



2025:DHC:935-DB



§~22

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 14.02.2025***

+ W.P.(C) 1925/2025

UNION OF INDIA AND ORS

.....Petitioners

Through: Mr.Ashish K. Dixit, CGSC with  
Mr.Shivam Tiwari, Ms.Urmila  
Sharma, Ms.Deepika Kalra and  
Ms.Venni Kakkar, Advs.  
Major Anish Muralidhar, Army.

versus

CAPT ANAMIKA DUTTA RETD

.....Respondent

Through: Mr. Sudhanshu Shekhar Pandey,  
Adv.

**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)****CM APPL. 9039/2025 (Exemption)**

1. Allowed, subject to all just exceptions.

**W.P.(C) 1925/2025 & CM APPL. 9038/2025**

2. This petition has been filed by the petitioners, challenging the Order dated 07.08.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in Original Application 450/2022 titled *Capt Anamika Dutta (Retd) v. Union of India & Ors.*, whereby the learned Tribunal has allowed the Original Application filed by the respondent herein under Section 14 of the Armed Forces Tribunal Act, 2007, with the following direction:

*"16. In view of this notification also, we find that any disability below 20% can be rounded off to 50%. However the arrears shall be restricted to three years prior to the date of*



*filing of this OA in view of the judgement **Tarsem Singh v. Union of India** reported in 2008 (8 SCC 648), within 4 months from the date of receipt of a copy of this order, failing which, the unpaid amount would carry interest @ 8% p.a.”*

3. The learned counsel for the petitioners submits that the learned Tribunal has erred in granting the disability element of pension to the respondent by ignoring the medical opinion of the Release Medical Board, which had opined that the Low Back Ache and Fibro Fasciitis, which the respondent suffered from at the time of her release, was not attributable to or aggravated by service conditions.

4. He submits that, in fact, in the Release Medical Board proceedings, it is specifically recorded that the respondent suffered from lower back ache even before joining the service.

5. The learned counsel for the petitioners further submits that the Release Medical Board had opined that the disability suffered by the respondent due to Low Back Ache and Fibro Fasciitis was only 11-14%. He submits that the learned Tribunal has, therefore, erred in increasing the same to 20% and thereafter broad-banding it to 50%.

6. On the other hand, the learned counsel for the respondent, who appears on advance notice, submits that as far as the contention that the respondent was suffering from lower back ache even prior to joining the service is concerned, the same is not supported by any document, but rather is a self-included insertion in the Release Medical Board proceedings.

7. He submits that the respondent entered the service in the year 1996, and was discharged in the year 2002, and in the previous





required to undergo a rigorous medical assessment, and it is only if the officer is found to be fully fit that the officer is then inducted into service. In terms of the Judgment of the Supreme Court in *Dharamvir Singh* (supra), in case there is no mention of a prior medical condition of the officer at the time of induction, a presumption has to be drawn that the disability suffered was post the induction. The only question thereafter that remains is whether the disability suffered can be said to be attributable to or aggravated by service conditions.

12. In the present case, the learned Tribunal has considered the peculiar facts of the case and has held that the injury suffered by the respondent can safely be said to be attributable to and aggravated by service condition. We may quote from the Impugned Order as under:

*“11. A detailed analysis of the applicant’s documents shows that the applicant was an active shooter and was posted to 3 DOU, Leh, from April 2001 till May 2002. In the year 2002, the applicant was hospitalised owing to Low Back Ache and Fibro Fasciitis which further led to her discharge in the same year. The RMB records of the applicant showcases the disability percentage between 11-14% and marks the onset in the year 2001 at Leh. Since, the disability was not detected at the time of her entry into service and since, the onset was recorded to be at Leh, this would attract the provision of the above mentioned rule thereby, making applicants disability attributable to and aggravated by service and making her entitled to the disability element of pension.”*

13. We have no reason to find fault with the above finding of the learned Tribunal.

14. On the issue of the percentage of disability, the learned Tribunal



has placed reliance on Para 32 of the Guide to Medical Officers, 2002, which records that the assessment of the disability of low backache cannot be less than 20%. The Release Medical Board has acted against its own policy instructions and, therefore, the learned Tribunal has rightly reassessed the percentage of disability of the respondent and enhanced it to 20%. Thereafter, the learned Tribunal relying upon the Judgment of the Supreme Court in *Ram Avtar* (supra), granted the benefit of broad banding of the percentage of disability for purposes of determining the disability pension. We do not find any error in the above findings of the learned Tribunal.

15. We may, however, at this stage, also note the submission of the learned counsel for the petitioners that in terms of the Impugned Order, the respondent would only be entitled to the disability element of pension and not the service element of pension.

16. Though the learned counsel for the respondent has submitted that given the findings of the learned Tribunal, the respondent would now also be entitled to the service element of pension, this is an issue which would require the respondent to make a representation to the Competent Authority of the petitioners, and if still aggrieved, to avail of her remedies in accordance with law. We need not make any comment on the same, but we clarify that the Impugned Order merely grants the disability element of pension in favour of the respondent and has not considered the entitlement of the respondent to the service element of person.

17. With the above observations, the petition along with the pending application is disposed of.

