$~66

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

\+ W.P.(C) 1855/2023

ASHVINI KUMAR SHARMA .....Petitioner

Through: Mr. J Sai Deepak, Sr. Adv. with Mr. Ankur Vyas, Ms. Garima Joshi, Advs.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Sushil Kumar Pandey, SPC with Mr. Ribhav Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 11.09.2025

C. HARI SHANKAR, J.

1. On 10 September 2024, a Coordinate Division Bench of this Court recorded as under:

> "1. By way of the present petition under Article 226 of the Constitution of India, the petitioner, who has superannuated from the Border Security Force (BSF) as a Deputy Inspector General (DIG), has approached this Court assailing the order dated 13.12.2022 passed by respondent no. 2 rejecting his claim for disability compensation, in lieu of disability pension for the disability from which he is suffering on account of the injury suffered by him in an IED blast in Jammu and Kashmir on 23.04.2001.
>
> 2. Learned counsel for the petitioner submits that the petitioner's claim has been erroneously rejected by the respondents

under Rule 6 of the Central Civil Services (Extraordinary Pension) Rules, 1939 ("Rules"), without appreciating the fact that despite the disability from which the petitioner has been suffering on account of the injury suffered by him in April, 2001, he was retained in service and was, therefore, entitled to receive disability compensation at the time of his discharge from service, for which purpose he relies on Rule 9(4) of the Rules. He contends that the respondents are opposing the petitioner's claim not only on the ground of the same being barred under Rule 6 but have also taken a plea that there is no record at this stage to show that the injury suffered by the petitioner in 2001, was the cause of his disability.

3. Having perused the proceedings of the Medical Board held on 03.07.2017, we find absolutely no merit in the respondents' aforesaid plea as we find that the Medical Board clearly records that the injury suffered by the petitioner in 2001 was the cause of his present disability. We have, therefore, put to learned counsel for the respondents as to why the petitioner's claim ought not to be allowed under Rule 9(4).

4. When faced with this query, he prays for time to obtain instructions as to why the petitioner's claim would not be covered under Rule 9(4).

5. List on 25.09.2024."

2. The hearing today has taken place in terms of the aforesaid order dated 10 September 2024, passed by the Division Bench of this Court.

3. Mr. J. Sai Deepak, learned Senior Counsel for the petitioner, has drawn our attention to the Medical Board proceedings dated 26 May 2017, which had been seen by the Division Bench on 10 September 2024. We deem it appropriate to reproduce the record of the proceedings, thus:

"01 <u>Findings by the board in brief (if different from the finding mentioned in Part-I):</u>

(As per documents attached, *Officer sustained injury on 23.04.2001 due to IED blast but no placed under LMC till 08.11.2016* and appeared before disability /re-categorization board on 26.05.2017.)

02 Opinion of the board:

The board having examined IRLA NO. 18632231 Shri Ashvini Kumar Sharma DIG/PSO (IRLA NO, Name, Rank) of Ftr IIQ Rajasthan (Unit/IIQ) arc of the opinion that he is suffering from "Effects of I.E.D[1] blast injury resulting in Mild to Moderate Bilateral Hearing Loss" and is considered unfit to remain in medical category SHAPE-I

03	Was the disability contracted in service? Yes	04.	Was it contracted in circumstances over which he had no control? Yes
05	Is it directly attributable to conditions of service? Yes	06	If so, by what specific conditions? Officer sustained multiple splinter injuries in I.E.D at Bandipur (J&K) on 23.04.2001 (copy of COI enclosed)
07	If not directly attributable to service, was it aggravated by thereby and if so, by what specific Conditions? N/A	08	Medical category recommended S1II3(P)A1P1E1
09	Percentage of disability 42% (Forty two percent)	10	Period for which above medical category is recommended Permanent
11	Further treatment /investigations recommended	12	Next Board due on 25.05.2019

[1] Improvised Explosive Device

	As advised by ENT specialist		
13	Employability restrictions: No limitation in physical capacity and fit for duties in peace or field areas including duties during I.S duty and war anywhere except as under:- a) Not fit for patrol, scout, and laying ambush in noisy surrounding b) Not fit for duties which demand keen hearing acuity of both cars.		

