REPORTABLE

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 36/2024 WITH MA 61/2021

Lt Col SK Robertson (Retd) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC with Mr. Rudra, Advocate with Maj Arvind Raman Subramanium, OIC Legal (Army)

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 61/2021

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others Vs. Tarsem Singh* [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 36/2024

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and prays for grant of disability pension.

Facts of the case

4. The applicant was commissioned in the Indian Army on 23.12.1973 and prematurely retired from service on 19.10.2003. At the time of retirement, he was brought before a duly constituted Release Medical Board at Military Hospital, Patiala. The Release Medical Board assessed that the applicant has suffered from disability - Diabetes Mellitus Type-II @ 6-10% for lifelong and held as NANA by service as is evident from the medical records. Later on, the applicant made a representation dated 04.12.2018 to conduct Re-assessment Medical Board, which was rejected vide AG PS-4(Imp) letter No.12681/IC-30070/ T-7/MP-5(B)/76/2019/AG/PS-4(Imp-1)dated 14.02.2019.

5. Subsequently, applicant preferred his first appeal dated 08.04.2019, which was adjudicated by the Appellate Committee on First Appeals, which accorded permission to conduct the First Appeal Medical Board vide letter No. 16050/AMB/DGAFMS/MA(Pens)/SKR dated 23.05.2019. In compliance with the aforesaid approval, the First Appeal Medical Board dated 09.09.2019 was conducted at Base Hospital, Delhi Cantt.

6. After assessment, the First Appeal Medical Board found the applicant to be suffering from the disability - Diabetes Mellitus Type-II and assessed the same @20%, and held the same to be 'Aggravated' by service, with remarks to the effect:

> ***"In the instant case as per the authenticated posting profile, at the time of onset of disability NIDDM (Diabetes Mellitus Type-2), the veteran was posted in Fd area. Hence, disability NIDDM (Diabetes Mellitus Type-2) is recommended to be conceded as aggravated by service in terms of Para 26, Chap VI, GMO 2002, amendment 2008."***

Submissions on behalf of the Applicant

7. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh*** Vs. ***UOI & Ors,***[1] learned counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

8. Learned counsel for the applicant further submits that the administrative authorities rejected his claim for grant of disability pension on technical grounds, by stating that the applicant being a premature retirees before 01.01.2006, he

[1] Dharamvir Singh v. Union of India & Ors. [(2013) 7 SCC 316]

cannot be granted benefit of the disability pension, while the issue has already been settled by this Tribunal.

Submissions on behalf of the Respondents

9. Per Contra, learned counsel for the respondents submits that under the provisions of Regulation 81(a) and 53(a) of the Pension Regulations for the Army, 2008, the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by military service and is assessed @ 20% or more.

10. Relying on the aforesaid provision, learned counsel for respondents further submits that though the aforesaid disability of the applicant were assessed as "aggravated by military service" by the Release Medical Board, yet the opinion of Release Medical Board is recommendatory in nature and has to be approved by the Competent Authority and that the decision regarding the attributability/aggravation is respect of disability cases shall be taken by the service HQs in case of officers and OIC Records in case of PBOR on the basis of the findings of the RMB/IMB as approved by the next higher medical authority which would be treated as final and for life.

Consideration

11. We find that it is not in dispute that the extent of disability was assessed to be 20% which is the bare minimum for grant of disability pension in terms of Regulation 81(a) and 53(a) of the Pension Regulations for the Army, 2008.

12. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we frame three questions for our adjudication, to decide the disputes under consideration:

a) **Whether an individual who has retired prematurely before 01.01.2006 is entitled to grant a disability pension ?**

b) **Whether the authorities/competent authority can overrule the opinion of duly constituted Medical Board ?**

c) **Whether the judgement of Regional Bench Chennai of this Tribunal in *Ex Sub M Vijayakannan*[2] and Principal Bench of this Tribunal in *Sub (AEC) Murgesan (Retd.)*[3], binding on the subsequent cases of this Tribunal?**

Question (a)

13. With respect to question (a), we find that the issue of grant of benefit to premature retirees who have retired prior to 01.01.2006 has been examined in detail by this Tribunal

[2] OA No.121/2021 AFT Regional Bench, Chennai [Date of Decision: 11.09.2023]
[3] OA 834/2022 AFT Principal Bench, New Delhi [Date of Decision: 06.02.2024]

in ***Major (Retd.) Rajesh Kumar Bharadwaj*** Vs ***UoI & Ors.***[4],

wherein this Tribunal has observed as under:

