COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.2424/2021

JWO Bal Krishn (Retd) ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant - Mr. Manoj Kumar Gupta, Advocate
For Respondents - Ms. Jyotsana Kaushik, Advocate

CORAM :

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER(J)
HON'BLE LT GEN CP MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by Air Force service and grant disability element of pension @20% rounded of to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Air Force on 19.09.1983 and discharged from service on 31.10.2020 under the clause on "On attaining the age of superannuation". The RMB not solely on medical grounds was held dated 05.02.2020 and found

the applicant fit to be released in low medical category A4G4 and suffering from the ID – 'Primary Open Angle Glaucoma with Cataract Left Eye and Psuedophakia Right Eye' with the RMB having opined the disability as being neither attributable to nor aggravated by Air Force service.

3. The disability pension claim of the applicant was rejected vide letter no RO/3305/3/Med dated 31.07.2020 and the same was communicated to the applicant vide letter no. HQ/99798/1/690520/10/20/DAV(DP/RMB) dated 07.08.2020. Aggrieved, the applicant has preferred this OA.

Submissions on behalf of the Applicant

4. The applicant submitted that he has suffered the present disability after serving for a long period of 35 years which makes it clear that the disease was not pre-existing and his disability was due to service. The applicant has further submitted that at the time he was inducted into the Indian Air Force, he was medically fit and after having undergone a thorough medical examination at the Training Centre, he was posted to various places during his service.

5. Inter alia, the applicant places reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs UOI & Ors***

[(Civil Appeal No 4949/2013) 2013 AIR SCW 4236]. with specific reliance on the observations in para-28 of the said verdict 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."*

6. The applicant has also placed reliance on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs Rajbir*** in Civil Appeal No. 2904/2011, decided on 13.02.2015, in the case ***of Sukhvinder Singh vs UOI & Ors*** [2014 STPL (Web) 468 SC] in ***UOI &Ors vs Manjit Singh*** (AIR 2015 SC 2114), and the judgement of Hon'ble Delhi High Court in ***Union of India & Ors. vs. Sgt Parmendra Kumar Singh*** [2025:DHC:2435-DB] to contend to the effect that in as much as in the absence of any cogent reasons recorded by the Medical Board for the cause of the disability that had arisen during the course of service of the applicant and with which the applicant did not suffer at the time of enrolment into the Air Force Service, the same has to be presumed to have arisen in the course of Air Force service. The applicant also submits that in terms of the verdict dated 10.12.2014 of the Hon'ble Supreme Court in ***UOI Vs Ram Avtar*** in Civil Appeal No.418/2012, the applicant is entitled to rounding off of the disability pension assessed @20% for life to 50% for life from the date of discharge.

Submissions on behalf of Respondents

7. The respondents through the counter affidavit dated 20.04.2022 filed on their behalf submit to the effect that as per Rule 153 of the Pension Regulations for Air Force, 1961 (Part-I),

the disability pension is granted to those who fulfill the following two criteria simultaneously:-

(i) Disability must be either attributable to or aggravated by service.

(ii) Degree of disablement should be assessed at 20% or more.

8. The respondents further place reliance on Para-5 of 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008, and submit that the mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.

Consideration

9. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in ***Dharamvir Singh (Supra)***, a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition, if there is no note or record at the time of entrance in relation to any disability, in the event of his subsequently being discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established, - is no more ***res integra***.

10. In view of the guidelines laid down vide the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India & Ors.***(Supra) and the factum that the non-existence of the ID of at

the time when the applicant joined Air Force service is not refuted by the respondents, the contention of the respondents that the disability of 'Primary Open Angle Glaucoma with Cataract Left Eye and Psuedophakia Right Eye' assessed has been rightly opined by the Release Medical Board and the AFCA at 20% as neither being attributable to nor aggravated by Air Force service,- cannot be accepted.

11. It is essential to observe that the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) vide Paras 12 to 15 lays down to the effect:-

> ***"12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:***
>
> ***"7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.***

The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This

would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

"29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)]. [pic] 29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time

of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

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 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."

(emphasis supplied)

12. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof state as under:-

"6. Causal connection:

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

7. Onus of proof.

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 lie on the claimant.

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) *Disease:*

(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) Disease 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 contacted 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."

13. 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.

14. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010 which relates to 'Attributability to Service' 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.

15. Additionally, it has already been observed by this Tribunal in a catena of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service. It has also to be taken into consideration that most of the personnel of the armed forces have to work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. The onset of the disability of 'Primary Open Angle Glaucoma with Cataract Left Eye and Psuedophakia Right Eye' as reflected in the RMB is in July 2019 at Bangalore after 35 years of

service in the Indian Air Force, with a total of 13 postings before the onset of the disability and thus, the cumulative stress and strain of the service tenure where the applicant was exposed to severe conditions cannot be overlooked.

