COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

C.

OA 1687/2019 with MA 2617/2019

Ex Sgt Shree Pal Singh ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C. P MOHANTY, MEMBER (A)

ORDER
22.04.2025

The matter was reserved for orders vide order dated 26.10.2023.

2. Vide order dated 27.10.2023, when the matter was fixed for directions, directions were issued to the respondents to place on record the Annexure R-1 stated to be attached to the counter affidavit of respondents dated 19.07.2021. Counsel for the respondents submits now to the effect that the said document which is Annexure R1 to the counter affidavit of the respondents dated 19.07.2021 has since been filed vide Diary No. 9352/2023 on 09.11.2023. The said submission is borne out to be correct and the copy of the said

document is also indicated have been so supplied to the counsel for the applicant on 09.11.2023.

3. Submissions have been addressed on behalf of either side qua the OA 1687/2019 whereby, the prayers made by the applicant are to the effect:-

> *"(a) Quash and set aside the impugned letters dated 01 Apr 2016 and 11 Sep 2019.*
> *(b) Direct Respondents to grant disability pension @30% and rounding off the same to 50% for life to the applicant with effect from 01 Oct 2016 i.e. the date of discharge from service with interest @12% p.a. till final payment is made.*
> *(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."*

4. The applicant as per record as averred also by the respondents vide their counter affidavit dated 19.07.2021 was enrolled in the Indian Air Force on 01.10.1987 and discharged from service on 30.09.2016 under the clause of fulfilling the conditions of his enrolment after rendering 29 years of regular service. As averred in the counter affidavit of the respondents themselves the applicant had undergone the initial medical examination and was declared fit in medical category AYE vide AFMSF-2A dated 17.08.1987 i.e. before he was inducted into the Indian Air Force. The applicant is

stated to have been initially placed in LMC A4G4 (T-12) for ID Primary Hypertension and ID Dyslipidemia Vide AFMSF-15 dated 07.01.2015 while serving at 6 P& S(U) AF and during subsequent review he was placed in LMC A4G2 (P) composite for both disabilities vide AFMSF-15 dated 03.11.2015.

5. The RMB that the applicant has placed on record as Annexure A-2 which is not refuted by the respondents indicates that the applicant suffered the disabilities of Primary Hypertension and Dyslipidemia with their onset in November 2014 at Kolkata. The Para 6 of the RMB in Part IV reads to the effect:-

"

6. What is present degree if disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows). 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiple of ten from 20-100%				
Disability (as numbered in question I Part-IV)	Percentage of disablement with duration	Composite assessment for all disabilities with duration (Max 100%) duration.	Disability qualify for disability pension with duration	Net assessment qualifying for disability pension (Max 100% with duration)
Primary Hypertension (Old) ICD NO I 10.0, Z 09.0	30% (Thirty Percent) for life time	30% (Thirty Percent) for life	Not admissible	Not admissible

Dyslipidemia (Old) (ICD-E-79.9, Z-09.0)	1-5% (One-Five Percent) for life time	time	Not admissible	Not admissible

"

which indicates that the percentage of disablement *qua* Primary Hypertension was assessed @30% for life and for Dyslipidemia @1-5% for life with the RMB having opined as per the opinion of the Medical Board at Part V to the effect:-

"PART-V
OPINION OF THE MEDICAL BOARD

1. Casual relationship of the disability with service conditions or otherwise:

Disability	Attributable to service (yes/no)	Aggravated by service (yes/no)	Not connected with service (yes/no)	Reason/cause specific conditions and period of service
(i) Primary Hypertension (Old) ICD No I 10.0, Z 09.0	No	No	yes	Onset of disability Nov 14 at CH (EC) Kolkata. No close time association with stress and strain of Field/HAA/CIOPS service. Hence NANA in terms of para 43 of Ch VI of GMO 2008
(ii)Dyslipidemia (Old) (ICD-E-79.9, Z-09.0)	No	No	yes	