> *"Now coming to the facts of the present case, notification dated 29.09.2009 has been issued for giving benefit to the persons who have sought voluntary retirement as earlier it was not possible to be given because of the Regulation 50. Regulation 5C contemplates that no person shall be entitled to disability pension if he sought voluntary retirement. But this was watered down by issuing notification dated 29.09.2009 which reads as under:*
>
> *"No. 16(5)/2008/D(Pen/Policy)*
> *Government of India*
> *Ministry of Defence*
> *Deptt. Of Ex-Servicemen Welfare*
>
> *New Delhi 29th Sept. 2009*
>
> *To*
> *The Chief of the Army Staff*
> *The Chief of the Naval Staff*
> *The Chief of the Air Staff*
>
> *Subject : Implementation of Government decision on the recommendation of the Sixty Central Pay Commission – Revision of provisions regulating Pensionary Awards relating to disability pension/war injury pension etc. for the Armed Forces Offices and personnel Below Officer Rank (PBOR) on voluntary retirement/discharge on own request on or after 1.1.2006*
>
> *Sir,*
>
> *The undersigned is directed to refer to Note below Para 8 and Para 11 of the Ministry's letter No. 1(2)/97/D(Pen-C) dated 31.1.2011, wherein it has been provided that Armed Forces personnel who retire Page 7 of 10 voluntarily or seek discharge on request, shall not be eligible for any award on account of disability.*
>
> *2. In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President if pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge*

[4] OA 336/2021 AFT Principal Bench, New Delhi [Date of Decision: 07.02.2012]

whether voluntary or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.

3. The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 1.1.2006.

4. Pension Regulations for the three Services will be amended in due course.

5. This issue with the concurrence of Ministry of Defence (fin.) vide their U.O. No. 3545(fin/Pen) dated 29.09.2009.

6. Hindi version will follow.

Yours faithfully,
(Harbans Singh)
Director
(Pen/Policy)

Copy to :- As per standard list."

As per this notification, the benefit has been extended to the Armed Forces personnel as mentioned in paragraph no. 2 of this notification but in paragraph no. 3, they have said that this will be applicable from 01.01.2006 i.e. the persons who have sought voluntary retirement on or after 01.01.2006 will be benefited and rest will not be benefited. Petitioner has retired prior to 01.01.2006, therefore, he has been denied the benefit on account of the cut-off date as per notification dated 29.09.2009. Learned counsel for the respondents has seriously contested before us that the Government has financial constraints, therefore, this benefit cannot be extended uniformly to the persons who sought voluntary retirement prior to 01.01.2006. In this connection, learned counsel for the petitioner has invited our attention to the subsequent notification dated 03.08.2010 of PBOR which reads as under:

"Tele - 23335048

Addl Dte Gen Personnel Services
Adjutant General's Branch
Integrated HQ of MoD (Army)
DHO PO, New Delhi-110011
B/39022/Misc/AG/PS-4 (L)/BC

All Legal Cells
All line Dtes

GRANT OF DISABILITY PENSION TO PREMATURE RETIREMENT CASES PROCEEDING ON DISCHARGE PRIOR TO 01 JAN 2006

1. Further to this office note No. A/39022/Misc/AG/PS-4(Legal) dt 22 Feb 2010 on subject matter.

2. It is clarified that as and when a pre-2006 retiree PBOR files a court case to claim disability pension which was denied to him merely

because he had proceeded on Pre-Mature Retirement, such cases will be immediately processed for Government Sanction through respective Line Dtes and Not contested. Government Sanctions in which cases will also be proposed in the same manner as that followed in cases of Government Sanctions issued in compliance of court cases.

3. This arrangement will be affective till MoD/D(Pen/Legal) formulated and issues comprehensive Govt orders.

4. It is re-iterated that only those cases where disability pension was denied to a PBOR solely on the grnds that he had proceeded on PMR will be processed for sanction and will not be contested. Which implies that as and when a PBOR files a case of similar nature their case files will be processed for Govt sanction without awaiting court order.

5. Contents of this letter are not applicable to offers as PRA, Rule 50 has been upheld by Hon'ble Supreme Court in judgment dt 06 July 2010 in case of Lt Col Ajay Wahi (SLP. No. 25586/2004, Civil Appeal No. 1002/2006).

