HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

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WP (C) No. 3173/2023
WP(C) Nos. 233, 234, 301, 316, 387, 421, 439, 526, 706, 1000, 1007, 1036, 1094, 1095, 1096, 1097, 1184, 1218, 1219, 1239, 1242, 1258, 1279, 1319, 1365, 1504, 1617, 1644, 1653, 1694, 1708, 2018, 2022, 2068, 2275, 2298, 2301, 2572, 2594, 2613 of 2024 and 540, 544, 657, 658 of 2025

1. **WP(C) No.3173/2023**

Union of India and others v. Nirman Singh Jamwal

.....Petitioner(s) *.....Respondent(s)*

2. **WP(C) No.233/2024**

Union of India and others v. Jagdish Lal

.....Petitioner(s) *.....Respondent(s)*

3. **WP(C) No.234/2024**

Union of Indiaand others v. Karan Singh

.....Petitioner(s) *.....Respondent(s)*

4. **WP(C) No.301/2024**

Union of India and others v. Dass Ram

.....Petitioner(s) *.....Respondent(s)*

5. **WP(C) No.316/2024**

Union of India and others v. Pawan Kumar

.....Petitioner(s) *.....Respondent(s)*

6. **WP(C) No.387/2024**

Union of India and others v. Bodh Raj

.....Petitioner(s) *.....Respondent(s)*

7. **WP(C) No.421/2024**

Union of India and others v. Ex Naik Bhagwan Das

.....Petitioner(s) *.....Respondent(s)*

8. **WP(C) No.439/2024**

Union of India and others v. Surendra Kumar

.....Petitioner(s) *.....Respondent(s)*

9. **WP(C) No.526/2024**

Union of India and others v. Ram Kumar
.....Petitioner(s) *.....Respondent(s)*

10. **WP(C) No.706/2024**

Union of India and others v. Sat Paul
.....Petitioner(s) *.....Respondent(s)*

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Union of India and others v. Angrez Singh
.....Petitioner(s) *...Respondent(s)*

12. **WP(C) No.1007/2024**

Union of India and others V. Murtaza Hussain
.....Petitioner(s) *.....Respondent(s)*

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Union of India and others v. Pushpa Devi
.....Petitioner(s) *.....Respondent(s)*

14.**WP(C) No.1094/2024**

Union of India and others v. Shubdeep Singh
.....Petitioner(s) *.....Respondent(s)*

15.**WP(C) No.1095/2024**

Union of India and others v. Ram Saroop
.....Petitioner(s) *.....Respondent(s)*

16.**WP(C) No.1096/2024**

Union of India and others v. Raj Kumar
.....Petitioner(s) *.....Respondent(s)*

17.**WP(C) No.1097/2024**

Union of India and others v. Madan Lal
.....Petitioner(s) *.....Respondent(s)*

18.**WP(C) No.1184/2024**

Union of India and others v. Sewa Singh
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19.**WP(C) No.1218/2024**

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Union of India and others v. Bharat Bhushan Sharma
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Union of India and others v. Jagtar Singh

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.....Petitioner(s) *.....Respondent(s)*

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Union of India and others v. Asha Ram

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Union of India and others v. Subash Singh

.....Petitioner(s) *.....Respondent(s)*

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Union of India and others v. Yash Paul

.....Petitioner(s) *.....Respondent(s)*

29.**WP(C) No.1644/2024**

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30.**WP(C) No.1653/2024**

Union of India and others v. Aijal Ram

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Union of India and others v. Bachan Singh

.....Petitioner(s) *.....Respondent(s)*

34.**WP(C) No.2022/2024**

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.....Petitioner(s) *.....Respondent(s)*

35.**WP(C) No.2068/2024**

Union of India and others v. Smt. Lal Dahe

.....Petitioner(s) *.....Respondent(s)*

36.**WP(C) No.2275/2024**

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.....Petitioner(s) *.....Respondent(s)*

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.....Petitioner(s) *.....Respondent(s)*

38.**WP(C) No.2301/2024**

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Union of India and others v. Sardari Lal

.....Petitioner(s) *.....Respondent(s)*

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.....Petitioner(s) *.....Respondent(s)*

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Union of India and others v. Girdhari Lal

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44.**WP(C) No.657/2025**

Union of India and others v. Arup Laha

.....Petitioner(s) *.....Respondent(s)*

45.**WP(C) No.658/2025**

Union of India and others v. Deep Singh

.....Petitioner(s) *.....Respondent(s)*

Through : Mr. Vishal Sharma, DSGI with Mr. Eishan Dadhichi, Advocate
Mr. Vikas Sharma, CGSC
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Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjeev Kumar "J"

1. In all these petitions before us filed by the Union of India under Article 226 of the constitution of India orders and judgments of the Armed Forces Tribunal, Regional Bench, Srinagar at Jammu ["AFT"] passed in favour of the respondents, holding them entitled to disability pension, have been assailed. The issues raised revolve around two set of provisions relating to pension.

2. The Pension Regulations for the Army, 1961 ["1961 Regulations"] and the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 1982 ["1982, Entitlement Rules"] represent one part, whereas Pension Regulations for the Army, 2008 ["2008 Regulations"] and Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 ["2008, Entitlement Rules"] form second part.

3. Some of the petitioners before the AFT (respondents herein) are covered by the first set of Rules whereas most of the petitioners before the AFT (respondents herein) are covered by the second set of Rules.

4. With a view to appreciating the controversy raised in all these petitions in proper perspective, we need to formulate few questions that precisely arise in these petitions for determination.

