of onset: Mumbai*
> *(b) Date & Time of onset: Feb 2017*
> *(c) Relevant History: - 43 years old serving AF personnel with about 26 years of service Radio Tech by trade came to Psychiatric attention at service hospital after he was referred by his AMA where he had self-reported with inadequate symptomatic relief with medication from civil Neurologist for ongoing symptoms.*
>
> *A detailed evaluation revealed that he was transferred to the current duty station in early 16. His work profile required him to perform duties completely different from his trade duties and were new to him. Although he tried to catch up and learn the new work found himself wanting as was also perceived by others. By May 16, he started experiencing episodes of ghabrahat associated with palpitations, left sided chest pain dizziness, paraesthesias and restlessness at a frequency of one episode every 2-3 days. These episodes were self-resolving and took 2-3 hours to resolve. Although low grade left sided chest pain would continue. He soon started staying preoccupied with his symptoms and possibility of a cardiac cause. This led to him being unable to concentrate on his work and make further mistakes at work and being ticked further. He slowly started having delayed initiation of sleep as would be preoccupied with his symptoms, their possible cardiac*

> *cause. He would feel unfresh during the day and have heaviness of head and be irritable. He would feel low whenever alone and seeked company of others.*
> *Over this period the episodes of ghabrahat worsened with frequency increased to almost one episode every day. He then while on leave in Delhi in Sep 16 seeked treatment from a Neurophysician in civil who diagnosed him with Anxiety Neurosis and counselled him about no cardiac cause being responsible for his symptoms. He started him on Tab Sertraline 25 mg OD and Tab Olanzapine 2.5 mg OD and Etizolam 0.5 mg BD. With the medicines although the irritability and headache resolved completely but he continued to have episodes of ghabrahat and left sided chest pain of lower intensity. He hence reported to his AMA for seeking help at a service hospital to rule out a cardiac cause of his symptoms, leading to his current psychiatric referral. No history of pervasive mood symptoms was present. No history of seeing strange things which others could not see/hearing disembodied voices. No history of thought insertion/withdrawal/broadcast by an external agency. No history of fever/ seizures/ head injury/psychoactive substance abuse."*

6. The only reason why the Release Medical Board still opined that the disability suffered by the respondent was not attributed to or aggravated by service was because the same was discovered when the respondent was posted in a peace station. The clinical assessment made by the Release Medical Board itself was ignored at this stage. A reading of the same clearly shows that the disability had a causal relation to the kind of work that the respondent was made to perform.

7. We, therefore, find no infirmity in the Order passed by the

learned Tribunal.

8. The petition, along with the pending application, is accordingly, dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 28, 2024*/ab/B/VS*

Click here to check corrigendum, if any