7. All lime Dtes are requested to give vide publicity to this letter amongst all Record Offices

(Ajay Sharma)
Col
Dir, Ag/PS-4 (Legal)
For Adjutant General

Copy to:
MoD/D(Pen/Legal)
JAG Deptt"

It has been clarified that as and when a pre 2006 retiree PBOR files a court case to claim disability pension which was denied to him merely because he had proceeded on Pre-Mature Retirement, such cases will be immediately processed for Government sanction through respective Line Dtes and not contested Government sanctions in which cases will also be processed in the same manner as that followed in cases of Government sanctions issued in compliance of court cases. That means Government has relaxed the condition for the PBOR, even if they sought voluntary retirement prior to 2006 they will not be denied the benefits of disability pension as per rules. If the Government can show benevolence for PBOR then why not same benefit can be given to the officers who are far less in number than PBOR.

The plea of the respondents of financial constraints is exploded. The number of PBOR who sought voluntary retirement pre 2006 would be hundred times more than that of officers. Therefore, we think that plea taken by the Government of financial constraints is nothing but an afterthought to somehow justify the administrative action. When this benefit has been extended to PBOR, we see no reason why it should not be released to the officer. More so, the justification of financial constraints pleaded by the

respondents is exposed on account of that they have released the benefit to the PBOR which are larger number than that of officer. Therefore, in our opinion, this artificial distinction which has been sought to be made of pre and post 01.01.2006 is without any rational basis. It is only a ploy to deprive the benefits of disability pension to the officers' rank.

Hence, we strike down the Clause 3 of the notification dated 29.09.2009. It will be open for the petitioner to make their representations to the authority to seek the disability pension benefit in terms of the aforesaid circular and the Government will examine the matter and pass appropriate orders in accordance with law. Petition is accordingly allowed. No order as to costs. Both the connected cases bearing OA Nos. 205/2011 and 189/2011 stand disposed of in the light of this order. No order as to costs."

14. We observe that on a basis of aforesaid detailed discussion in ***Major (Retd.) Rajesh Kumar Bharadwaj,*** this Tribunal held that the officers retired on premature retirement before 01.01.2006 are also entitled for grant of disability pension and the same has been implemented vide GoI MoD letter no. 16(05)/2008/D (Pension Policy) dated 19.05.2017. Therefore, the answer to Question (a) is answered in affirmative and it is held that the officers retired on premature retirement before 01.01.2006 are entitled for grant of disability pension.

Question (b)

15. With respect to question (b) under consideration, we find that the said issue has been previously considered by this Tribunal as well as the Hon'ble Supreme Court. We observe that the administrative decision taken by the respondents, i.e. PIFA/PCDA/HQs/OIC REcords to deny disability element of

pension to the applicant when it has been held as attributable to/aggravated by military service by the duly constituted Medical Board, is contrary to the decisions of the Hon'ble Supreme Court in ***Ex Sapper Mohinder Singh*** Vs. ***Union of India and another***[5] and ***Dharamvir Singh*** Vs. ***Union of India and others*** (supra).

16. We further find that the IHQ (Army) has also issued a letter dated 25.04.2011, the relevant portion of which is reproduced below:

> *"2 These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.*
>
> ....
>
> *4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such file be processed for sanction."*

17. In a catena of judgments (pointedly, O.A No. 270 of 2016 of Armed Forces Tribunal, Regional Bench, Chandigarh), this Tribunal has reaffirmed with consistency that due credibility and primacy has to be given to medical board proceedings. Whether it be the PCDA or an administrative authority, refutation of a medical opinion can only be by another more competent medical opinion. Therefore, in any case, whether it is any administrative authority, it has no power to overrule the assessment or decision

[5] Supreme Court - Civil Appeal 164 of 1993 [Date of decision: 14.01.1993]

made by a duly constituted medical board. The answer to the question (b) is thus, answered.