5. With a view to analyzing the questions in the light of relevant rule position governing the entitlement of an ex-serviceman to disability pension, an advertence to the legal landscape obtaining in the matter would be of utmost necessity.

The Pension Regulations for the Army, 1961.

Primary conditions for grant of disability pension

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated -by military service in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

Note for Examines: -Service element of Disability pension is being notified on permanent basis w.e.f. 1/1/73 and even if at some stage the percentage of disability of the pensioners, goes below 20%, his service element notified initially continues to remain in force for life of the pensioner. However in the case of pre 1/1/73 disability pensioners, the service element is contingent upon the continuance of disability element unless and until the pensioner has put in minimum of 10 years of service before 1/3/68 and 5 years of service after that date upto 31/12/72, after which the service element becomes permanent feature as explained above.

Individuals discharged on account of their being permanently in low medical category

173-A. Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note. The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension.

Disability at the time of retirement/discharge

179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 percent or more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.

Note: In the case of an individual discharged on fulfilling the terms of his retirement, his unwillingness to continue in service beyond the period of his engagement should not effect his title to the disability element under the provision of the above regulation."

6. Relevant extract of 1982, Entitlement Rules are reproduced hereunder:

> "4. Invaliding from service is a necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service.
>
> 5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-
>
> **Prior to and during service**
>
> (a) A member is presumed to have been in sound physical and mental condition entering service except as to physical disabilities noted or recorded at the time of entrance.
>
> (b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken placed is due to service.
>
> 8. Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.
>
> **Onus of Proof**
>
> 9. The claimant shall not be called upon to prove the conditions of entitlement. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Post Discharge Claims

10. Cases in which a disease did not actually lead to the member's discharge from service but arose within 10 years thereafter, may be recognised as attributable to service if it can be established medically that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtained prior to discharge and that if the disability had been manifest at the time of discharge the individual would have been invalided out of service on this account.

11. In cases where an individual in receipt of a disability pension dies at home and it cannot from a strictly medical point of view, be definitely established that the death was due to the disablement in respect of which the disability pension was granted:-

(a) the benefit of doubt in determining attributability should go to the family of the deceased, if death occurs within 10 years from the date of his invalidment from service unless there are other factors adversely affecting the claim; and

(b) if death takes place more than 10 years after the date of man's invalidment from service, the benefit of doubt will go to the State.

Duty

12. A person subject to the disciplinary code of the Armed Forces is on duty:-

(a) when performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him.

(b) When moving from one place of duty to another place of duty irrespective of the mode of movement.

(c) During the period of participation in recreation and other unit activities organized or permitted by service authorities and during the period of travelling in a body or singly by a prescribed or organized route.

Note 1

(a) personnel of the Armed Forces participating in

(i) local/national/international sports tournaments as member of service teams, or

(ii) mountaineering expeditions/gliding organized by service authorities, with the approval of Service HQrs; will be deemed to be 'on duty' for purpose of these rules.

(b) personnel of the Armed Forces participating in the above named sports tournaments or in privately organized mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be 'on duty' for purpose of these rules, even though prior permission of the competent service authorities may have been obtained by them.

(c) Injuries sustained by personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organized by, or with the approval of, the local service authority, and death or disability arising from such injuries, will continue to be regarded as having occurred while 'on duty' for purpose of these rules.

Note 2

The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional courses or exercises for the Defence Services for the purpose of the grant of disability/family pensions on account of disability/death sustained during the courses.

(d) When proceeding from his duty station to his leave station or returning to duty from his leave station, provided entitled to travel at public expense i.e. on railway warrant, on concessional voucher, on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in Government transport o

r when road mileage is paid/payable for the journey.

(e) When journeying by a reasonable route from one's quarter to and back from the appointed place of duty, under organized arrangements or by private conveyance when a

person is entitled to use of service transport but that transport is not available.

(f) An accident which occurs when a person is not strictly 'on duty' as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. 20 Thus, for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed 'on duty' at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act.

13. In respect of accidents or injuries the following rules shall be observed :-

(a) Injuries sustained when the man is "On duty" as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.

(b) In cases of self inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.

DISEASES

14. In respect of diseases, the following rule will be observed:-

(a) Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease but influenced the subsequent courses of the disease, will fall for acceptance on the basis of aggravation.

(b) 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 military service. 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.

(c) If a disease is accepted 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 worsen due to the circumstances of duty in military service.

Communicable diseases and diseases due to infection

16. Death or disablement resulting from such disease other than sexually transmitted diseases contracted during service shall be regarded as attributable to military service. Where the disease may have been contracted prior to enrolment or during leave, the question of determining the incubation period in a particular case will arise and an opinion on this point should be expressed.

Miscellaneous Rules

17. Medical Opinion: At initial claim stage, medical views on entitlement and assessment are given by the IMB/RMB. Normally, these views shall prevail for decisions in accepting or rejecting the claim. In case of doubt the Ministry/CDA(Pensions) may refer such cases for second medical opinion to MA(Pensions) Sections in the office of the DGAFMS/Office of CDA(P), Allahabad, respectively. At appeal stage, appropriate appellate medical authorities can review and revise the opinion of the medical boards on entitlement and assessment.

Assessment

22. Assessment of degree of disability is entirely a matter of medical judgment and is the responsibility of the medical authorities.

The degree of disablement due to service/duty of a member of the military forces shall be assessed by making a comparison between the condition of the member as so disabled and the condition of a normal healthy person of same age and sex, without taking into account the earning capacity of the member in his disabled condition in his own or any other specific trade or occupation, and without taking into account the effects of any individual factor or extraneous circumstances.

