Union Of India & Ors. vs Wo Binod Kumar Sah (Retd) on 1 April, 2025

Author: C. Hari Shankar

Bench: C. Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
\+ W.P.(C) 3918/2025, CM APPL. 18166/2025 & CM APPL. 18167/2025

UNION OF INDIA & ORS. .....Petitio
Through: Mr. Jivesh Kr. Tiwari, CGSC.

versus

WO BINOD KUMAR SAH (RETD) .....Respond
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL
JUDGMENT (ORAL)

% 01.04.2025

C. HARI SHANKAR, J.

1. The respondent joined the Indian Air Force1 on 19 August 1985 as Instrument Fitter. 22 years after he had joined service, he was diagnosed, in March 2007, as suffering from primary hypertension. He was, therefore, placed in Low Medical Category A4 G2(P). He was released from Air Force Service on 25 January 2021, and superannuated on 31 October 2021, after serving the IAF for over 36 years.

2. The Release Medical Board2, which assessed the respondent on 25 January 2021, found him to be suffering from 30% disability for 1 "IAF" hereinafter 2 "RMB" hereinafter life, but opined that the disability (primary hypertension) was not attributable to military service. The following features of the report of the RMB are significant:

> (i) In the Personal Statement provided by the officer, which is not doubted or disputed by the respondent, he has specifically stated that he did not suffer from any disability before joining the armed forces.
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> (ii) In the statement of the Commanding Officer, contained in Part-III of the RMB

> Report, it is acknowledged that the respondent was in low medical category only for 13 years prior to the report. No doubt, the statement also states that the duties undertaken by the respondent did not involve severe/exceptional stress or strain.
>
> (iii) Thus, it is an undisputed position that, at the time when the respondent joined the IAF, he was not suffering from hypertension. It is also undisputed that the ailment was detected, in the case of the respondent, 22 years after he had joined military service.
>
> (iv) The reason for opining that the primary hypertension, from which the respondent was found to be suffering, was not attributable to military service, as entered by the RMB in its Report, read thus:
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> "A lifestyle related disorder, onset in peace area (Bangalore), no delay in diagnosis and treatment, no close time association with stress and strain of military service in filed/HAA/CI Ops hence conceded neither attributable nor aggravated by service as per Para 43 of chapter VI of GMO 2008. (Mil Pension)"

Para 43 of Chapter VI of the GMO 2008, to which the aforesaid RMB refers, reads as under:

> "43. Hypertension. The first consideration should be to determine whether the hypertension is primary or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (e.g. Nephritis), and it is unnecessary to notify hypertension separately.
>
> As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas prolonged afloat service."

(Emphasis supplied)

3. After superannuation, the respondent claimed disability pension. His claim was rejected by the IAF, on the ground that his disability was not attributable to, or aggravated by, military service.

4. Aggrieved, the respondent approached the Armed Forces Tribunal3 by way of OA 1982/2022, which stands allowed by the AFT vide order dated 12 May 2023.

3 "AFT" hereinafter

5. The IAF, through the Union of India, challenges the decision of the AFT before us, by means of the present writ petition.

6. Mr. Jivesh Kumar Tiwari, learned Central Government Standing Counsel, submits that the AFT erred in allowing the respondent's claim, in the teeth of the findings of the RMB.

7. A similar dispute stands decided by us in UOI v EX Sub Gawas Anil Madso4.

8. We have, in the said decision, examined practically the entire existing body of case law on the subject, and do not intend to burden this order by redoing the exercise. Mr. Tiwari has invited our attention to the report of the RMB, apropos the aspect of attributability of the ailment from which the respondent was suffering to the military service being undergone by him. Some major takeaways from the said decision are, however, the following:

> (i) If a disease or ailment was not present at the time of entry of the claimant in military service, it is presumed to be attributable to military service. The longer the military service undergone before the onset of the ailment, the stronger the presumption.
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> (ii) There are certain diseases which, under the applicable 4 2025 SCC OnLine Del 2018 guidelines, are identified as diseases which cannot ordinarily be detected by the tests conducted at the time of induction of the claimant into military service, such as neurological disorders, HIV, asthma with periodic episodes, etc. In such cases, the presumption of attributability under (i) above would not apply.

(iii) Save and except in cases where the claimant prefers his claim for disability pension 15 years, or more, after his discharge or retirement from service, the initial onus to establish that the disease was not attributable to military service is on the military establishment, and not on the claimant. Rule 75 of the 2008 Entitlement Rules, which apply, and on which Mr. Tiwari places reliance, itself says so.

(iv) The RMB has to give clear and cogent reasons for its decision. Judgments of the Supreme Court, referred in Gawas Anil Madso, have clearly delineated the manner in which the RMB is to examine the case, and frame its opinion. There can be no compromise on that score.

