



2025:DHC:1199-DB



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

Date of decision: 21.02.2025

+ W.P.(C) 2122/2025
JASBIR KAUR

.....Petitioner

Through: Ms.Ananya Roy, Mr.Umesh
Sharma and Mr.Ritesh Kumar
Kaushik, Advs.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr.Piyush Gupta, CGSC with
Mr.Prateek Gupta, Mr.Atishay
Jain, Mr.Sudhanshu Sharma,
Ms.Nidhi Bhati, Mr.Satjeet Gill
and Ms.Kamya Chawla, Advs.
for UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 10036/2025 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 2122/2025 & CM APPL. 10035/2025

2. This petition has been filed by the petitioner, praying for the following reliefs: -

“A. Quash the impugned orders dated 16/5/2024 passed by AFT, PB in OA No. 1303/2022 and issue directions to make necessary calculation as per the provisions of Special Family Pension instead of Ordinary family pension w.e.f. 23.05.2021 by declaring the disability of Petitioner's husband (infested



in year 2014 after 15 years of strenuous mil service) as attributable and further aggravated (during further 7 years of service stressor in LMC) to mil service; and/or

B. To direct respondents to grant benefit of rounding off of Disability element of the deceased soldier @50% as per settled law upheld in the case of Ram Avtar by Hon'ble Supreme Court, considering the fact that disability of PH is presumed to be more than 20% (in worst case any disability less than 20% presumed to be 20%); and/or

C. Direct the respondents to credit amount in lieu of Capitalized value of 50% service pension as consent by her husband prior to discharge in terms of Discharge Roll dt. 20.09.2020 for commutation of 50% portion of service pension as the same was denied due to non-completion of RMB in terms of record letter dt. 04.08.2021 and 07.07.2021 for cap value @50% of pension.

D. Arrears of OFP is to be paid with applicable interest; and/or.”

3. It is the case of the petitioner that the husband of the petitioner had joined the Indian Army on 12.04.1999. At the time of his induction into service and till 2014, the petitioner was not reported to be suffering from Hypertension, which was first discovered only on 07.11.2014. He was subsequently placed in Low Medical Category P3 (Temporary) for six months. However, the Medical Board wrongly observed that the disability was neither attributable to nor aggravated by military service (NANA).

4. The petitioner further contends that in the subsequent Re-categorisation Medical Board proceedings held on 24.04.2015, her husband was downgraded to Low Medical Category P2 (Permanent), with the disability once again being classified as NANA.



5. In the Re-categorisation Medical Board proceedings held on 02.05.2017 as well, the Medical Category of her husband was again maintained as P2 (Permanent), with the observation of NANA.

6. The petitioner alleges that being on leave from 21.04.2019 to 20.05.2019 to attend the cremation of his father-in-law, the husband of the petitioner could not participate in his Re-categorisation Medical Board. On re-joining service, the husband of the petitioner reported for the Re-categorisation Medical Board, however, was wrongly denied the same, stating that there was a delay in reporting which first needed to be condoned by the Competent Authority. The husband of the petitioner immediately applied for the condonation of delay/sanction from the General Officer Commanding, HQ 7 Mountain Division, which was granted only on 26.04.2021. However, the Re-categorisation of Medical Board proceedings could not be conducted due to restrictions related to the COVID-19 pandemic. Ultimately, the husband of the petitioner was finally discharged from service on 30.04.2021 without the Re-categorisation Medical Board/Re-Medical Board proceeding taking place.

7. The husband of the petitioner unfortunately died on 23.05.2021.

8. As the petitioner was granted only an Ordinary Family Pension and not the Special Family Pension, the petitioner filed O.A. No. 1303/2022 before the learned Armed Force Tribunal, Principal Bench, New Delhi (herein referred as the 'learned Tribunal') on 16.05.2024. The same has been dismissed by the Impugned Order dated 16.05.2024.

9. The learned counsel for the petitioner, placing reliance on the



Judgment of the Supreme Court in *Ex. GNR Laxmanram Poonia (Dead) v. Union of India & Ors.*, (2017) 4 SCC 697, submits that the Supreme Court, while reiterating the principles laid down in *Dharamvir Singh v. Union of India and Ors.*, (2013) 7 SCC 316, has held that a disease that has led to an individual's discharge or death will ordinarily be treated to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces. He submits that in the present case, the disability was neither noted at the time of the induction into service, on 12.04.1999, but not even until 2014 by the respondents. Therefore, in accordance with the law settled by the Supreme Court and the Entitlement Rules for Casualty Pensionary Awards, 1982, the disability should have been assessed as attributable to or aggravated by service, thereby entitling the petitioner to the Special Family Pension.

10. On the other hand, the learned counsel for the respondents, who appears on advance notice of this petition, submits that the learned Tribunal, after analysing the regular Re-categorisation Board proceedings which had opined that the disability suffered by the husband of the petitioner could not be said to be attributable to or aggravated by service, has found no merit in the Original Application filed by the petitioner herein. He submits that these Re-categorisation Medical Board proceedings had not been challenged by the husband of the petitioner and, therefore, cannot now be challenged by the petitioner.

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



12. Though the Supreme Court, in *Dharamvir Singh* (supra) and also in *Ex. GNR Laxmanram Poonia (Dead)* (supra), while interpreting the Entitlement Rules for Casualty Pensionary Awards, 1982, has held that ordinarily a disability which is not noted at the time of the induction of an individual into an Armed Force, is to be considered as attributable to or aggravated by service, the same is a rebuttable presumption. The onus of proving the converse is on the respondents.

13. In the present case, the learned Tribunal has noticed that apart from the disability of Primary Hypertension, the husband of the petitioner was also found to be grossly over-weight, with his weight being 80 Kgs as against the ideal weight of 67.5 Kgs, as noticed in the Medical Examination conducted on 07.11.2014. In the subsequent Re-categorisation Medical Board proceedings held on 24.04.2015 and 02.05.2017, instead of improving upon the problem of obesity, there was a further deterioration in the health of the husband of the petitioner, and in the Re-categorisation Medical Board held on 02.05.2017, it was opined that his condition was one of 'Developed Obesity', with the weight of 91 Kgs, that is, being over-weight by 23.5 Kgs, and with a BMI of 30Kg/m^2 . He was again advised to reduce his weight to an acceptable range through exercise.

14. Importantly, all the Re-categorisation Medical Boards' proceedings unanimously opined that his disability of Primary Hypertension and obesity is not attributable to nor aggravated by service. The husband of the petitioner never challenged these findings. In fact, as noted hereinabove, he was discharged from service on



2025:DHC:1199-DB



30.04.2021.

15. Merely because of unforeseen circumstances his Re-categorisation Medical Board proceedings could not take place from 2019 till his date of discharge, in our opinion, it would not make any difference to the above opinion of the Medical Boards which remain unchallenged by the husband of the petitioner. The petitioner, after her husband's death, cannot be permitted to challenge the same.

16. In view of the above, we do not find any merit in the present petition, the same is, accordingly, dismissed.

17. The pending application also stands disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 21, 2025/sg/DG

Click here to check corrigendum, if any