Where disablement is due to more than one disability a composite assessment of the degree of disablement shall also be made by reference to the combined effect of all such disabilities in addition to separate assessment for each disability.

In other than paired organs, conditions may co-exist which through interaction may give also rise to the need for consideration under the greater disablement principle. One of the simplest example is, the pensioner with entitlement for bronchitis who also suffers from coronary atherosclerosis and as a consequence of acute bouts of coughing claims increasing frequency of attacks of angina. In such cases it is a matter of clinical judgement as to the extent to which the assessment for bronchitis should be increased to cover the greater disablement arising from the interaction between that condition and the coronary atherosclerosis. The pensioner is not entitled to the total assessment of disablement for the coronary atherosclerosis which might well be in the regions of 30 to 40%, but only to that portion of that assessment which it is reasonable to add to cover greater disablement. Depending on the increased frequency in the 27 attacks of angina due to severe bouts of coughing a greater disablement addition in the less than 20% range might well be appropriate.

(a) The assessment of a disability is the estimate of the degree of disablement it causes, which can properly be ascribed to service as defined below.

(b) The disablement properly referable to service will be assessed as under :-

(i) <u>At the time of discharge from the forces</u>:

Normally, the whole of the disablement then caused by the disability. This will apply irrespective of whether the disability is actually attributable to service, or is merely aggravated thereby.

(ii) <u>On resurvey of disability after discharge from service</u> :

The whole of the disablement then caused by the disability, less the following :-

(1) The part due to non-service factors, such as individual's habits, occupation in civil life, accident after discharge, climatic environment after discharge;

(2) Any worsening due to the natural progress of the disability since discharge, apart from the effect of service.

Note: Deduction (1) will be made in all cases; while deduction (2) will apply only in cases where the disability is accepted as aggravated by, but not attributable to, service.

Appeals

23. Right of appeal : Where entitlement is denied by the Pension Sanctioning Authority on initial consideration of the claim, the claimant has a right of appeal against decision on entitlement and assessment. Whereas for decisions on entitlement all concerned authorities have to give opinions, assessment of degree of disablement is entirely a matter of medical judgment and is the responsibility of appropriate medical authority.

Appellate Bodies

25. (a) Defence Minister's Appellate Committee on Pensions

DMACP shall deal with second or the final appeal on claim for casualty pensionary awards. This committee consists of :

Chairman	RM/RRM
Members	URM
	Chiefs of Staff (Army, Navy & Air Force)
	Defence Secretary
	Financial Adviser (DS)
	JAG (Three Services)

(b) Appellate Committee for First Appeals

ACFA shall deal with claims for casualty pensionary awards on first appeals. This Committee consists of :-

Chairman	DS(Pension), Ministry of Defence dealing with pension cases.
Members	Director Personal Services, Army HQ. and his counterparts in Naval and Air HQ. dealing with pension cases.
	Deputy Director General(Pensions) of office of DGAFMS.
	Deputy Financial Adviser (Pensions).”

From a reading of Regulation 173, it is clearly evident that with a view to claiming disability pension, which consists of service element and disability element, invalidation or boarding out of service of the individual on account of disability, which is attributable to or aggravated by military service in non-battle casualty is *sine qua non*. Additionally, the disability as assessed by the medical authorities must be 20% or above. The question whether disability is attributable to or aggravated by military service is required to be determined under the Rules in Appendix II i.e. 1982 Entitlement Rules. Regulation 173-A would, however, apply to an individual who is placed in lower medical category other than “E” permanently and is discharged because no alternative employment in his trade or category suitable to his medical category could be provided by the army or who is unwilling to accept alternative employment or who having accepted the alternative appointment is discharged before completion of his engagement. Such army personnel shall be deemed to have been invalided from service for the purpose of his entitlement to disability pension in terms 1982, Entitlement Rules. The note appended, however, prescribes that an individual, who is placed in low medical category while on extended

service and is discharged on that account before completion of his period of extension shall also be covered by Regulation 173-A.

Now let us revert to the 1982, Entitlement Rules. Rule-4 of 1982 Entitlement Rules is a provision which is akin to Regulation 173 and provides that invalidation from service is a condition precedent for grant of disability pension. It lays down that an individual, who, at the time of his release, is in a lower medical category than in which he was recruited, shall also be deemed to have been invalided out of service. Rule 5 underscores some presumptions in favour of the individual claiming disability pension. It prescribes that a member of the Force shall be presumed to have been in sound physical and mental condition upon entering service and any subsequent deterioration in his health leading to his discharge from service on medical grounds shall be deemed to have taken place due to army service.

From reading of relevant Regulations and the Entitlement Rules in juxtaposition, it is clear that if a member of force enters service in sound physical and mental condition and is later discharged on medical grounds, any deterioration in his health shall be attributed to military service. Rule 8 provides further that attributability/aggravation shall have to be accepted, if appropriate medial authority certifies causal connection of the death/disability with the military service. Rule 9 deals with the onus of proof and makes it crystal clear that it shall not be for the claimant to prove the conditions of entitlement. Besides, the

benefit of any reasonable doubt shall also go to the claimant, which benefit of doubt would be construed liberally in favour of the claimant in field/afloat cases.