4. Thus, it is clear that even on 26 May 2017, the petitioner had been found to be suffering from Mild to Moderate Bilateral Hearing Loss, which was attributable to the IED blast injury borne by him on 23 April 2001. The words employed in para 1 of the medical board proceedings are clear and speak eloquently for themselves. The medical board clearly holds that, though the petitioner had sustained injury on 23 April 2001 owing to the IED blast, he was not placed in LMC[2] for 15 years till 8 November 2016, after which he appeared before the disability/recategorization Medical Board on 26 May 2017.

5. This position is underscored in Suitability Certificate dated 27 September 2017, issued by the Commandant (Pers) DG BSF, which reads thus:

"SUITABILITY CERTIFICATE

It is certified that Shri Ashvini Kumar Sharma, DIG, IRLA-18632231, DIG/PSO, Ftr HQ Raj, who was placed under Low Medical Category S1H3(P)A1P1E1 wef 26/05/2017 *being a case of Effects of IED blast injury resulting in Mild to Moderate Bilateral Hearing Loss and awarded 42% disability*, can be suitably employed in consistence to the Medical Category.

[2] Low Medical Category

2. This has the approval of the DG BSF."

(Emphasis supplied)

6. In the face of the order dated 10 September 2024 and the afore-extracted documents, it can clearly not lie in the mouth of the respondents to contend that the petitioner had not suffered any injury in 2001, or that he was not suffering any disability thereafter till as late as in 2016, or that the disability from which he was not suffering was not attributable to the injury borne in 2001.

7. Faced with this position, Mr. Sushil Kumar Pandey, learned SPC appearing for the UOI, on instructions, advances the astonishing submission that the petitioner had continued to be retained in employment from 2001 to 2016 after his having been examined every year and found fit.

8. To a query from the Court as to how such a submission could be made in the face of the medical board report of 26 May 2017 and the suitability certificate dated 27 September 2017, his response is that perhaps the respondents might not have come to know of the petitioner's disability from 2001 to 2017.

9. The less said about such a submission, the better.

10. Mr. Pandey has additionally sought to rely on para 3 of the counter-affidavit filed by way of response to the present writ petition which reads as under:

> "That the deponent states that the petitioner had undergone Annual Medical Examination every year after the unfortunate incident (from 2001 to 2015 and his medical category remained in SHAPE-I till the year 2016. The deponent further states that the petitioner had never disclosed any medical problems difficulty or injuries before the AME Board through self-declaration form as per chapter-2 of BSF Manual- IX of Medical Directorate Para 4.1. The Copy of Chapter -2, BSF Manual- IX of Medical Directorate Para 4.1 is annexed herein as **ANNEXURE R-I."**

11. The assertion in para 3 is obviously incorrect. Mr. Sai Deepak has pointed out that, after having suffered the injury in 2001, the petitioner was taken by the respondents to the Sector Hospital Bandipore for initial treatment after which he was shifted to the BSF Kashmir Frontier Hospital in Srinagar and finally referred, through proper channel to AIIMS. AIIMS detected him as suffering from bilateral moderate mixed hearing loss on 9 May 2001.

12. Thereafter, the ENT specialist in AIIMS opined, on 14 November 2003, that the petitioner should avoid water or humidity, in view of the injury suffered to his ear. The petitioner's battalion was nonetheless shifted to Tripura, which was a State with high humidity. The petitioner, in these circumstances, addressed communications to the DG BSF on 25 November 2005, 5 September 2006, 4 June 2007 and 5 December 2007, pointing out his condition and requesting, therefore, that he be posted in an area which was less humid.

13. We deem it appropriate to reproduce these representations *in extenso*, thus:

Letter dated 25 Nov 2005

"No. AKS/Pers/87 /2005
HQrs 87 Battalion, BSF
Raninagar
PO & Distt –
Jalpaiguri (WB)

Dated, the 25th Nov 2005

To

The Director General
Border Security Force
Force Headquarters, New Delhi

(Through proper channel)

Sir,

I suffered multiple splinter injuries and bilateral Tympanic Perforation due to an IED blast in April 2001 while posted in 20 Bn BSF at Bandipur as 2IC and Offg Commandant.