"

thus, stating that the onset of the disability was in November 2014 at CH (EC) Kolkata and thus there was no close time association with stress and strain of HAA/field/ CI Ops Area by the service and thus the disabilities of the applicant were

neither attributable to nor aggravated by military service with a specific averment stated therein in relation to Para 43 of the Chapter VI of the GMO (MP), 2008. During the course of the submissions, a submission that was made on 26.10.2023, on behalf of the applicant has also been reiterated today on behalf of the applicant that the prayer made through the present OA in relation to the disability Dyslipidemia (old) is not pressed.

6. Reliance has been placed on behalf of the applicant on catena of verdicts of the Hon'ble Supreme Court in ***Dharamvir Singh Vs UOI & Ors*** (Civil Appeal No 4949 of 2013) 7 SCC 316 as well as the verdict dated 27.03.2025 of the Hon'ble High Court of Delhi in W.P. (C) 3545/2025 in ***Union of India & Ors.*** Vs. ***Ex Sub Gawas Anil Madso*** and W.P. (C) 3677/2025 in ***Union of India & Ors.*** Vs ***Ex Nk Amin Chand,*** to submit to the effect that the applicant is entitled to the grant of disability element of pension in relation to the disability of Primary Hypertension which had its onset in November 2014 much after the enrolment of the applicant into the Indian Air Force on 01.10.1987 and that too after he was inducted into the Indian Air Force without any disablement of any kind as also indicated vide the response of

the respondents to the question listed at page 37, question No. 2, as mentioned in Part IV of the RMB which indicates that the said disability did not exist before the applicant's entry into the service. It is significant that vide the response to question no. 3 also in the RMB as to whether the said disability existed at the time of entry, was it possible that it could not be detected during the routine Medical examination carried out at the time of entry, the opinion of the medical authorities is in the negative. The same is reproduced herein below to the effect:-

> *"3. in case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of entry: NO"*

7. The contention raised on behalf of the respondents through submissions made now and through the submissions made vide the counter affidavit are to the effect that in as much as the onset of the disability was in a peace area, the same is neither attributable to nor aggravated by military service.

8. It is essential to advert to the RMB of the applicant i.e. placed on record in relation to the postings of the applicant as reflected by Para 1 of Personal Statement of the applicant which reads to the effect:-

"Part I

PERSONAL STATEMENT

1. Give details of service(P=Peace OR F=Field/Operational/Sea Service.

SL NO.	FROM	TO	PLACE	P/F	SL NO.	FROM	TO	PLACE	P/F
1	01.10.87	22.04.88	WTI Tambaram,	P	2	23.4.88	13.01.89	MTTI AF Avadi	P
3	14.01.89	21.02.91	15 FBSU AF	P	3	22.02.91	19.05.94	20 SU AF	P
4	20.05.94	30.06.95	MTTI AF Avadi	P	5	01.07.95	31.05.00	8 KTK ANCC	P
6	01.06.00	05.06.03	49 WG Naliya	F	7	06.06.00	11.06.08	23 EX AVADI	P
8	12.06.08	22.05.11	415 AF STN Delhi	P	9	23.05.11	27.04.14	509 SU AF	P
10	28.04.14	Till date	6P&S(U), AF						

The same indicates that during the period from 01.06.2000 to 05.06.2003 the applicant was posted in 49 WG Naliya, a field posting i.e. prior to the onset of the disability which had its onset on November 2014. Apart from the same it cannot be overlooked that Para 423 of the Regulations for the

Medical Services from the Armed Forces 2010 which relates to attributability to service and provides as under:-

"423.(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.

(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which

has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.

(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :

(i) AFMSF – 16 (Version – 2002) in all cases
(ii) IAFY – 2006 in all cases of injuries.

(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."

(emphasis supplied),

has not been obliterated.