As is evident from reading of Clause (a) of Rule 14, where it is established that condition of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease, such disease shall be accepted as aggravated by military service. Similarly in terms of Clause (b), a disease which has led to the discharge or death of an individual shall ordinarily be deemed to have been arisen in service, if no note of it has been made at the time of the individual's acceptance for military service. This presumption can only be rebutted, if medical opinion holds, for reasons to be stated, that the disease was such as could not have been detected on medical examination prior to acceptance for service. Clause (c) makes it further clear that even where disease is accepted as having arisen in service, it would not be ipso facto deemed to have been aggravated by military service unless it is established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to circumstances of duty in military service.

Rule 15 enumerates the factors leading to onset and progress of some diseases. Environmental factors relating to service conditions, dietic compulsions, exposure to noise, physical and mental stress and

strain and disease due to infection arising in service will merit an entitlement of attributability. The Rule further provides that a careful attention must be given to the possibility of pre-service history of such conditions, which, if approved, could rule out entitlement of attributability. Even in such cases it would require consideration regarding aggravation. To determine the attributability/aggravation or otherwise reference shall be made to the Guide to Medical Officers (Military Pensions) 1980, as amended from time to time. As per Rule 16, death or disablement resulting from communicable diseases (other than venereal diseases) and diseases due to infection shall be regarded as attributable to military service.

Rule 17 is a provision of profound importance and unequivocally provides that views of initial medial board/review medial board with regard to entitlement and assessment shall normally prevail for acceptance or rejection of the claim for disability pension. However, in the cases where, Ministry/CDA(Pensions) raises some doubt, it may refer such cases for second medical opinion to the MA(Pensions) Section. The appropriate appellate medical authority can review or revise the opinion of the medical board on entitlement and assessment.

In terms of Rule 22 of the 1982, Entitlement Rules, the assessment of degree of disability is entirely a matter of medical judgment and is the responsibility of the medial authorities. Rule 23

gives the army personnel, who is denied his entitlement to disability pension by the Pension Sanctioning Authority on initial consideration of the claim, right to file appeal. Appellate Bodies to hear such appeals are provided under Rule 25.

These are some of the salient provisions of 1961, Regulations and the 1982, Entitlement Rules and are required to be kept in mind while determining the entitlement of the respondents, who have retired prior to the promulgation of the 2008 Regulations.

It is now time to have a look on the relevant provisions of 2008 Regulations and 2008, Entitlement Rules.

> "**Disability Element in Addition to Retiring Pension to Officer Retired on Attaining the Prescribed Age of Retirement.**
>
> 37. (a) An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, maybe granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more.
>
> (b) The disability element for 100% disability shall be at the rate laid down in Regulation 94 (b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 94(c) shall not be applicable for computing disability element.
>
> DISABILTY ELEMENT FOR DISABILITY AT THE TIME OF DISCHARGE/RETIREMENT
>
> 53. (a) An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service

and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.

(b) The disability element for 100% disability shall be at the rate laid down in Regulation 98 (b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 98(c) shall not be applicable for computing disability element.

Notes: 1. An individual discharged on fulfilling the terms of his engagement, his unwillingness to continue in service beyond the period of his engagement should not affect his title to the disability element under the provisions of the above Regulation.

2. An individual who seeks discharge at own request shall not be eligible for disability element provided that the individual who is due for discharge on completion of tenure or on completion of service limit or on completion of terms of engagement or on attaining the prescribed age of retirement and who seeks within one month pre-mature retirement/discharge within one month on request for the purpose of getting higher commutation value of pension, shall remain eligible for disability element.

WHEN ADMISSIBLE

81. (a) Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section.

Explanation: -

There shall be no condition of minimum qualifying service for earning service element.

(b) The question whether disability is attributable to or aggravated by military service shall be determined under the Entitlement Rules

For Casualty Pensionary award, 1982 as laid down in APPENDIX-IV of these Regulations.

CIRCUMSTANCE OF DEATH/DISABILITY ATTRIBUTABLE TO OR AGGRAVATED BY MILITARY SERVICE

82. For determining the pensionary benefits on death or disability which is attributable to or aggravated by Military service under different circumstance, the cases shall be broadly categorized as follows: -

Category A

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

Explanation : The cases of death or disability due to natural causes falling under Category A entitles ordinary family pension or invalid pension or invalid gratuity as the case may be.

Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as:

(i) Accidents while travelling on duty in Government vehicles or public/private transport.

(ii) Accidents during air journeys

(iii) Mishaps at sea while on duty.

(iv) Electrocution while on duty etc.

(v) Accidents during participation in organised sports events/adventure activities/expeditions or training.

Explanation: Invalidment case falling under Category B and Category C due to disease contracted or injury sustained or cause of death if accepted by medical authority and/ or competent authority attributable to or aggravated by Military service the individual may be granted disability pension or special family pension as the case may be.

Category D

Death or disability due to acts of violence /attack by terrorists, anti - social elements etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public etc. would be covered under this category, besides death/disability occurring while employed in aid of civil power and also while dealing with natural calamities.

Explanation : Cases falling under Category D entitles liberalised disability pension or liberalised family pension as the case may be.

Category E

Death or disability arising as a result of: -

(i) Enemy action in international war

(ii) Action during deployment with a peace keeping mission abroad

(iii) Border skirmishes

(iv) During laying or clearance of mines including enemy mines as also mine sweeping operations.

(v) On account of accidental explosions of mines while laying operationally oriented mine field or lifting or negotiating mine field laid by the enemy or own forces in operational areas near international borders or the line of control.