2. I remained under treatment at AIIMS for a long period and perforation healed completely. In the end of Oct 2003 ENT Specialist of AIIMS who treated me advised to avoid water/ humidity in the ear as my ears are prone to OTITIS EXTERNA & CSOM (Cronic Supperotive Otitis Media).

3. At present I am Commanding 87 Bn BSF at Raninagar under SHQ BSF Jalpaiguri, Ftr North Bengal since Feb 2002 and my unit is moving to Tripura in Dec 2005 as per move plan of units.

4. Tripura, where it rains for more than six months in a year and humidity is more, which may damage my ears. It is therefore requested to kindly consider my posting to any place having lesser humidity or Delhi where I could care for my ears recovered after damage due to IED blast.

Encl: Photocopies of treatment with remarks of ENT Specialist of AIIMS.

Yours faithfully,

(A K SHARMA)
Commandant
87 Battalion, BSF"

Letter dated 5 September 2006

"No. Pers/ AKS/ 87 /06/
87 Battalion BSF
Rokhin, Tripura (West)

Dated the 05 Sep 2006

To

The Director General
Border Security Force
(Through proper channel)

Sub: TRANSFER/POSTING ON MEDICAL GROUND

Sir,

I submitted an application for consideration of my posting to any place having lesser humidity or Delhi due to medical compulsion as per advise of specialist of AIIMS. My application no. AKS/Pers/87/2005 dated 25th Nov 2005 duly recommended by IG BSF North Bengal was forwarded lo FHQ BSF vide HQrs NB Ftr letter no. ESTT-III (28)/NBF/2005/9949-53 dated 06 Dec 2005 (Copies enclosed). Thereafter my unit 87 BN BSF moved in to Tripura Frontier in Dec 2005 during changeover of Units and I also came to Tripura along with the unit. I remained under treatment at AIIMS New Delhi for injuries suffered due to an IED blast in April 2001 while Commanding 20 Bn BSF at Bandipur (J&K) on officiating basis.

2. Vide FTR HQ BSF Tripura signal No. A/4458 dated 27th July 2006 with reference to FHQ Pers Dte SVG No. 9/21 /2003-PERS/BSF/31388-402 dated 14 July 2006, it has been communicated to me that "REPRESENTATION REGARDING CHOICE POSTING" in respect of six Commandants and two Second-in-Commands including my case have been considered during annual posting/transfer but could not be acceded to.

3. I would therefore like to humbly apprise your good self that I did not ask for choice posting to be considered during annual transfer/posting. I only requested for posting to a place with lesser humidity or Delhi due to medical compulsion.

4. I would also like to apprise the fact that I have Commanded two battalions on officiating basis in Kashmir for about two years at a stretch i.e. firstly 26 Battalion BSF at Khaniyar, SGR from

July 99 to June 2000 and thereafter 20 BN BSF in continuity from June 2000 to April 2001 i.e. till proceeding for treatment after IED blast in May 2001. Now also I have completed my command tenure of more than four and half years in 87 BN BSF from Feb 2002.

5. I therefore request your good self to kindly re-consider my case for posting to an area with lesser humidity/dry climate in static formation/Headquarter.

A K SHARMA)
Commandant
87 Bn BSF"

Letter dated 4 June 2007

"No. AKS/Pers/87/07/
87 Battalion. BSF,
Gas Thermal Power Project,
Rokhia, Tripura (W)

Dated, the 04 Jun 2007

To

The Director General,
Border Security Force,
New Delhi
(Through Proper Channel)

Sub:- INTERVIEW OF DG BSF

Sir,

It is submitted that I had requested for consideration of my posting to any place having lesser humidity or Delhi due to medical compulsion as per advise of specialist of AIIMS where I had undergone treatment of injury in ears due to IED blast on 21.04.2001 while commanding 20 Bn BSF (copy of application No. AKS/Pers/87/2005 dated 25th Nov, 2005 forwarded to FHQ vide HQrs BSF NB Ftr letter No. Estt-111/(28)/NBF/2005/9 949-53 dated 6th Dec, 2005 enclosed). FHQ (Pers Dte) disposed off *my* application with remarks – representation regarding choice posting in respect of Six Commandants and two Second in- Commands (including my case) have been considered during annual posting/ transfer but could not be acceded to" as communicated by Ftr HQ BSF Tripura Signal No. A/4458 dated 27th July, 2006 in reference to FHQ (Pers Dte) savingram No.9/21/2003-Pers/BSF/31388-402

dated 14th Jul, 2006 (Copy of Tripura Ftr Signal No. A/4458 enclosed).