9. In the present case, despite the fact that the respondent was not suffering from hypertension at the time of his induction in the Air Force, and the onset of the ailment was 22 years thereafter, the RMB has opined that his ailment was not attributable to military service.

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would be on the claimant.

10. A reading of the justification contained in the afore-extracted report of the RMB denotes that it merely states that

(i) hypertension is a lifestyle related disorder,

(ii) the onset of hypertension, in the case of the respondent, was while he was working in a peace area,

(iii) there was no delay in diagnosis or treatment and

(iv) there was no close time association which stress and strain of military service in Field/HAA6/CIOPS7.

The RMB appears to be of the opinion that these cumulative factors are sufficient for the hypertension, from which the respondent was suffering, to be regarded as not attributable to military service. Additionally, the RMB Report refers para 43 of Chapter VI of the GMO 2008, which we have already extracted supra.

11. Para 43 of Chapter VI of the GMO 2008 is mechanically cited by the RMB in nearly all reports dealing with claimants to disability pension on the ground of hypertension. There appears to be some misunderstanding, in understanding the provisions of the GMO 2008 inasmuch as they deal with individual ailments, and we deem it appropriate to clarify the position, as we see it.

12. Para 43 of the Chapter VI of the GMO 20088, vivisected into its individual components, specifies that, while dealing with hypertension, 6 High Altitude Area 7 Counter Intelligence Operations 8 Refer para 2(iv) supra

(i) the RMB is required to determine whether the hypertension is primary or secondary,

(ii) if the hypertension is secondary, entitlement consideration should be directed to the underlying disease process,

(iii) where disablement for essential hypertension appears to have arisen to, or become worse in, service, it has to be considered whether service compulsion caused aggravation,

(iv) in cases where the disease has been reported after long and frequent spells of service in Field/HAA/Active Operational Areas, the case could be explained by variable response exhibited by different individuals to stressful situations and

(v) primary hypertension would be considered aggravated if it occurred while the officer was serving in field areas, HAA, CIOPS areas or prolonged afloat service.

13. The mere fact that para 43 states that, in the case of an officer who was serving in field areas, HAA, CIOPS or was on prolonged afloat service when hypertension was first detected, there would

be a presumption that the hypertension was attributable to, or aggravated by, military service, does not imply, as a sequitur, that, in all other cases, the presumption would be otherwise. The contrapositive cannot be implied.

14. If an officer has undergone military service for 22 years before he was found suffering from hypertension, there can, in our reckoning, be no manner of doubt that an onerous duty would be cast on the RMB to establish that the hypertension was not attributable to, or aggravated by, military service. This would have to be established by cogent material, after garnering all requisite evidence. The Supreme Court has already laid down the nature of the exercise which has to be undertaken by the RMB in such cases.

15. In the present case, the reasoning given by the RMB for holding that the hypertension from which the respondent suffers was not attributable to military service does not, in our opinion, meet these standards.

16. All that is said is that hypertension is a lifestyle related disorder and that in the respondent's case the onset was while the respondent was posted in a peace area.

17. We have already held, in Gawas Anil Madso, that all disorders which can arise owing to lifestyle issues are not, for that reason alone, presumed not to be attributable to the military service undergone by the cadet. If the lifestyle of the cadet during military service was the cause of the ailment, the RMB report has specifically to say so, identifying the exacerbating causes in the claimant's lifestyle.

18. The emphasis, that we find in various RMB reports, on the fact that the onset of the ailment, for which the claimant claims disability pension, was during his posting in a peace area, appears to us to be misguided. The entitlement to disability pension is only dependent on the ailment, or disability, being attributable to, or aggravated by, military service. There is no further requirement that the military service must have been rendered in a disturbed area, or in an atmosphere where the candidate is subjected to stress or tension. We are in agreement with the AFT that military service, even by its very nature, entails a certain degree of stress and strain, both physical and mental. There can be no universal presumption that hypertension is attributable to military service only if its onset is while the candidate is posted in an area where he is under stress or pressure.

19. Beyond this, the RMB report only says that there was no delay in diagnosis or treatment and that there was no close time association with stress and strain of military service in Field/HAA or CIOPS activities.

20. No sufficient reason can be said to have been adduced, by the RMB, for its opinion that the hypertension from which the respondent was suffering was not attributable to military pension. It merits reiteration that the onset of the ailment was 22 years after the respondent joined the IAF.

21. Given the law in that regard, we are of the opinion that no exception can be taken to the decision of the Tribunal to grant disability pension to the respondent.

22. Accordingly, the order of the Tribunal is upheld. Compliance with the impugned judgment of the AFT be ensured within a period of four weeks.

23. The writ petition is dismissed in limine.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 1, 2025 ar Click here to check corrigendum, if any