Question (c)

18. We now proceed to examine the issue under consideration in Question (c). At this point, it is essential to observe that the prayer for the grant of the disability element of pension for the disability of 'Diabetes Mellitus' in the case of ***Ex. Power Satyaveer Singh***[6] has been upheld by the Hon'ble Supreme Court vide the verdict in ***UOI & Anr*** Vs. ***Rajbir Singh.***[7]

19. Subsequently, Hon'ble Supreme Court had the opportunity to examine the grant of disability pension for the disability of Diabetes Mellitus Type-II while adjudicating the grant of disability pension in ***Commander Rakesh Pande*** Vs. ***UOI & Ors.,***[8] wherein Hon'ble Supreme Court while upholding the judgement of this Tribunal in ***Cdr Rakesh Pande*** Vs. ***UOI & Crs.***,[9], wherein the disability pension was upheld for a period of 5 years, observed that the disability being of permanent nature, the disability pension has to be granted for life, instead of limiting it to 5 years.

20. We find it appropriate to refer to the observations made by this Tribunal in ***Cdr Rakesh Pande*** (supra) with respect to the grant of the disability element of pension as specified in Paras 8, 9, 10, 11 and 12 thereof were upheld by the Hon'ble

[6] Supreme Court - Civil Appeal 7368/2011 [Date of Decision: 13.02.2015]
[7] Supreme Court - Civil Appeal 2904/2011 [Date of Decision: 13.02.2015]
[8] Supreme Court - Civil Appeal 5970/2019 [Date of Decision: 28.11.2019]
[9] AFT PB OA 1532/2016 [Date of Decision: 06.02.2019]

Supreme Court in *Commander Rakesh Pande* (supra). The observations in paras 8, 9, 10, 11 and 12 of the decision of the AFT (PB), New Delhi were to the effect:-

> *"8. On the merits of the case, the respondents submit that the medical disability NIDDM is considered as a metabolic disorder resulting from a diversity of aetiologies, both genetic and environmental, acting jointly. It is characterized by hyperglycemia and often associated with obesity and improper diet. Diabetes Mellitus Type 2, as per Para 26 of Amended Guide to Medical Officers (Medical Pensions) 2008 can be conceded as aggravated while serving in field, CI operations, high altitude areas and prolonged afloat service. However, the same is not relevant in the applicant's case as he was serving in shore duties in New Delhi, Mumbai and Goa prior to onset of the disease. As regards the disability Hyperlipidaemia, respondents submit that associated high cholesterol levels are also a result of metabolic disorder caused due to genetic causes or dietary indiscretion and there can be no service causes that can be considered responsible for predisposition and onset of the disability. Thus, respondents contend that the RMB was just and correct in assessing that the disability was neither attributable nor aggravated by military service.*
>
> *9. Further, the respondents aver that the RMB had granted the medical disability only for five years and the same period has expired on 30.04.2006. The applicant made no effort whatsoever to present himself before a Resurvey Medical Board after expiry of the medical disability period. Respondents contend that the contents of Govt. of India (MoD) Circular dated 07.02.2001 can, in no way, be taken to imply that the applicant's disability period would automatically be extended 'for life' even without reference to the medical authorities for reassessment of medical disability on conclusion of the said period.*
>
> *Consideration :*
>
> *10. Having given careful consideration to the arguments on both sides, we find that the basic issue before us is whether the applicant, a naval officer who contracted NIDDM and Hyperlipidaemia after about 17 years of service, and was assessed @ 20% composite for these two diseases for a period of 5 years by the RMB three years later, on his taking premature retirement, can be granted disability element of pension despite the fact that (a) the applicant has approached the respondents and the Tribunal about 15 years after his premature retirement from service, and (b) the RMB assessed his disabilities*

(composite @ 20% for five years) as neither attributable nor aggravated (NANA) by military service.

11. In the first instance, we have considered the delay of about 15 years by the applicant in forwarding his representation against non-grant of disability element of pension and filing his OA thereafter. We have examined the averments in M.A. No. 566 of 2019 explaining the delay and, in the interests of justice, condoned the delay, relying upon the judgment dated 13.08.2008 of the Hon ble Supreme Court in the matter of Union of India Vs. Tarsem Singh (2009) (1) AISLJ 371.

12. With regard to the merits of the OA, we find that the applicant's case is squarely covered by the judgments in the case of Dharamvir Singh (supra) and Rajbir Singh (supra), whereby the Hon'ble Apex Court had observed to the effect that, unless cogent reasons are given to the contrary by the medical authorities, attributability or aggravation will be conceded in cases where military personnel contract medical disabilities during the course of the service based on the grounds that military personnel are put through thorough medical examination at the time of their entry into service, and are not enrolled or commissioned unless they are found fully fit medically."