2. On this I once again apprised your good self vide my application No.Per/AKS/87/06 dated 5th Sept, 2006 (copy enclosed) that I did not ask for choice posting to be considered during annual posting/transfer but I only requested for posting to a place with lesser humidity or Delhi due to medical compulsion.

3. Pers Dte, FHQ vide savingram No. 11/3981/86-Pers/BSF/55927 *dated* 6th Oct, 2006 intimated that "(.) case for posting of Shri Ashvini Kumar Sharma, Comdt 87 Bn BSF to a place with lesser humidity or Delhi examined in detail(.) As desired by the competent authority, his case will be considered during annual posting transfer-2007 (.) Inform officer accordingly (.)" The same was conveyed to me by Ftr HQ BSF Tripura vide savingram No.iga/Estt/03-GO/2006/30605 dated 16th Oct, 2006 (copy enclosed).

4. Despite assurance by FHQ vide Savingram No. 11/3981/ 86-pers/BSF/55927 dated 6th Oct 2006 for considering my case during annual posting/transfer 2007, my name did not figure in the list of annual posting / transfer of Commandants 2007.

5. Sir, I wish to apprise following facts for your kind perusal and consideration please:-

(a) After coming to Tripura Frontier in Dec 2005, I am having frequent problem in my ears. Even perforation occurred in my left ear twice and Tempanic Membrane (TM) has been thinned out and retracted as per report of the ENT specialist of IGM Hospital, Agartala (Nov 06), J L N Medical College and Hospital, Ajmer (Dec 06) and Tripura Medical College and Dr B R Ambedkar Hospital, Agartala (June 07)

(b) All the ENT specialists have categorically mentioned that this problem is recurring because of humid climatic conditions of North Eastern region.

(c) I have never requested for posting to any place in my entire service except this time on medical grounds.

(d) Earlier also I have served in North East for complete two years at Tura in 124 Bn BSF under AMM&N Ftr.

(e) I have never served in Rajasthan & Gujrat Ftrs after my selection in AC(DE) in 1986.

(f) I have commanded three Bns (26 Bn, 20 Bn and 87 Bn) for more than seven years including officiating period for more that two years and commanding 87 Bn BSF since 22 Feb 2002 continuously.

6. I, may please be allowed to appear before your good self to express my genuine grievances with request to consider my case sympathetically for posting to a place with lesser humidity or Delhi in static HQ so that further deterioration of my ears could be prevented.

Yours faithfully

Sd/-
(ASHVINI KUMAR SHARMA)
COMMANDANT 87 BN BSF"

Letter dated 5 Dec 2007

"No. Pers/ AKS/87 /07 /
87 Battalion BSF, Bagafa-11
Gas Thermal Power Project
Rokhia, Tripura (West)

Dated the 5 Dec' 2007

To

The Director General
Border Security Force
NEW DELHI
(Through proper channel)

Sub: - POSTING / TRANSFER ON MEDICAL GROUND

Sir,

It is submitted that I had requested for consideration of my posting to any place having lesser humidity or Delhi due to medical compulsion as per advise of specialist of AIIMS where I had undergone treatment of injury in ears due to IED blast on 21.04.2001 while commanding 20 Bn BSF (copy of application No. AKS/Pers/87 /2005 dated 25th Nov' 2005 forwarded to FHQ vide HQrs BSF NB Ftr letter No. Estt-111/(28)/NBF /2005/9949-

53 dated 6th Det'2005 enclosed). FHQ(Pers Dte) disposed off my application with remarks" representation regarding choice posting in respect of Six Commandants and two Second-in-Commands (including my case) have been considered during annual posting/ transfer but could not be acceded to" as communicated by Ftr HQ BSF Tripura Signal No. A/ 4458 dated 27th July' 2006 in reference to FHQ (Pers Dte) Savingram No. 9/21/2003- Pets/BSF/31388-402 dated 14th Jul' 2006 (Copy of Tripura Ftr Signal No. A- 4458 enclosed)

2. On this I once again apprised your good self vide my application No. Pers/ AKS/ 87 /06 dated 5th Sept'2006 (copy enclosed) that I did not ask for choice posting to be considered during annual .,posting/ transfer but I only requested for posting to a place with lesser humidity or Delhi due to medical compulsion.