(vi) War like situations, including cases which are attributable to/aggravated by:-

(1) extremist acts, exploding mines etc, while on way to an operational area

(2) battle inoculation training exercises or demonstration with live ammunition

(3) Kidnapping by extremists while on operational duty

(vii) An act of violence/attack by extremists, anti social elements etc. while on operational duty.

(viii) Action against extremists, antisocial elements etc. death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators shall be covered under this category.

(ix) Operations specially notified by the Government from time to time

Explanation :

Death or injury sustained in the circumstances falling under Category E entitles liberalised family pension or war-injury pension as the case may be.

Note: The illustrations given in each category above from 'A' to 'E' are not exhaustive. Case not covered under these categories shall be dealt with as per Entitlement Rules for

Casualty Pensionary Awards, 1982 as contained in APPENDIX IV of these Regulations.

SERVICE PERSONNEL WHO RETIRES VOLUNTARILY

83. (a) An Officer who retires voluntarily/or a Personnel Below Officer Rank who is discharged at his own request on compassionate ground shall not be eligible for any award on account of disability.

(b) Individual who is due for retirement/discharge on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the prescribed age of retirement and who seeks pre-mature retirement/discharge on request within a month of due date of retirement/discharge for purpose of getting higher commutation value of pension, shall remain eligible for getting higher commutation value of pension and shall remain eligible for disability element.

SERIOUS NEGLIGENCE OR MISCONDUCT

84. If the disability of service personnel is wholly or partly due to his serious negligence or misconduct, the amount of disability pension or gratuity otherwise admissible may be reduced at the discretion of the competent authority.

Provided the reduced pension shall not be less than the invalid pension admissible as if the individual has been invalided from service not due to service factor.

REFUSAL TO UNDERGO MEDICAL TREATMENT

85. (a) An award of disability element of pension otherwise admissible may be withheld or be granted at a reduced rate, at the discretion of the competent authority, if an individual suffering from a disability, accepted as attributable to or aggravated by military service unreasonably refuses to undergo an operation or other

medical treatment which in the opinion of the service medical authority would cure or reduce the degree of disablement.

(b) The refusal shall not be regarded as unreasonable when, in the opinion of the service medical authority, the treatment or operation may be severe and dangerous to life.

(c) The question whether Service personnel's refusal to undergo medical treatment or an operation for his disability is reasonable or unreasonable shall be decided in accordance with the criteria laid down in APPENDIX-V to these Regulations.

MANIFESTATION OF DISABILITY AFTER RETIREMENT/ DISCHARGE

86. Service personnel who had retired/discharged (otherwise than at his own request or in any of the circumstances specified in Regulation 29 & Regulation 41) on a retiring/service pension/gratuity, but who within a period of 10 years form the date of retirement is found to be suffering from a disease which is accepted as attributable to his military service, be granted in addition to his retiring/service pension/gratuity, a disability element with effect from the date of Review Medical Board constituted by the Director General Armed Forces Medical Services.

REFUSAL TO APPEAR BEFORE RESURVEY MEDICAL BOARD.

87. (a) In case a pensioner, who has been asked, to appear before Resurvey Medical Board for assessment of his temporary disability, refuses to do so, the disability element of his disability pension shall be suspended from the date of such refusal. However, he shall continue to draw service element of disability pension.

(b) In case the pensioner, who has been asked to appear before Resurvey Medical Board for re-assessment his disability but fails to respond within the period specified in call letter, he will be deemed to have refused to appear before the Resurvey Medical Board.

(c) If a pensioner, who has been deemed to have refused or has refused to appear before Resurvey Medical Board as above, requests later to appear before the Resurvey Medical Board, the disability element, as may be due with reference to degree of disability re-assessed by the Re-Assessment Medical Board, shall be payable from the date of such Re-Assessment Medical Board."

Following provisions of 2008, Entitlement Rules would also be relevant and are set out below:-

4. **Invalidment from service:**

(a) Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.

(b) An individual who is boarded out of service on medical grounds before completion of terms of engagement shall be treated as invalided from service.

(c) PBOR and equivalent ranks in other services who are placed permanently in a medical category other than SHAPE 1 or equivalent and are discharged because (i) no alternative employment suitable to their low medical category can be provided, or, (ii) they are unwilling to accept alternative employment, or, (iii) they having been retained in alternative employment are discharged before the completion of their engagement, shall be deemed to have been invalided out of service.

5. Medical Test at entry stage:

The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not

detect some dormant disease. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.

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.

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. Attributablity:

(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

(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.

(ii) 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.

(iii) 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 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 attirbutability/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.

(iii) Diseases Cases:

The decision regarding attributablity/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/Release 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 cases 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.

14. Appeals:

(I) (a) First appeal:

If a person is aggrieved by the denial of entitlement, be may, if he so desires, submit an appeal before Record Office/Service HQrs within six months, which would be considered by the Appellate Committee for First Appeal. The Appellate Committee's decision for upholding or rejecting the appeal will be by consensus.

(b) Second appeal:

Any person, aggrieved by the decision in the first appeal, may file a second appeal within six months of the decision of the Appellate Committee for first Appeal, to the Defence Minister's Appellate Committee on Pension (DMACP).

(II) The composition of the Appellate Committee for First Appeal and the Defence Minister's Appellate Committee on Pension and detailed procedures for disposal of appeals shall be issued by the Ministry of Defence from time to time.

Regulation-37 of the 2008, Regulations talks about an officer, who retires on attaining the prescribed age of retirement or on completion of tenure and prescribes that if such person is found suffering from a disability, which is either attributable to or aggravated by military service at the time of his retirement and it is so recorded by the Release Medical Board, he shall be entitled to disability element in

addition to his admissible retiring pension provided the degree of disability is accepted at 20% or more.

