Union Of India And Ors. vs Sgt Parmendra Kumar Singh (Retd) on 7 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) 4359/2025 and CM APPL.20134/2025 20135/2025

UNION OF INDIA AND ORS. .....Petit
Through: Ms. Ekta Choudhary, SPC wi
Mr. Anand Krishna, Mr. Ayush Kumar
Ms. Rushali Sikand, Advocates with
Sharvan Singh and Sgt. Manish Kumar
Singh

versus

SGT PARMENDRA KUMAR SINGH
(RETD) .....Respondent
Through: Mr. M.K. Gupta, Advocate

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 07.04.2025

C. HARI SHANKAR, J.

1. The UOI is in writ before us against order dated 28 July 2023 passed by the learned Armed Forces Tribunal1 in OA 240/2020 whereby the Tribunal has allowed the respondent's claim to disability pension.

1 "the Tribunal", hereinafter

2. We have recently had an occasion to examine the legal position in this regard and have, in our judgment, in UOI v Ex Sub Gawas Anil Madso2 scanned through the existing law and culled out the principles that apply.

3. It is clear, from a perusal of the applicable judgments on the point, that the entitlement of the officer to disability pension has essentially to be decided on the basis of two considerations. The first is that whether the officer was suffering from the concerned disability or ailment at the time when he was inducted into military service. In the event that he was not, the second question that arises for consideration is as to whether the military service was attributable to the ailment or aggravated the ailment.

4. In that regard, the judgment of the Supreme Court to which reference is contained in our decision in Ex Sub Gawas Anil Madso accord pre-eminence to the decision of the Release Medical Board3. The Supreme Court has also set out the manner in which the RMB is to approach the problem and has also advised that the report of the RMB should sufficiently detail and should clearly set out, why according to RMB, the disease is not attributable to or aggravated by military service. This would be all the more so, where the onset of disease is several years after the officer has joined the military service.

5. We have also noted that in Rule 7 of the 2008 Entitlement 2 2025 SCC Online Del 2018 3 "RMB", hereinafter Guidelines, which presently apply, the officer is not required to discharge the initial onus to show that the ailment is attributable to military service except where the claim is made more than 15 years after the officer is discharged or retired on that ground. In all other cases, the onus would be on the Military Establishment to prove otherwise.

6. In the present case, the respondent joined military service on 4 February 1999. He was found to be suffering from Open Angle Glaucoma on 15 October 2018, i.e. 18 years after he had joined the military service. In the personal statement of the officer, which was part of the RMB proceedings, he has specifically stated that he was not suffering from the ailment at the time when he joined service. This fact is also vouchsafed by the entries made in the RMB, later in the point of time by his superior officers. There is, therefore, no dispute about the fact that at the time when the respondent joined military service, he was not suffering from Glaucoma of any kind.

7. It would, therefore, be on the RMB to prove positively that the Glaucoma, detected later, was not attributable to military service. We have, for this purpose, seen the reasons provided by the RMB, in its report, which reads thus:

> "Open angle glaucoma is the most common form of glaucoma. It is caused by slow clogging of the drainage canals, resulting in increased eye pressure, has wide open angle between iris and cornea. The disability is unaffected by conditions of service, hence NANA vide (Refer para 35 of Cha. VI of GMO (Mil. Pen) 2008."

8. We have also seen para 35 of Chapter VI of GMO (Mil. Pen) 20084 to which the opinion of the RMB refers, which reads thus :

> "35. Glaucoma.

> (a) Primary and Idiopathic: which may be either acute or chronic. Its onset is generally speaking unaffected by service conditions; but exceptionally, an acute attack may be brought on by worry, fatigue, or illness and, if any of these were considered to be the result of service, aggravation might have to be conceded.

The onset may be insidious and it may reveal its presence for the first time as an acutely painful eye, but in the absence of evidence of undue mental or physical stress occasioned by war service, it can not be considered that this disease is attributable to or has been aggravated by service factors.

(b) Secondary Glaucoma: This may be due to a service trauma and would be attributable. It may be caused be iritis and intra-ocular haemorrhage, and entitlement would, therefore, have to be considered in relation to the underlying cause. It may also be the result of an intra-ocular tumour.

In general terms it may be said that, in the great majority of cases there is a disturbance of the intra-ocular circulation to which is frequently added an obstruction to the circulation of the intra-ocular fluids. The factor common to all cases is the increase of intra-ocular pressure. In such cases, therefore, the primary condition which is responsible, for these changes or sequelae must be considered in relation to entitlement and not the glaucoma per se."

9. On a juxtaposed reading of the opinion of the RMB with para 35, it is clear that the finding that Glaucoma is not affected by service 4 "Para 35" hereinafter conditions, is incorrect. Para 35 itself envisages that an acute attack of Glaucoma being possible in the case of worry, fatigue or illness as also the possibility that it could be aggravated by military service. The instruction goes on to say that in the absence of evidence of undue mental or physical stress occasioned by war service, it cannot be considered that the disease is attributable to or has been aggravated by service factors. There is no opinion by the RMB to the effect that there is no evidence of any undue mental or physical stress, as the cause of the Glaucoma, from which the respondent was suffering.

10. No doubt such a finding has been entered by the Appellate Medical Board, whom the respondent approached in appeal. However, the Appellate Medical Board cannot be wiser than the RMB. The report of the RMB is to be accorded predominance and, in the absence of any of the factors which find place in Para 35 being mentioned in the opinion of the RMB, we are of the view that the RMB report did not make out a case of non attributability of the Glaucoma from which the respondent was suffering to the military service undergone by him. This is all the more so, as the respondent had undergone 18 years of military service, before the Glaucoma was detected.

11. We are not exercising appellate jurisdiction over the decision of the Tribunal. The Tribunal has taken a conscious decision to grant disability pension to the respondent. We exercise certiorari jurisdiction. Even if, another view is possible, that would not be a ground for us to interfere. Within the limits of the certiorari jurisdiction, we are of the opinion that no case is made out to interfere with the judgment of the Tribunal.

12. The judgment of the Tribunal is accordingly affirmed in its entirety. The writ petition is, accordingly, dismissed in limine.

13. Compliance with the order of the Tribunal, if not already made, be ensured within a period of four weeks from today.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 7, 2025/yg Click here to check corrigendum, if any