

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Case No: WP(C) No. 527/2024
CM NO.1237/2024**

Reserved on: 10.11.2025
Pronounced on: 20.11.2025
Uploaded on: 20.11.2025

Whether the operative part or full
Judgment is pronounced :**Full**

1. Union of India through its Secretary to Government of India, Ministry of Defence, South Block, New Delhi-110 011.
2. Additional Director General Personnel Services, Adjutant General's Branch, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi- 110 001.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad, Uttar Pradesh- 211 014.
4. Senior Record Officer, JAKLI Record Office, Pin 911 097 C/O 56 APO.

...Petitioner(s)/Appellant(s)

Through: Mr. Suneel Malhotra, CGSC

v/s

Rajinder Singh (TS) Ex. No. 9104566 N- NK S/O Shri Shamsheer Singh, R/O Village and P.O.Dhangri, Tehsil Rajouri, District Rajouri.

.... Respondent(s)

Through: None.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.**

JUDGMENT

PER OSWAL-J

1. The respondent was enrolled in military service on 17th March, 2000 in J&K Light Infantry but discharged on 31.03.2017 (Afternoon) after rendering 17 years of service and attaining the age of 50 years. Prior to his discharge, the respondent was examined by the Release Medical Board on 16th November, 2016, and Release Medical Board assessed his disability as **Diabetes Mellitus Type II (R-73) and Obesity (E-66) @ 20% composite and NIL % for life**. The disability suffered by the respondent was stated to be neither attributable to nor aggravated by military service, and as such the respondent was held not qualified for disability pension.
2. The respondent did not prefer the appeal, but submitted a representation dated 5th March 2020 through his counsel for grant of disability element and the said representation dated 5th March, 2020 was replied by the petitioners in terms of letter dated 17th March, 2020 thereby rejecting the claim of the respondent for grant of disability element.
3. Aggrieved thereof, the respondent filed OA No. 102 of 2021 before the Armed Forces Tribunal, Regional Bench, Srinagar at Jammu (for short- 'Tribunal'). The OA was disposed of by the learned Tribunal vide order dated 15th July, 2022.

4. Aggrieved thereby, the petitioners have assailed the order on the grounds, inter alia, that the learned Tribunal failed to appreciate that the disabilities suffered by the respondent, namely *Diabetes Mellitus Type II (R-73)* and *Obesity (E-66)*, had been assessed by a duly constituted Release Medical Board as neither attributable to nor aggravated by military service. It is contended that, as per the settled legal position, due weight is required to be accorded to the findings of the Medical Board while arriving at a conclusion and this aspect which, according to the petitioners, was overlooked by the learned Tribunal. It is further submitted that the instant case does not fall within the parameters of the law laid down in *Dharamvir Singh v. Union of India & Others*, (2013) 7 SCC 316.
5. Mr. Suneel Malhotra, learned counsel for the petitioners has reiterated the submissions as recorded above.
6. Heard and perused the record meticulously.
7. It needs to be noted that the co-ordinate Bench of this Court, in ***WP(C) No. 3173/2023, Union of India and others v. Nirman Singh Jamwal***, along with the connected petitions, after examining a catena of judgments of the Hon'ble Supreme Court of India and various High Courts, and upon considering the Pension Regulations for the Army 1961 as well as the Pension Regulations for the Army, 2008, has laid down the following principles governing the grant or refusal of disability pension:-

“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 suffice 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 contracted 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.”

8. In applying the aforesaid principles to the cases concerning the grant of disability pension to personnel suffering from *Diabetes Mellitus Type-II* and *Obesity*, the co-ordinate Bench of this Court has held that it is incumbent upon the medical authorities to render a clear and unequivocal opinion as to whether the disability with which the individual stood afflicted at the time of discharge had arisen during the course of service and had undergone any deterioration attributable to the exigencies of service. The medical authorities are mandated to specifically address whether the compulsions and rigours of service had the effect of aggravating the said disability. It has further been emphasized that, while forming such an opinion, the medical authorities must take into account the entirety of the individual's service career.

9. It is also not in dispute that when the respondent was accepted in army service, he was found physically and mentally fit by the authorities and, therefore, the disease ‘*Diabetes Mellitus Type-II and Obseity*’, which led to his discharge from army service, occurred during service. To disentitle the respondent from claiming the disability pension, the petitioners were required to plead and demonstrate that the disability ‘*Diabetes Mellitus Type-II and Obseity*’, which led to discharge of the respondent, though arisen during army service, was neither attributable to nor aggravated by army service. The burden to disprove acceptance of causal connection between the disability and the army service would also lie on the petitioners.

10. With a view to determine as to whether the petitioners have successfully discharged the burden and have by clear, unambiguous and cogent medical evidence established that the disabilities, which the respondent was found suffering at the time of his discharge from army service is neither attributable to nor aggravated by the military service, we have gone through the medical record produced by the petitioners. The relevant portion of the medical opinion is set out below:-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with Service (Y/N)	Reason/cause/specific conditions and period in service
(a) DIABETES MELLITUS TYPE-II (R.73)	No	NO	Yes	It is metabolic disorder not related with military service, as per para 26 Ch.VII of GMO 2008

(b) OBESITY (E.66)	NO	NO	YES	It is life style disease not related with military service
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11.From the reading of above, it clearly transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have successfully discharged the burden to prove disentitlement on the ground of absence of causal connection between the disabilities and the military service, as the one line opinion by the medical board in respect of the disability with regard to its attributability to or aggravation by military service is not a substitute for clear, unambiguous and cogent medical reasons required to disentitle the respondent from disability element of pension. Since the one line opinion of the Medical Board is vague and cryptic, therefore, same cannot be treated as a substitute to clear, unambiguous and cogent medical reasons required to disentitle the respondent from disability pension. We are unable to concur with the conclusion recorded by the Release Medical Board that the disability suffered by the respondent is neither attributable to nor aggravated by military service. In such circumstances, a mere opinion of non-attribution or non-aggravation, without any supporting analysis or cogent medical reasoning, cannot be accepted at its face value.

12.We also find ourselves unable to agree with the submission advanced by learned counsel for the petitioners that, owing to the respondent's young age at the time of enrolment, the disease could not be detected then and must therefore be treated as pre-existing. This contention is

not borne out from any material placed on record and appears to be based on conjecture rather than medical evidence.

13. Upon examining the record, we find that the learned Tribunal, after taking note of the judgment of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India and others** reported in (2013) 7 SCC 316, has concluded that the disease/disability from which the respondent was subsequently found to be suffering did not exist at the time of his enrolment into military service. The Tribunal has further observed that there is nothing on record to indicate that the Medical Board had opined that such disease could not have been detected at the time of his enrolment.

14. Having considered the submissions advanced by learned counsel for the parties and upon a meticulous examination of the record, we find ourselves in full agreement with the reasoning adopted by the learned Tribunal while allowing the Original Application preferred by the respondent.

15. In view of the foregoing discussion and the settled legal principles governing entitlement to disability pension, we are of the considered view that the present petition is devoid of merit. Accordingly, the writ petition is **dismissed** along with connected CM(s), if any.

(Rajnish Oswal)
Judge

(Arun Palli)
Chief Justice

Jammu
20.11.2025
Madan Verma-Secy

Whether order is speaking? **Yes.**
Whether order is reportable? **No.**