Regulations 81 to 77 of 2008 Regulations, deal with disability pension. Regulation 81 of 2008 Regulations is akin to Regulation 173 of 1961 Regulations and provides that a service personnel, who is invalided from service on account of a disability which is attributable to or aggravated by military service, shall be entitled to disability pension consisting of service element and disability element. The entitlement shall, however, be determined in accordance with the Regulations in Section-1 dealing with disability pension. The Regulation clarifies by way of explanation that in cases where the army personnel is invalided from service, there shall be no condition of minimum qualifying service for earning service element.

Like Regulation 173 of 1961 Regulations, Regulation 81 also provides that the question whether disability is attributable to or aggravated by military service shall be determined under 1982, Entitlement Rules as laid down in Appendix-IV of Regulations, later superseded by 2008, Entitlement Rules, which came into force w.e.f. 01.01.2008. Regulation-82 enumerates circumstances of death/disability attributed to or aggravated by military service and puts them under Category ‘A’ to Category ‘E’. Category ‘A’ refers to death or disability due to natural causes which are neither attributable to nor aggravated by military service to be determined by the competent

medical authorities. By way of example, the Regulation makes a mention of ailments of nature of constitutional diseases, chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty as assessed by the medical authorities. In respect of Category 'A', it has further been clarified by introducing explanation that the cases of death or disability due to natural causes as mentioned in category 'A' would ordinarily entitle family pension or invalid pension or invalid gratuity, as the case may be. Category 'B' refers to cases of death or disability due to causes which are accepted as attributable to or aggravated by military service, as determined by competent medical authorities and cites by way of example, the diseases contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting to death or disability. The accidents while travelling on duty in government vehicle or public or private transport; accidents during air journey; mishap at sea while on duty; electrocution while on duty and accidents during participation in organized sports events/adventure activities/expeditions or training resulting into death or disability shall be attributable to army service. These are indicated in category 'C'.

Category 'D' deals with death or disability due to acts of violence/attack by terrorists, anti-social elements whether on duty other than operational duty or even when not on duty. It also refers to

bomb blasts in public places or transport, indiscriminate shooting incidents in public etc and provides that if death or disability happens or arises due to these reasons, the same shall be held attributable to military service. Category 'E' deals with death or disability arising as a result of various actions like enemy action in international war, action during deployment with a peace keeping mission abroad, border skirmishes etc. etc.

Regulation 83 disentitles an officer for any award on account of disability, who retires voluntarily and a personnel below officer rank, who is discharged on his request on compassionate ground. Regulation 84 disentitles service personnel for any award on account of disability, if such disability is suffered by him wholly or partly due to his serious negligence or misconduct. In such situation, the competent authority may, at its discretion, award disability pension at a reduced rate. Regulation 85 deals with service personnel, who refuses to undergo medical treatment and prescribes consequences of such refusal. Regulation 86 pertains to service personnel, who have retired or discharged otherwise than at their own request or in any of the circumstances specified in Regulation 29 and Regulation 41 on retiring/service pension/gratuity, who are found to be suffering from a disease which is attributable to his military service within a period of 10 years of their retirement, such army personnel shall be granted in addition to the retiring/service pension/gratuity, a disability element

also w.e.f. the date of Review Medical Board constituted by the Director General, Armed Forces Medical Services. Regulation 87 provides for the consequences for refusal by the pensioner to appear before the Resurvey Medical Board.

Insofar as 2008, Entitlement Rules are concerned, Rule 4 only lays down pre-requisite conditions to be fulfilled for entitlement to disability pension. There is not much of difference between 1961 Regulations and 2008 Regulations in this regard. Invalidation from service for disablement which is attributable to or aggravated by military service is sine qua non for entitlement to disability pension providing however, that disability accepted as such should not be less than 20%. Rule 5 prescribes medical tests to be conducted at the entry stage. Rule 5 makes a departure from 1982 Entitlement Rules and provides that the scope of medical test at the time of entry is not exhaustive but is limited to physical examination and that during physical examination it may not be possible to detect some dormant diseases like hereditary, constitutional and congenital diseases. Such diseases, the rule provides, may manifest later in life, irrespective of service conditions. The Rule clarifies that mere fact that a disease has manifested during military service does not ipso facto establish attributability to or aggravation by military service. Rule 6 stressed upon causal connection between disability or death and military service so as to claim award of disability pension or special family

pension. The causal connection, rule provides, has to be established by appropriate authorities. Rule 7 also make slight change in the matter of onus of proof and lays down that ordinarily the claimant shall not be called upon to prove the conditions of entitlement. However, where the claim is lodged after 15 years of discharge/retirement/ invalidment/release, the onus shall be upon the claimant to prove the entitlement, for the reason that by such time the service documents of the claimant are destroyed. Post-discharge claims are dealt with by Rule 8 and the disease/disability that occurs within seven years of the retirement and is recognized as attributable to military service shall hold the pensioner entitled to disability pension, provided it is established by the competent medical authority that the disease is delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.

Rule 10 deals with attributability of the disability to military service. Category 'A' deals with injuries sustained by individual while on duty and accepted as attributable to military service provided a nexus between injury and military service is established. The first category rules out self inflicted injury while on duty from being treated as attributable to Military service unless, it is established that service factors were responsible for such action. Category (b) refers to diseases and provides that for acceptance of a disease as attributable to military service, following two conditions must be satisfied:

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

(ii) that the disease has been caused by the conditions of employment in military service.