9. It is also essential to advert to the verdicts of the Hon'ble High Court of Delhi in these two cases i.e., in W.P. (C) 3545/2025 in ***UoI & Ors.*** Vs. ***Ex Sub Gawas Anil Madso*** dated 27.03.2025 and the verdict of the Hon'ble High Court of Delhi in ***Union of India and Ors.*** Vs. ***Col Shashank Sihorkar*** (Retd) a verdict dated 19.12.2024 in W.P. (C) 14636/2024. In W.P.(C) 3545/2025 vide paras 22, 23, 24 and25 thereof it has been observed to the effect:-,

"22. The Supreme Court, thereafter, referred to, and relied upon, its earlier decision in Dharamvir Singh and concluded its discussion thus, in Paras 14 to 16 of the report:

14. The legal position as stated in Dharamvir Singh case 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 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.

15. 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.

16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the

absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants.

UOI v Angad Singh Titaria

23. This, again, was a case in which the issue of whether the deterioration in health of the Respondent Angad Singh Titaria was, or was not, attributable to military service, fed directly for consideration. Angad was enrolled in the Indian Air Force on 13 November 1971. At that time, he was medically and physically examined and found fit as per prescribed standards for appointment. During the period of his service in the Air Force, Angad was admitted to Hospital, where he was diagnosed as suffering from coronary artery disease and, further, after some time, also as suffering from Diabetes Mellitus Type II . He was referred to the Release Medical Board , which assessed his disability on account of CAD at 60% and on account of DM-II at 15 to 19%. He was also diagnosed as suffering from composite disability assessed at 60%. However, the RMB opined that the disabilities were constitutional and neither attributable to, nor aggravated by, Angad's service in the Air Force. On that basis, disability pension was denied to him. Having failed in an attempt to challenge the decision in appeal, Angad

approached the AFT. The AFT allowed Angad's claim. Aggrieved thereby, the UOI appealed to the Supreme Court.

24. The Supreme Court identified the "moot question" arising for consideration before it as "whether or not the disabilities caused to the Respondent during the course of his employment are attributable to his service entitling him to the benefit of disability pension in accordance with law".

25. The Supreme Court referred to, and relied upon, Rules 4, 5, 9 and 14 of the Entitlement Rules as well as the judgments in Dharamvir Singh and Rajbir Singh, whereafter it concluded thus:

> *16. Here in the case on hand, the respondent was rendered ineligible for further promotion and thereby invalidated on the ground of his being in medical category A4 G4 (Permanent). In the absence of any specific note on record as to the respondent suffering from any disease prior to his joining the service, he is presumed to have been in sound physical and mental condition while entering service as per Rule 5(a) of the Entitlement Rules. The fact remains that the respondent was denied promotion on medical grounds and the deterioration in his health shall therefore be presumed to have been caused due to service in the light of Rule 5(b) of the Entitlement Rules. Moreover, simply recording a conclusion that the disability was not attributable to service, without giving a reason as to why the diseases are not deemed to be attributable to service, clearly shows lack of proper application of mind by the Medical Board. In such circumstances, we cannot uphold the view taken by the Medical Board.*

17. Considering the facts and circumstances of the case in the light of the above discussed Rules and Regulations as well as settled principles of law enshrined by this Court in Dharamvir Singh v Union of India and reiterated in Union of India v Rajbir Singh, we are of the considered opinion that the Tribunal had not committed any error in awarding disability pension to the respondent for 60% disability from the date of his discharge along with 10% p.a. interest on the arrears. For all the reasons stated above, we do not find any merit in this appeal and the same stands dismissed without any order as to costs."

10. As observed vide Paras 22 and 23 of the verdict of the Hon'ble High Court of Delhi in W.P. (C) 14636/2024 in the case of ***Union of India & Ors.*** vs. Col ***Shashank Sihorkar Retd,*** it has been observed to the effect:-

"22. On the other hand, the Second Appellate Authority relied solely on the fact that the respondent was posted in peace area when the onset of disability occurred and that there was no evidence of exceptional stress and strain of service, thus, it declined to interfere with the findings of the First Appellant Authority.