16. It is pertinent to record that the judgements of this Tribunal adjudicated and allowed in consonance with the settled position laid down by Hon'ble Supreme Court in **Dharamvir Singh (Supra),** were assailed by the Respondents before Hon'ble Delhi High Court in ***Union of India v. Col Balbir Singh [WP (C) No. 140/2024; 2025: DHC: 5082-DB],*** wherein it was concluded as under:

> ***44. For the purpose of further delving into the pleas raised by the parties, it is necessary to analyze the impact of the changes introduced by the new Entitlement Rules of 2008.***
>
> ***45. The Kerala High Court in Union of India & Ors v. Bhaskaran. N, 2024 SCC OnLine Ker 7023,while examining the Entitlement Rules, 2008, held as under:***
>
> ***"45. By employing the word "ordinarily", the rule-making authority has obviously diluted the rigor of the burden which was on the establishment under the Rules of 1982. The intention is very clear that in all cases and under all circumstances it shall no longer be the burden of the establishment to show that the employee is not entitled for the benefit. In appropriate cases the employee shall discharge the onus of proof to seek the benefit. The learned Senior Central Government Counsel placed emphasis on this Rule and argued that the same has made a drastic change in the matter of onus of proof. According to the learned counsel, claimants cannot no longer raise a demand and leave it to the establishment to rebut. We shall now examine this contention. We note that the second part of Rule 7 opens with the expression "however" and the said sentence operates like a proviso carving out exception to the general rule found in the previous sentence. Reason for providing the exception is also clear from the latter sentence that; when claim is preferred after 15 years, by that time, the service documents of the***

claimant would be destroyed. Hence, ostensibly, the rule making authority altered the tenor of the rule regarding onus of proof in view of the fact that when belated claims are raised the establishment will not be in possession of the relevant records and in such situations the employee may obtain undue advantages. Unscrupulous persons waiting for destruction of records and raising claims thereafter is also a conceivable situation. Nonetheless, the intention of the rule makers regarding claims made within 15 years discernible from the language employed, is that the onus will continue to be primarily on the Department. We therefore hold with respect to Rule 7 of the Entitlement Rules of 2008 that the said provision does not exonerate the establishment totally from the burden of proof and in all cases in which the claim is raised within 15 years from the date of discharge/retirement/invalidment/ release, the onus of proof will be primarily on the Department. Only in cases wherein claims are raised after 15 years, the burden will be entirely on the claimant. While holding thus, we have kept in mind the observation of the Supreme Court in Union of India v. Vijay Kumar that the Entitlement Rules are beneficial in nature and ought to be liberally construed."

46. Furthermore, a similar issue came up before a Co-ordinate Bench of this Court in Union of India & Ors v. Ex Sub Gawas Anil Madso, 2025:DHC:2021-DB, wherein it was held as under:

"The effect of the change in policy in the 2008 Entitlement Rules

67. Much has been sought to be made, before us, about the fact that the presumption of attributability, contained in Rule 5 of the 1982 Entitlement Rules, has been done away with, in the 2008 Entitlement Rules. We have also, therefore, compared the Rules.

68. It is true that the 2008 Entitlement Rules does not contain any provision presuming that, if there is no mention of the physical disability or ailment at the time of induction of the officer in service, there would be a presumption that it was attributable to military service. To the extent that the Court cannot presume, based on the fact that the records at the time of induction of the officer in military service did not indicate that he was suffering from the ailment detected later, that the ailment was attributable to military service, the petitioners are correct in their contention.

69. What, however, turns on this?

71. Having said that, we are also conscious of the indisputable legal position that there is a difference between a disease, or infirmity, arising

during military service and being attributable to military service. The fact that the disease has arisen during military service does not ipso facto mean, irrevocably, that it was attributable to military service. There can be no cavil with this proposition.

72. To that extent, the amended Rule 5 in the 2008 Entitlement Rules, which proclaims that "the mere fact that a disease has manifested during military service does not per se establish attributability or aggravation by military service" is unexceptionable.

xxxx

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."

(emphasis supplied)

47. This Court has thus observed that with the removal of the "presumption" under the 2008 Entitlement Rules, the absence of a note regarding the disease at the time of induction no longer automatically leads to the conclusion that the disease is attributable to military service, however, under Rule 7, the onus remains on the RMB to substantiate, through cogent reasoning in its Report, that although the disease was not present at the time of induction or at least not reported/discovered, it is still not attributable to military service. This implies that the RMB must identify some other factor, apart from military service, as the cause of the disease. The RMB cannot merely assert, without adequate reasons, that the disease, though contracted during military service, is not attributable to such service.