The diseases due to infection arisen in service other than sexually transmitted diseases shall also merit an entitlement of attributability. The Rule further provides that if nothing at all is known about the cause of the disease and the presumption of entitlement in favour of the claimant is not rebutted by medical opinion, attributability shall be conceded on the basis of clinical picture and current scientific medical application.

Rule 11 deals with aggravation and prescribes that a disability shall be deemed to have been aggravated by service, if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posting in places of extreme climatic conditions, environmental factors related to service conditions e.g. fields, operations, high altitudes etc. Rule 12 names the competent authorities to determine attributability/ aggravation. Rule 14 is a provision for filing appeals by the person aggrieved by the denial of entitlement to the disability pension.

The discussion would not be complete, if we do not discuss the relevant provisions of the Regulations for Medical Services to Armed Forces. Attributability to service is dealt with by Regulation 423, which reads thus:

"423. Attributability to service.—(a) For the purpose of determining whether the cause of a disability or death is or is 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 service/active service area or under normal peace conditions. It is, however, Page 9 of 31 essential to establish whether the disability or death bore a casual connection with the service conditions. All evidence, 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 carry the 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 favour, 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 doubt could be given more liberally to the individual, in cases occurring in field service/active service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of 'duty' in armed forces. 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 disability 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 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, insofar as it relates to the actual cause 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 attributed to service 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) AFMS F-81 in all cases other than those due to injuries.

(ii) IAFY-2006 in all cases of injuries other than battle 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 ADMS (Army)/DMS (Navy)/DMS (Air).”

The amendment to Chapter-VII and VIII of Guide to Medical Officer (Military Pension) effected in September, 2008 by Ministry of Defence, Government of India deals with each possible disease which may be suffered by an army personnel during his service and lays down guidelines for determining attributability to or aggravation by the military service so as to concede the entitlement of an army personnel to disability pension. We will refer to guidelines mentioned therein in respect of each ailment/disease, which, we shall confront in individual cases of the respondents. Suffice it to say that in the year 2008, the Ministry of Defence, Government of India laid down comprehensive guidelines for the medical authorities for assessment of individual's disability and their causal relationship to the military service. Chapter-VI and VII of the Guide to Medical Officer (Military Pension), 2002 were comprehensively amended so as to include recent advancement in medical science so that causal connection of other relevant factors is brought up to date in accordance with latest scientific opinion.

Discernible changes brought about by 2008 guidelines read with 2008 Entitlement Rules viz-z-viz 1961 Regulations and 1982 Entitlement Rules.

We have elaborately discussed the two set of Rules and Regulations governing the disability pension to the army personnel and find that there are few substantial changes brought about by the Rules

and Regulations of 2008. The comparative table set out below will highlight the changes.

1961 Regulations/1982 Entitlement Rules	**2008 Regulations and 2008 Entitlement Rules.**
173-Lays down primary conditions for grant of disability pension i.e. invalidation out of service on account of disability attributable to or aggravated by military service and assessed at 20% or over. Attributability or aggravation by military service to be determined under 1982 Entitlement Rules contained in Appendix-II.	**81-**lays down similar conditions for entitlement for disability pension but clarifies that in case a person is invalided from service on account of disability as aforesaid, he would be entitled to both disability as well as service element of pension and for earning service element in such situation there shall be no minimum qualifying service. The Regulation provides that question as to whether the disability is attributable to or aggravated by military service shall be determined by 2008 Entitlement Rules. Initially it was provided that 1982 Entitlement Rules would be applicable but the same were superseded and replaced by 2008 Entitlement Rules.
173-A deals with individual's discharge on account of his being permanently in low medical category	There is, however, no corresponding provision
178-deals with manifestation of a disability after an individual is retired/discharged from service. It prescribes period of ten years for manifestation of the disability from the date of retirement/discharge. The disability element to be payable shall be at the rate appropriate to the accepted to degree of disablement and the substantive rank last held with effect from such date as may be decided upon	**86.** Similar provision except that if the disease that manifests within a period of ten years from the date of retirement of the pensioner is found attributable to military service, the disability element shall be paid in full w.e.f. the date of review medical board.

in the circumstances of the case.	
No such provision exists	**Regulation 82** puts circumstances of death/disability attributable to or aggravated by military service into five different categories from A to E.
<u>1982 Entitlement Rules</u>	**<u>2008 Entitlement Rules</u>**
Rule 4 prescribes conditions sine qua non for entitlement to disability pension. An individual, who, at the time of discharge, is in low medical category than the one in which he was recruited shall be treated as invalided from service. It also deals with the individuals placed in permanent medical category other than 'A' and discharged because of non-availability of alternative employment suitable to their low medical category.	**Rule 4**. This Rules does not make any substantial change except that it provides that an individual who is boarded out of service on medical grounds before completion of his term shall be treated as invalided from service and also lays down PBOR and equivalent ranks in other services, who are placed permanently in medical category other than SHAPE-1 or equivalent or discharged because no employment suitable to their low medical category can be provided or they are unwilling to accept alternative employment or they having been retained in alternative employment are discharged before completion of their engagement, shall also be deemed to have been invalided out of service.
Rule-5. It raises certain presumptions in favour of the claimant. It provides that a member of the force shall be deemed to be in sound physical and mental conditions upon entering service except to the disabilities which are noted or recorded at the time of entry in army service	**Rule-5.** This Rule prescribes for medical test at the entry stage and recognizes the fact that there are some hereditary, constitutional or congenital diseases, which may not be detected at the time of physical examination that takes place at the time of entry into service and that such diseases may manifest later irrespective of the service conditions. The mere fact that a disease has manifested during military service is not a proof of his attributability to or aggravation by military service.
Rule 5(viii) takes care of the role of	**Rule-6** separately deals with causal