3. Pers Dte, FHQ vide Savingram No. 11/3981/86-Pers/BSF/ 55927 dated 6th Oct' 2006 intimated that "(.) case for posting of Shri Ashvini Kumar Shanna, Comdt 87 Bn BSF to place with lesser humidity or Delhi examined in detail (.) As desired by the competent authority, his case will be considered during annual posting transfer- 2007 (.) Inform officer accordingly(.)". The same was conveyed to me by Ftr HQ BSF Tripura vide Savingram No. IGA/Estt/03-GO/2006/30605 dated 16th Oct' 2006 (copy enclosed).

4. Despite assurance by FHQ vide Savingram No. 11/3981 /86~pers/BSF *(* 55927 dated 6th Oct' 2006 for considering my case during annual posting/ transfer 2007, my name did not figure in the list of annual posting/transfer of Commandants 2007.

5. Sir, I wish to apprise following facts for your kind perusal and consideration please:-

(a) After coming to Tripura Frontier in Dec 2005, I am having frequent problem in my ears. Even perforation occurred in my left ear twice and Tempanic Membrane (TM) has been thinned out and retracted as per report of the ENT specialist of IGM Hospital, Agartala (Nov 06), J L N Medical College and Hospital, Ajmer (Dec 06) and Tripura Medical College and Dr B R Ambedkar Hospital, Agartala (June 2007)

(b) All the ENT specialists have categorically mentioned that this problem is recurring because of humid climatic conditions of North Eastern region.

(c) I have never requested for posting to any place in my entire service except this time on medical grounds.

(d) Earlier also I have served in North East as Dy Comdt for complete two years at Tura in 124 Bn BSF under AMM&N Ftr.

(e) I have never served in Rajasthan & Gujrat Ftrs after my selection in AC(DE) in 1986.

(f) I have commanded three Bns (26 Bn, 20 Bn and 87 Bn) for more than seven years including officiating period for more that two years and commanding 87 Bn BSF since 22 nd Feb' 2002 continuously.

6. I once again request your good self to kindly reconsider my case sympathetically for posting to a place with lesser humidity or Delhi in static HQ so that further deterioration of my ears could be prevented.

Yours faithfully

Sd/-
(ASHVINI~MAR SHARMA)
COMMANDANT, 87 Bn BSF
IRLA 18632231"

14. Thereafter, on 28 May 2016, the petitioner was referred by the Commandant Medical Jodhpur to one Dr Yogesh Kumar Bhati, CMO, STC BSF, Jodhpur for medical examination. Following these, the petitioner was placed in S1H2(T-24)A1P1E1 medical category.

15. In these circumstances, we find the submission of Mr. Pandey, learned SPC for the respondents, as well as the assertion in para 3 of the counter-affidavit that the petitioner had been examined every year and found to be in optimum physical condition, which is from 2001 to 2016, and that he had "failed to disclose" the ailment from which he was suffering, which is why he was continued in service, astonishing.

The submission, clearly, is directly contrary to the documents on record.

16. Consequent to the findings of the medical board in 2017, which assessed him as suffering from Mild to Moderate Bilateral Hearing Loss with 42% disability, the petitioner applied for disability compensation in terms of Rule 9(4)[3] of the Central Civil Services (Extraordinary Pension) Rules, 1939[4], later re-numbered 9(3).

17. The proposal was recommended by the Inspector General on 11 August 2017. The recommendation reads thus:

"PROPOSAL FOR GRANT OF DISABILITY COMPENSATION IN LIEU OF DISABILITY PENSION IN RESPECT OF SH. ASHVINI KUMAR SHARMA, DIG (IRLA NO. 18632231) OF FTR HQ BSF RAJASTHAN

1.	Date of incident	23rd April 2001
2.	Place of incident	Bandipur (J&K)
3.	Date of appointment in BSF	12th March 1979
4.	Date of Medical board	26th May 2017
5.	Final percentage of disability of the Applicant	42%
6.	Basic pay of the applicant on the Date of medical board awarded % of Disability	Rs.1, 76,200/-
7.	Complete history of the case Along with supporting documents (including all	Brief history of the case, medical board proceedings and SCOI

[3] (4) If the Government servant is retained in service in spite of such disablement, he shall be paid a compensation in lump sum (in lieu of the disability pension) on the basis of disability pension admissible to him in accordance with the provisions of sub-rule (2) of this Rule, by arriving at the capitalized value of such disability pension with reference to the Commutation Table, in force from time to time.

