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

Date of decision: 15th October, 2024

\+ W.P.(C) 16127/2023 & CM APPL. 64823/2023-Stay

UNION OF INDIA .....Petitioner

Through: Mr. Ravi Prakash, CGSC with Mr. Yasharth, Ms. Tana Yasin, Mr. Ashu Khandelwal & Ms. Isha Kanth, Advs.
Major Anish Muralidhar.

versus

COL (TS) SHYAMA NAND JHA (RETD.) .....Respondent

Through:

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 under Article 226 of the Constitution of India, challenging the Order dated 12.05.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short, 'AFT') in Original Application (OA) No.280/2019 titled ***Col. (TS) Shyama Nand Jha (Retd.) vs. Union of India & Ors.***, whereby, the learned AFT has applied the ratio of the decision of the Supreme Court in ***Dharamvir Singh v. Union of India & Ors.***, (2013) 7 SCC 316 and held as under:

> *"8……. Admittedly, the applicant was enrolled in December, 1981 and both the disabilities have first started*

after more than 24 years of Army service i.e. in July, 2006. There has not been any note regarding his leading a poor lifestyle etc. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of above judgment and settled law on the point of attributability/aggravation, the disabilities of the applicant should be held attributable to/aggravated by the military service.

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11. In the light of the law already laid down with regard to the attributability/ aggravation, we find that the RMB has denied the attributability/ aggravation of the disabilities on the ground that the diseases occurred in peace station. However, taking note of the facts and circumstances of the case, we are of the view that this reasoning given by the RMB for denying disability element of disability pension to the applicant is not convincing. The Tribunal has consistently taken a view that the armed forces personnel go through the pressure of rigorous military training and associated stress and strain of the service and holding the disability in question as only metabolic disorder without giving any specific grounds for the opinion may not be acceptable. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of above judgment and settled law on the point of attributability/aggravation, the disability of the applicant should be held attributable to/aggravated by the military service."

Submissions of the learned counsel for the petitioner

2. The learned counsel for the petitioner has drawn our reference to the Order dated 24.10.2018 passed by the Additional Directorate General of Manpower (Policy & Planning), to submit that the learned AFT has failed to appreciate that in the said order detailed analysis was done by the Competent Authority on the disability suffered by the respondent and as to why it cannot be said to be attributed to or

aggravated by the conditions of service. He submits that, therefore, the presumption which the learned AFT has drawn was incorrect and in fact, bad in law and, therefore, the Impugned Order is liable to be set aside.

Submissions of the learned counsel for the respondent

3. On the other hand, the learned counsel for the respondent has drawn our attention to the opinion of the Medical Board, wherein, not only there is an overwriting/change of the opinion on whether the disability can be said to have been aggravated by the service or as one not connected with the service, but also had an observation that the petitioner was detected with the disease only in July, 2006 during his peace tenure, and that the respondent had been serving in the peace area since 1993.

4. The learned counsel for the respondent, drawing our reference to the service profile/placement of the respondent, submits that the respondent had been posted at the Siachen Glacier from 05.07.1997 to 01.09.1998, therefore, the reasoning of the Medical Board is wrong. He further submits that in the paragraph 5 (iii) of the Medical Board Proceedings dated 21.07.2008, it had further been admitted and observed that the duties with which the respondent was charged, involved severe/exceptional stress and strain. He submits that even the Appellate Order on which reliance has been placed by the petitioner has ignored this vital findings.

Analysis and findings

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

6. As is evident from the Medical Board Proceedings itself, the premise that the respondent was posted in a peace area from 1993 is factually incorrect. The Medical Board Proceedings further acknowledged that the posting of the respondent involved severe/exceptional stress and strain. The Order dated 24.10.2018, on which reliance has been placed by the learned counsel for the petitioner, has premised its findings on the fact that when the disability was first noticed, the respondent was not working in the field. In our view, this itself cannot be a sufficient ground for holding that the disability suffered by the respondent cannot be attributed to or said to have been aggravated by conditions of service. The learned AFT has given cogent reasons for disagreeing with the opinion of the Medical Board and for granting the relief to the respondent.

7. In view of the above, we do not see any ground to interfere with the findings of the learned AFT in exercise of our powers under Article 226 of the Constitution of India.

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

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 15, 2024/ab/KM/***VS***

Click here to check corrigendum, if any