

# Union Of India And Ors. vs Jwo Dusyant Kumar Sharma on 4 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) 4286/2025 & CM APPL. 19805/2025, 19806/2025

UNION OF INDIA AND ORS.

.....Petitioners

Through: Ms. Niyati Sharma, SPC with

Mr. Saurabh Kumar Kaushik, Ms. T

Imlinaro Jamir and Mr. Hardik Malik, Adv.

versus

JWO DUSYANT KUMAR SHARMA

.....Respondent

Through: Mr. Ravi Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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04.04.2025

C. HARI SHANKAR, J.

1. This writ petition assails the order dated 24 April 2023 passed by the Armed Forces Tribunal<sup>1</sup> whereby OA 855/2022, filed by the respondent, has been allowed. The AFT has held the respondent to be entitled to disability pension.

2. Aggrieved thereby, the UOI has approached this Court by means of the present writ petition.

3. We find that the case is fully covered by the judgment rendered by us in UOI v Ex Sub Gawas Anil Madso<sup>2</sup>.

1 "the AFT", hereinafter 2 2025 SCC Online Del 2018

4. We have, in the said petition, after considering the law that is developed in this regard over the years, held that the primordial consideration which has to be borne in mind in such cases is whether, at the time of entry into military service, the concerned officer was suffering from the ailment which was detected later. If the onset of the ailment was during military service, then, unless there are clear and categorical reasons adduced by the Release Medical Board<sup>3</sup>, explaining as

to why the ailment is not to be treated as attributable to military service, the presumption would lie in favour of the officer.

5. We have also noted that, under Rule 7 of the 2008 Guidelines which are presently holding the field, the officer is not required to establish that the ailment is attributable to military service and the onus in that regard lies with the establishment.

6. It is only where the claim is made more than 15 years after the officer has retired or discharged from service that the initial onus would be on the officer.

7. In the present case, the claim of the officer has not been made beyond 15 years of his retirement from service.

8. The respondent was found to be suffering from primary hypertension, 13 years after he joined service. He was certified as suffering from 30% disability for life.

3 "RMB", hereinafter

9. The claim of the respondent for disability pension was placed before the RMB. In the personal declaration filed by the respondent before the RMB, he specifically stated that he was not suffering from the ailment before he joined military service. This declaration has not been questioned by the petitioners either before the AFT or before this Court.

10. The reasoning which has been adopted by the petitioners for rejecting the respondent's claim and holding that the hypertension from which he suffered was not attributable to military service reads thus:

"1. After due examination of your case in consultation with the competent medical authority and/or in accordance with relevant rules and the existing medical/administrative provisions, it has been decided by the competent authority that you are not entitled to Disability Pension, in terms of Regulation 153 of Pension Regulations for the IAF 1961, Part-I, since the following disabilities, as recorded in Release Medical Board proceedings, have been found to be neither attributable to nor aggravated by Military Services.

- i. Primary Hypothyroidism
- ii. Primary Hypertension."

11. We make it clear that the mere fact that the officer is at a peace posting at the time of onset of the disease or ailment, would not indicate that the ailment was not attributable to military service. In such cases, too, it would be for the RMB to examine the matter in all its perspectives and to give cogent reasons as to why the disease is not to be treated as attributable to military service.

12. This would be all the more so in a case such as the present where the first stage at which the hypertension was detected was 13 years after the respondent had joined service.

13. In view of the aforesaid, we find that the case is fully covered by the judgment passed by us in *Gawas Anil Madso*.

14. No case is made for interference with the judgment of the AFT which is affirmed in its entirety.

15. The writ petition is, accordingly, dismissed.

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

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 4, 2025 dsn [Click here to check corrigendum](#), if any