48. This Court further held as under:

"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 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.

84. This would be all the more so when, as in the case as the present, the disease has manifested 3 decades after the officer has been enrolled into military service. By certifying that the disease is not owing to any negligence on the part of the officer, there is an implied acknowledgement that the Respondent cannot be said to be responsible for the Type II DM from which he suffers. It was for the RMB, in such circumstances, to identify the cause of the disease, in its report. This, the RMB has, in the present case, clearly failed to do."

49. With the above observations, the Co-ordinate Bench of this Court dismissed the writ petitions involving similar issues. We find ourselves in agreement with the aforementioned observations, namely that although the Rule on presumption has been modified, the RMB ought to have provided specific reasons for not considering the disability/disease

suffered by the respondents as attributable to or as aggravated by service, especially when the onus in this regard remains with the petitioners.

50. In this regard, it is further relevant to note the observations of the Supreme Court in the Rajumon T.M. v. Union of India &Ors., 2025 SCC OnLine SC 1064, the relevant portions of which reads as under:

"20. In our opinion, the requirement to give reasons by the Medical Board is crucial, critical, decisive and necessary for the purpose of granting or denying disability pension and it is not a mere formality, but a necessary material on the basis of which the pension sanctioning authority has to decide about the grant or refusal of disability pension.

21. As noticed above, it has been specifically provided under Clause (d) of Regulation 423 as quoted that the question as to whether the disability is attributable to or aggravated by service or not, will be decided as regards its medical aspects by the Medical Board and the Medical Board will specify reasons for their opinion and the question whether the cause and attendant circumstances can be attributed to service will be decided by the pension sanctioning authority.

22. Thus, this requirement to give reasons by the Medical Board about their opinion is in our view absolutely necessary as also required under Regulation 423(d) for the reason that the fate of the future career of the serviceman is going to be decided by the opinion of the Medical Board, which is to be treated as final as regards the cause of disability and the circumstances in which the disability originated. The continuation of the service of the concerned serviceman and as to whether he will be entitled to disability pension is dependent on the opinion of the Medical Board which is also to be treated as the final one.

23. Hence, the rules mandate giving of reasons by the Medical Board while rendering its opinion. The reasons given by the Medical Board would obviously be the basis for determination by the competent authority whether the serviceman would be discharged from service and whether he would get disability pension.

24. Accordingly, in our opinion, if the serviceman is discharged from service or denied the disability pension on the basis of a medical opinion which is devoid of reasons, it would strike at the root of the action taken by the authority and such action cannot be sustained in law.

25. We, therefore, hold that if any action is taken by the authority for the discharge of a serviceman and the serviceman is denied disability

pension on the basis of a report of the Medical Board wherein no reasons have been disclosed for the opinion so given, such an action of the authority will be unsustainable in law."

(emphasis supplied)

51. In view of the above, it is essential for the Medical Boards to record and specify the reasons for their opinion as to whether the disability is to be treated as attributable to or aggravated by military service, especially when the pensionary benefits of the Force personnel are at stake.

52. The position of law is well settled that the opinion given by the Medical Boards must be given due weightage and primacy in determining whether the injuries or illness sustained during service were due to or aggravated by military service, and whether they contributed to the individual's invalidation from service. In this context, it is relevant to note the decision of the Supreme Court in Narsingh Yadav v. Union of India, (2019) 9 SCC 667, which reads as under:

"21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board....."

53. Particularly in this milieu, it is of paramount importance that Medical Boards record clear and cogent reasons in support of their medical opinions. Such reasoning would not only enhance transparency but also assist the Competent Authority in adjudicating these matters with greater precision, ensuring that no prejudice is caused to either party.

xxx xxx xxx xxx xxx

68. From a plain reading of Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces, 2010, it is clear that whether a disability or death occurs in a Field/Active service area or under normal Peace conditions is immaterial.

69. Nonetheless, it must be noted that even in Peace Stations, military service is inherently stressful due to a combination of factors such as strict discipline, long working hours, limited personal freedom, and constant readiness for deployment. The psychological burden of being away from family, living in isolated or challenging environments, and

coping with the uncertainty of sudden transfers or duties adds to this strain. Additionally, the toll of continuous combat training further contributes to mental fatigue. Despite the absence of active conflict or the challenges of hard area postings, the demanding nature of military life at peace stations can significantly impact the overall well-being of personnel.