[4] "CCS EOP Rules", hereinafter

	details of incident, Medical board, outcome of inquiry and remarks of Unit Comdt/Sector DIG/Ftr IG, etc)	proceedings alongwith remarks of the IG are placed in the file duly flagged.
8.	Opinion/Recommendation of COI/SCOI : Final % of disability of the applicant: Remarks/Recommendation: in brief of Unit Comdt on COI/SCOI Remarks/Recommendation: of DIG on COI/SCOI	Opinion / Recommendation of SCOI placed in the file duly flagged. 42% Not applicable Personnel susained injuries due to militants action while on bonafide Govt duty for which nobody is to be blamed and the injury sustained is fuly attributable to the Govt. service. (Remarks of the DIG on the SCOI proceedings is placed in the file duly flagged).
9.	Remarks/Recommendation of IG on COI/SCOI	Injuries sustained by the personnel are attributable to bonafide active Govt. duty. (Remarks of the IG on the SCOI proceedings is placed in the file duly flagged).
10.	Amount recommended as capitalized value as per the guidelines issued vide Pers Die Letter No. 14/52/01-Rectt/BSF/33172-417 dated 29 July 2010 and other guidelines on the subject.	Last pay i.e. pay as on the date of medical board (the basic pay as on the date of medical board) x 12 x commutation factor x actual percertage of disability divided by 100. (Rs. 1,76,200/- x 12 x 8.371 x 42 / 100) = Rs. 74,33,849.80 Say Rs. 74,33,850/-
11.	Recommendation of Ftr IG	**Recommended**/Not recommended

18. This was reiterated by the following certificate issued by the Inspector General, BSF Jodhpur on 11 August 2017:

> "Office of the Inspector General, Frontier HQ Border Security Force, Jodhpur, Rajasthan
>
> // Certificate //
>
> It is certified that the proposal for disability compensation on account of the award of medical category due to disabilities suffered on duty by Shri Ashvini Kumar Sharma (IRLA No. 18632231), DIG (PSO) Frontier HQ BSF Rajasthan and the record forming the basis of it has been thoroughly checked and found to be correct.
>
> 02. It is also certified that the aforementioned officer has not claimed from the P.A.D. or has been paid any compensation on account of the award of medical category due to disability suffered while on duty.
>
> Place: Jodhpur (Raj.) **signed**
> Date: 11.08.2017 (Anil Paliwal) IPS
> Inspector General
> Border Security Force, Jodhpur"

19. Thereafter came to be issued the suitability certificate dated 27 September 2017, already reproduced in para 5 *supra.*

20. On 4 May 2018, the Commandant Establishment addressed the following communication to the FHQ (Adm Dte - EOP Sec) Directorate:

> "Government of India, Ministry of Home Affairs,
> HEADQUARTERS, SPECIAL DG BSF
> (WESTERN COMMAND)

Industrial Area, Phase-II
Near 3 BRO (Air Force)
Chandigarh (UT)-160003

Dated, 04 May 2018

To

FHQ, (Admn Dte –EOP Sec)
BSF, New Delhi

Sub:- PROPOSAL FOR GRANT OF DISABILITY COMPENSATION IN LIEU OF DISABILITY PENSION IN RESPECT OF SHRI ASHVINI KUMAR SHARMA, DIG/PSO, FTR HO BSF RAJASTHAN

Kindly refer to Ftr HQ BSF Rajasthan L/No. T-IX/Estt-I/DC-DP/Ftr Raj/2018/3613-15 dated 19th Mar 2018 and teleconversation in between DIG (Estt) of this HQ and DIG (RR) as well as Comdt (Pers-II) FHQ, BSF New Delhi on 25.04.2018.