(emphasis supplied)

21. It is essential to observe that Para-28 of the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh v. Union of India & Ors.*** (supra) lays down the guiding canons which are to the effect:-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note

or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to

be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in

service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."

22. It is essential to observe the verdict of the Hon'ble Supreme Court in ***UOI & Ors.*** Vs ***Rajbir Singh***[10] vide Para 15 is to the effect:-

"15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as

[10] Supreme Court - Civil Appeal 2904/2011 [Date of decision: 13.02.2015]

seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

23. At this point, we find it pertinent to the refer to the two judgements relied upon by the Respondents, with first being ***Ex Sub M Vijayakannan*** Vs.. ***Union of India & Ors*** (supra)

and second being, ***Sub (AEC) Murgesan (Retd.)*** Vs. ***Union of India and Ors.*** (supra).

24. On an examination of first judgment, ***Ex Sub M Vijayakannan*** Vs. ***Union of India & Ors*** (supra), relied upon by the Respondents, we find that neither judgment rendered in ***Ex. Power Satyaveer Singh*** (supra) as has been upheld by the Hon'ble Supreme Court vide the verdict in ***UOI & Anr*** Vs. ***Rajbir Singh*** (supra) has been considered, nor the judgment of Hon'ble Supreme Court in ***Commander Rakesh Pande*** Vs. ***UOI & Ors.,*** (supra) wherein Hon'ble Supreme Court has upheld the judgment of this Tribunal in ***Cdr Rakesh Pande*** Vs. ***UOI & Ors.,*** (supra) for grant of disability pension for the disability of Diabetes Mellitus, by which the issue pertaining to grant of disability pension for the disability of Diabetes Mellitus has been settled, unless a distinction is made on the basis of factual matrix, which we find has not been done in the aforesaid case. Therefore, in our considered view, the decision in ***Ex Sub M Vijayakannan*** Vs. ***Union of India & Ors*** (supra) is limited to the facts of that case, and cannot be held to be a binding precedent.

25. As far as the opinion of this Tribunal in the case of ***Sub (AEC) Murgesan (Retd.)*** Vs. ***Union of India and Ors.*** (supra)

is concerned, we find that a distinction has been made on the basis of the applicant in the aforesaid case being overweight. However, in the instant case, we find that the applicant is within permissible weight as per the policy, and thus, the aforesaid case is of no help to the applicant.

26. Hence, we are of the opinion that the decision of Regional Bench Chennai in ***Ex Sub M Vijayakannan*** (supra) is *per incuriam* and cannot be held to be a binding precedent, whereas the judgement of Principal Bench in ***Sub (AEC) Murgesan (Retd.)*** is a binding precedent, in any case involving similar facts and circumstances. However, the instant case is not *pari materia* to the case of ***Sub (AEC) Murgesan (Retd.).***

Conclusion

27. Concluding, we reiterate the answer to three issues framed by us for adjudication in the present case, as under:

Answer (a): The officers retired on premature retirement before 01.01.2006 are entitled for grant of disability pension.

Answer (b): whether it is any administrative authority, it has no power to overrule the assessment or decision made by a duly constituted medical board.

Answer (c): The decision of Regional Bench Chennai in *Ex Sub M Vijayakannan (supra)* is *per incuriam* and cannot be held to be a

binding precedent, whereas the judgment of Principal Bench in *Sub (AEC) Murgesan (supra)* is a binding precedent, in any case involving similar facts and circumstances.

28. Keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon'ble Supreme Court in the case of ***Dharamvir Singh*** (supra) wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of enrollment into the military Service, we see no reason not to allow the prayer of the applicant with regard to the aforesaid disability.

29. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the applicant @ 20% for life which be rounded off to 50% for life from the date of conduct of retirement, i.e. 19.10.2003 in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of ***Union of India*** Vs. ***Ram Avtar***[11] However, noting the fact that there has been inordinate delay in the representation made by the applicant for the conduct of First Appeal Medical Board, and the same has to be attributed to him, we are inclined to limit the arrears in this case to three years from the date of filing of this OA

[11] Supreme Court - Civil Appeal No. 418/2012 [Date of decision: 10.12.2014]

(31.08.2022) in view of the law laid down in the case of ***Tarsem Singh.***[12]

30. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

31. No order as to costs.

32. Pending miscellaneous application, if any, stands closed.

Pronounced in an open Court on 30th day of August, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C. P. MOHANTY]
MEMBER (A)

Ps

[12] Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]