23. It appears that even the Second Appellate Authority probably did not consider the case of the respondent in its entirety and disagreed with the Medical Board by primarily hinging its opinion on the fact that the onset of the disability was in a peace station. Needless to say, that only on the said ground, the opinion of the RMB could not have been brushed aside, without even elaborating on the observations that no evidence of stress and strain of service was found,"

It is apparent thus that the disability which had its onset after induction of the applicant into the Indian Air Force cannot be said to be neither attributable to nor aggravated by military service merely because it arose in peace area.

11. Vide Para 28 of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh* v. *Union of India and others* (2013) 7 SCC 316, it has been observed 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."

12. In terms of 43 of GMO Military Pension 2008 which reads to the effect:-

"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 or prolonged afloat service,"

the disability of the applicant of Primary Hypertension in the instant case has to be presumed to attributable to military services even if it had its onset whilst the applicant was posted in a peace area for the aspect of cumulative stress and strain during military service due to hostile environment difficult weather conditions and the strict disciplinary norms has to be taken into account. Significantly, in terms of Para 43 of the GMO (MP) 2008, itself it is provided that in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area and the same can be explained by an variable response exhibited by different individuals to stressful situations.

13. Furthermore, the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, which take effect from 01.01.2008 provide vide 6, 10, 11, 12 and 13 thereof to the effect:-

"6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

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10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established)..

(ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.

(b) Diseases:

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-

(a) that the disease has arisen during the period of military service, and

(b) that the disease has been caused by the conditions of employment in military service,

(ii) Diseases due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g, Fields, Operations, High Altitudes etc.

12. Competent Authorities:

(a) Attributability/Aggravation:

(i) Injury Cases:

Decision regarding attributability/aggravation in respect of injury cases in invalidment/retirement or discharge would be taken by the Service HQrs. in case of officers and OIC Records in case of PBOR, for the purpose of casualty pensionary awards.

(ii) Disease Cases:

The decision regarding attributability/aggravation in respect of disease cases shall be taken by the Service HQrs 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.

(b) Assessment

(i) The assessment with regard to percentage of disability in both injury and disease cases as recommended by the Invaliding/Relese Medical Board as approved by the next higher medical authority shall be treated as final and for life unless the individual himself requests for a review, except in the caves of disability/disabilities which are not of a permanent nature.

(ii) Where disablement is due to more than one disability, a composite assessment of the degree of disablement shall be made by reference to the combined

effect of all such disabilities in addition to separate assessment for each disability. In case of overlapping disabilities, the composite assessment may not be the sum of individual disabilities.

(c) Re-Assessment of Disability:

There shall be no periodical review by Resurvey Medical Boards for re-assessment of disabilities except for disabilities which are not of a permanent nature, for which there shall be only one reassessment of the percentage by a Reassessment Medical Board. The percentage of disability assessed/recommended by the Reassessment Medical Board shall be final and for life unless the individual himself asks for a review.

13. Death cases:

(i) Due to injury - Decision regarding attributability/aggravation in respect of death in injury cases for grant of special family pension shall be taken by Service HQrs in case of officers/OIC Records in case of PBOR.

(ii) Due to disease - Decision regarding attributability/aggravation shall be taken by Service HQrs/OIC Records, as the case may be, on the basis of medical opinion of DGAFMS or such medical authorities as prescribed by him.

Note: In case of battle casualty, the awards for liberalized family pension shall be decided by the Pension Sanctioning Authority based on the casualty report published by the authorities concerned."