2. I have been directed to forward herewith the proposal for grant of disability compensation in lieu of disability pension in respect of Shri Ashvini Kumar Sharma, DIG/PSO (IRLA-18632231) of Ftr HQ BSF Rajasthan (02 Files) for your further necessary action please.

3. As regards Para-3 (iii) of your Dte L/No. 2957 dtd 13.12.2017 addressed to Ftr HQ BSF Rajasthan, special opinion of Commandant (Medical) of this HQ on sub para (i) & (ii) of your Dte ibid letter is not feasible as no Medical Officer is presently posted/ attached with this HQ.

4. Keeping in view of the above, it is, therefore, requested that justification as sought by your Dte on above mentioned sub paras, may be obtained either from FHQ (Med Dte) or the remarks/opinion of the Commandant (Med), Ftr HQ BSF Rajasthan may be considered to finalize the instant case.

5. This has the approval of the ADG BSF (WC) Chandigarh.

Sd/-
(Harmeet Singh)
Commandant (ESTT)
HQ SPL DG BSF (WC) CHANDIGARH”

21. Even at this stage, instead of releasing, to the petitioner, the disability compensation to which he was entitled under Rule 9(3) of the CCS (EOP) Rules, we are constrained to record, with considerable anguish, that a fresh SCOI[5] was constituted which went on to reject the petitioner's claim to disability compensation on the ground that it was time barred.

22. The manner in which the petitioner's claim has been dealt with is a matter of concern. We do not wish to second guess the reason as to why the petitioner, who was a war veteran who had suffered 42% hearing loss attributable to an injury borne by him on the warfront in 2001, has had to wait for 24 years as on date for obtaining his entitlement.

23. Even today, the respondents are not willing to concede to the petitioner's claim, but have gone to the extent of submitting before the Court that the petitioner was medically fit for 16 years between 2001 and 2017.

24. We are hardly in a position to record our views on such a submission, in the face of all the material cited *supra*.

25. Mr. Pandey also sought to submit that, in view of Rule 6(i)[6] of the CCS (EOP) Rules, as the petitioner had suffered the injury, owing

[5] Staff Court of Inquiry

[6] **6. Cases where no award to be made. –** No award shall be made in respect of –
(i) an injury sustained more than five years before the date of application;

to the IED, more than five years before the date of his application, no award of disability compensation could be made to him.

26. In the first place, the entitlement to disability compensation, under Rule 9(3) of the CCS (EOP) Rules is a *sui generis* compensation which applies especially in cases in which a government servant is retained in service despite disablement. There can be no dispute about the fact that the petitioner was retained in service for 17 years after 2001, and even after the decision of the Medical Board in 2017, till he superannuated in 2018. It was for this reason that his claim to disability compensation was in fact recommended by the highest officials.

27. Rule 6, in our view, cannot apply in a case which falls within the meaning of Rule 9(3) of the CCS (EOP) Rules. Besides, in view of the repeated communications of the petitioner with the respondents regarding his disability, suffered due to the IED in 2001, we fail to see why the respondents could not have released disability compensation to the petitioner. The petitioner cannot be expected to approach the respondents with a begging bowl, asking for his due entitlement under the Rules. It was for the respondents, in fact, to have released the petitioner's dues on coming to learn of the fact that the petitioner had actually suffered disability which was attributable to the injury borne by him in 2001.

28. The reliance, by respondents on Rule 6 of the CCS (EOP) Rules cannot, therefore, be regarded as wholesome.

29. In these circumstances, we allow the writ petition in the following terms:

(i) We hold the petitioner to be entitled to disability compensation in terms of Rule 9(3) of the CCS (EOP) Rules.

(ii) The said compensation shall be released to the petitioner w.e.f. the date of issuance of the Suitability Certificate dated 27 September 2017, with interest from that date @ 9% p.a. till the date when the disability compensation is released to the petitioner.

(iii) We direct that the aforesaid amounts be released to the petitioner positively within two weeks from today.

30. Given the manner in which the petitioner has had to suffer despite the injury that he bore in 2001, we would have been inclined to award punitive costs in this case. However, as we have awarded interest on the disability compensation granted by us, we refrain from doing so.

31. The petition is allowed in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

SEPTEMBER 11, 2025
gunn/dsn