70. Undisputably, even when not on the front lines or in hard areas, soldiers are aware that the threat is never far away. This environment, where danger is a constant reality for their peers and could become their own at any moment, creates a persistent state of mental and emotional strain that cannot be overlooked. Thus, military service, whether in peace locations or operational zones, inherently carries stress that may predispose Force personnel to medical conditions such as hypertension.

71. Moreover, it must be noted that lifestyle varies from individual to individual. Therefore, a mere statement that a disease is a lifestyle disorder cannot be a sufficient reason to deny the grant of Disability Pension, unless the Medical Board has duly examined and recorded particulars relevant to the individual concerned.

72. Having taken note of the aforesaid, it is pertinent to refer to the decision of the Co-ordinate Bench in Union of India & Ors. v. WO Binod Kumar Sah (Retd) in W.P (C) 3918/2025, wherein it has been held as under:

"13. The mere fact that para 43 states that, in the case of an officer who was serving in field areas, HAA, CIOPS or was on prolonged afloat service when hypertension was first detected, there would be a presumption that the hypertension was attributable to, or aggravated by, military service, does not imply, as a sequitur, that, in all other cases, the presumption would be otherwise. The contrapositive cannot be implied.

14. If an officer has undergone military service for 22 years before he was found suffering from hypertension, there can, in our reckoning, be no manner of doubt that an onerous duty would be cast on theRMB to establish that the hypertension was not attributable to, or aggravated by, military service. This would have to be established by cogent material, after garnering all requisite evidence. The Supreme Court has already laid down the nature of the exercise which has to be undertaken by the RMB in such cases."

73. A reading of the above reinforces that disability pension cannot be denied solely on the ground that the onset of the disability occurred

while the Force personnel were posted at Peace Station. Furthermore, it is evident that when Force personnel have rendered prolonged military service, there exists a substantial onus on the RMB to establish that the hypertension is not attributable to or aggravated by military service.

74. It is disheartening that members of our Armed Forces are being denied disability pension solely on the aforementioned ground. This overlooks the continuous physical and mental stress faced by soldiers, regardless of their location.

75. Moreover, the petitioners have ignored the fact that many of the respondents had previously served in field areas or hard areas, only to be diagnosed with their respective disabilities later during their peace postings. Denying benefits under such circumstances not only undermines their service but also fails to acknowledge the effect of their demanding careers. Thus, the possibility cannot be ruled out that these factors jointly and severally can become a chronic source of mental stress and strain, precipitating various medical conditions such as hypertension etc.

xxx xxx xxx xxx xxx

85. In view of the aforesaid, and considering the limited scope of the writ jurisdiction in reviewing the orders of the learned Tribunal, no case has been made out warranting interference by this Court with the decision of the learned Tribunal."

17. It is further essential to place reliance on the judgement dated 07.04.2025 of the Hon'ble Delhi High Court in ***Union of India and Ors. v. Sgt Parmendra Kumar Singh (Retd.)***, (supra) wherein while dealing with the disability of Open Angle Glaucoma, it has been recorded by the Hon'ble High Court as under:

6. In the present case, the respondent joined military service on 4 February 1999. He was found to be suffering from Open Angle Glaucoma on 15 October 2018, i.e. 18 years after he had joined the military service. In the personal statement of the officer, which was part of the RMB proceedings, he has specifically stated that he was not suffering from the ailment at the time when he joined service. This fact is also vouchsafed by the entries made in the RMB, later in the point of

time by his superior officers. There is, therefore, no dispute about the fact that at the time when the respondent joined military service, he was not suffering from Glaucoma of any kind.

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

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

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

"35. Glaucoma.

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

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

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

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

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

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

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

Conclusion

18. Therefore, in line with the settled position laid down by the Apex Court in ***Dharamvir Singh (supra)*** and followed by Delhi High Court in ***Col Balbir Singh (supra)***, and ***Sgt Parmendra Kumar Singh (supra),*** the OA 2424/2021 is allowed and the applicant is held entitled to the grant of the disability element of pension qua the

disability of 'Primary Open Angle Glaucoma with Cataract Left Eye and Psuedophakia Right Eye' @ 20% for life which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as ***UOI & Ors. Vs. Ramavtar***, is rounded off to 50% for life from the date of discharge.

19. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum on the arrears till the date of payment.

20. No order as to costs.

21. Pending miscellaneous application(s), if any, are disposed off.

Pronounced in the open Court on the 4th day of August 2024.

[JUSTICE NANDITA DUBEY]
MEMBER (J)

[LT GEN CP MOHANTY]
MEMBER (A)

Akc/-