14. Thus, the ratio of the verdicts in ***Dharamvir Singh*** vs ***UOI & Ors*** (Civil Appeal No. 4949/2013) (2013) 7 SCC 316, ***Sukhvinder Singh*** vs ***UOI & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI & Ors. vs Rajbir Singh*** (2015) 12 SCC 264 and ***UOI & Ors*** versus ***Manjeet***

Singh dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

15. Significantly, the observations of the Hon'ble High of Delhi vide the verdict dated 27.03.2025 in W.P.(C) 3545/2025 and W.P. (C) 3766/2025 vide Paragraphs 73 to 83 are to the effect:-

> *73. That takes us, however, to Rule 7 of the 2008 Entitlement Rules, which deals with "Onus of Proof", and reads thus:*
>
> > *"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."*
>
> *Mr Tiwari, appearing for the petitioners, laid great stress on the word "ordinarily". He points out that Rule 9 of the 1981 Rules, which earlier ordained that the claimant "shall not be called upon to prove the conditions of entitlement" had been replaced by the word "ordinarily", which was clearly weaker, in its import, and lacked the mandatory colour of the expression "shall".*
>
> *74. We are of the view that the change in the language of the Rule is more one of form than of substance.*
>
> *75. Viewed in isolation, there is clear etymological difference between the import of the words "shall" and "ordinarily". However, Rule 7 of the 2008 Entitlement Rules has, in our view, to be read as a whole. The Rule does not end with the statement that, ordinarily, the claimant would not be called upon to prove the condition of entitlement. It proceeds to clarify that the onus to prove entitlement would be on the claimant officer "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". Clearly, therefore, the reason for Rule 7 of the 2008 Entitlement Rules having not chosen to retain the earlier Rule 9 of the 1981 Entitlement Rules in its original form, is only because, where a belated claim, more than 15 years after discharge, or retirement, or invalidment, or release, is preferred, the petitioners would not have retained the original service documents of the claimant. In some circumstances, it would be unfair to expect the petitioners to be burdened with the initial onus to prove that the claimant officer, who has preferred his claim belatedly, is not entitled to it. In such a circumstance, the initial onus to prove entitlement would be on the officer. It is obviously to clarify this position that Rule 7 commences with the word "ordinarily". If anything, therefore, the word "ordinarily" would re-emphasise the position that the initial onus to prove entitlement remains on the military establishment, and is not on the officer claiming disability pension, and that this onus would shift only where the officer approaches, with his claim, belatedly, more than 15 years after discharge/retirement/invalidment/release.

76. Rule 14 of the 2008 Entitlement Rules, which applies to claims based on diseases, first that, for a disease to be treated as attributable to military service, it has to be simultaneously established that the disease arose during the period of military service and that the disease was caused by conditions of employment in military service. This, again, is obvious, and cannot be disputed.

77. It goes without saying that the mere fact that the officer may have contracted the disease during military service would not suffer to entitle him to disability pension, unless the disease was attributable to the military service. The petitioners are also correct in their submission that, with the removal, in the 2008 Entitlement Rules, of the presumption that, if no note was entered in the record of the officer, at the time of his induction into military service, to the effect that he was suffering from the ailment, the ailment would be deemed to be attributable to military service.

78. The removal of this presumption, from the Entitlement Rules, does not, however, automatically shift, to the claimant officer, the responsibility to prove that the disease is attributable to military service. This is clear from Rule 7, which

unmistakably holds that, ordinarily, the officer would not be called upon to prove the condition of entitlement.

79. All that the removal of the presumption, contained in Rule 5 of the 1981 Entitlement Rules, of the disease being attributable to the service where no note, regarding its existence, was contained in the record of the officer at the time of his enrolment into military service, entails is that it would be open to the Medical Board to hold that the disease was not attributable to military service, even if it was not present at the time of induction of the officer.

80. Even then, the responsibility would remain with the RMB to demonstrate, in its Report, with cogent reasons to be stated in the Report that, though the disease was not present at the time of induction of the officer in service, it was equally not attributable to the military service undergone by the officer. This would require, in its wake, the Report to fix attributability of the disease on some other factor, other than the military service being undergone by the officer. The RMB cannot seek to content itself with a bald statement that, in its opinion, the disease or ailment, though contracted during the tenure of military service of the officer, was not attributable to such service. The decisions cited supra, including the pronouncement in Munusamy, remain consistent on this aspect, till date. As the law stands today, the mere fact that, at the time of induction into service, the record of the claimant officer did not contain any note to the effect that he was suffering from the disability or ailment on the basis of which he later claims disability pension, would not result in any presumption that the ailment or disability was attributable to military service. It would remain, however, an indisputable fact that, even in such cases, the disease or inability arose during the course of military service. The removal of the presumption would result in the RMB being open to establish, in its Report, that the disease, even if contacted during the military service of the concerned officer, was not attributable to or aggravated by, it.

81. That responsibility has, however, to be assiduously discharged. The RMB has to record reasons as to why it arrives at the conclusion that the disease, forming subject matter of the claim for disability pension, contracted during the military service of the officer, was not attributable to such service in the

absence of any such reason, the claim of the officer, disability pension, has necessarily to sustain.

82. In the facts of the present case, we do not deem necessary to state anything further. We have already emphasised the salient features of the report of the RMB in the case of the respondent. There is candid acknowledgement, in the Report, of the fact that the Type II DM, from which the Respondent suffered, was contracted 30 years after the Respondent had entered military service. The fact that the onset of the disease was during the course of military service of the Respondent is not, therefore, in dispute. Beyond this, there is precious little, in the Report of the RMB, to indicate that the military service of the respondent was not the cause of the disease. Inasmuch as the claim of the Respondent was not preferred more than 15 years after his discharge, the onus to establish this fact continues to remain on the RMB, even under Rule 7 of the 2008 Entitlement Rules. A mere statement that the onset of the disease was during a peace posting is clearly insufficient to discharge this onus. The judgments of the Supreme Court are consistent on the fact that the report of the RMB is required to be detailed, speaking, and supported by sufficient cogent reasons. The RMB Report, in the case of the Respondent, clearly does W.P.(C) 3545/2025 Page 74 of 77 not satisfy these conditions.

83. While we are not doctors, it is a matter of common knowledge that Diabetes is a disease which can be caused, and exacerbated, by stressful living conditions. The fact that the onset of the disease might have been while the officer was on a peace posting cannot, therefore, be determinative of the issue of whether the disease was, was not, attributable to military service. In such a case, the RMB has a greater responsibility to identify the cause of the disease, so that a clear case, dissociating the disease and its onset, from the military service of the claimant officer, is established."

16. In the circumstances of the instant case, thus, the applicant is held entitled to the grant of disability element of pension in relation to disability of Primary Hypertension assessed @30% for life by the RMB dated 03.11.2015 which

in view of the verdict of the Hon'ble Supreme Court in ***Union of India*** Vs. ***Ram Avtar*** (Civil Appeal No. 418/2012) decided on 10.12.2014, is directed to be rounded off to 50% for life. The PPO is directed to be issued by the respondents within a period of three months from the date of this order granting the disability element of pension to the applicant @50% for life in relation to the disability of Primary Hypertension which shall be paid to the applicant from the date of discharge which was 30.09.2016.

17. In the instant case the OA has been instituted just exactly three years from the date of discharge and thus there is no requirement of confinement of the grant of the arrears to a period of three years prior to the institution of the OA which was instituted well within time in terms of the verdict of the Hon'ble Supreme Court in **UoI & Ors** Vs **Tarsem Singh** (2008) 8 SCC 648.

18. Furthermore, in the event in failure of the respondents to make the payment of the grant of the disability element of pension and the arrears due thereon as directed hereinabove within a period of three months from the date of this order, the arrears shall incur interest at the rate of 6% per annum till the date of payment of the same.

19. The OA is disposed of accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

/nmk