causal connection between death or disablement and military service.	connection between disability/death and the military service to be established by appropriate authority.
Rule-9. Onus to prove that the disability is not attributable to or aggravated by army service is on the force and not on the claimant. The claimant's entitlement and the benefit of reasonable doubt to be construed liberally in favour of the claimant in fields/afloat cases.	**Rule-7.** Ordinarily claimant cannot be called upon to prove the condition of entitlement. However, in a case where the claim is preferred after 15 years of discharge/retirement/ invalidment / release, the onus shall be upon the claimant to prove his entitlement. There is, thus, slight change in onus of proof as well.
Rule 10. Ten years is the period prescribed for a disease manifestation after retirement which is found attributable to military service.	**Rule 8**. Period of seven years post retirement has been prescribed during which the injury that has manifested is found attributable to army service. Period is also seven years in respect of individuals who are in receipt of disability pension die during the said period.
Rule-14. Attributability It is provided that cases in which it is established that conditions of military service did not determine or contribute onset of disease but influenced its subsequent courses shall be accepted as the basis of aggravation. It also provides that a disease which has led to individual's discharge or death shall be deemed to have been ordinarily arisen in service, if no note of it at the time of entry of individual in the military service is made. This is, however, rebuttable by medical opinion holding with reasons that the disease could not have been detected on medical	**Rule 12(b).** There is substantial departure made by 2008 Rules and it simplifies the provisions and lays down that for acceptance of a disease as attributable to military service, the two conditions must be satisfied that the decease has arisen during military service and that same has been caused by the conditions of employment in military service. The Rule further deals with the disease inflicted due to infection arising in service other than sexually transmitted diseases and also the diseases where the cause of such disease is not known. Aggravation is provided in Rule 11. There is thus no such presumption that if no note of a disease is made at the time of entry into service, same shall necessarily be treated

examination. Late part of the Rule lays down that if disease is accepted as having been arisen during service it must be established that conditions of military service determine or contributed to the onset of the disease and that the conditions were due to circumstances of duty of military service.	to have happened during army service.
Rule 15. This Rule enumerates certain environmental and service condition factors which are responsible for onset and progress of some diseases. Apart from referring to the Guide to Medical Officer (Pension), 1980 as amended from time to time, the Rule also refers to Annexure-3 to the Rules which makes classification of the diseases effected by environmental factors.	**Rule-11.** Similar provision, in particular, provision with regard to classification of disease to be taken as environmental factors of service is missing. Rule 11, which deals with aggravation, however, provides that the disability shall be conceded aggravated by service if its onset is hastened or 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.
No such specific provision noticed	**Rule 12** specifically provides competent authorities to certify attributablity/ aggravation.

From the reproduction of both set of Rules and from comparative analysis, it is seen that there are some noticeable changes brought about with regard to procedure for determining whether a disability is attributable to or aggravated by military service. Presumption that person shall be deemed to be in sound physical and

mental condition, if no note of any disease suffered by him is made at the time of his entry into service is now not available under the new Rules of 2008. It is also not provided in the new Rules of 2008 that a disease with regard to which there was no note made at the time of entry into service shall be deemed to have been arisen during military service. The changes brought about by 2008 Regulations are though extensive but do not seem to be substantial so as to change the very basis of entitlement of an individual to the disability pension.

Indisputably, when an individual is enrolled in military service he is subjected to thorough medical examination to find out his physical and mental condition so as to determine whether such individual is fit for military service. If during examination, no physical or mental disability is noted or recorded, it would not be inappropriate or illogical to say that the disease that occurred or manifested after his entry in service is due to military service unless of course the medical opinion states to the contrary. It shall be well within the domain of medical experts to opine that the disease which an army personnel suffers during service was either hereditary/constitutional or congenital and, therefore, could not have been detected at the time of enrollment where the individual is subjected to a general fitness examination. What was relevant under the old Rules is equally relevant under the new set of Rules. Under the old set of Rules, as we have discussed herein above, there was a long list of factors responsible for onset or

aggravation of various type of diseases and, therefore, in such matters, medical opinion was not much required.

Under the new set of Rules promulgated in the year 2008, entire issue of attributability and aggravation has been left to be determined by the medical experts. however, from a reading of the entire set of new rules, it becomes abundantly clear that one line opinion sans reasons given by the medical authorities is not determinative of the fact whether the injury or death is either attributable to or aggravated by military service. Before we conclude on the issues raised and render our definite opinion, we would like to outline legal precedence on the subject *infra*.

Dharamvir Singh v. Union of India and others, (2013) 7 SCC 316. In this case Hon'ble the Supreme Court framed the following two questions for consideration:

> "i) Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance?
>
> ii) Whether the appellant is entitled to disability pension?"

The case of the pensioner in the aforementioned case was covered by the 1961 Regulations read with 1982 Entitlement Rules.

Dharamvir Singh was found suffering from ‘epilepsy’ when he was boarded out of service w.e.f. 01.04.1994. He was not granted disability pension on the basis of the opinion of the medical board of the Army that the disablement was not related to the military service rendered by Dharamvir Singh. The Supreme Court, after taking note of the provisions of 1961 Regulations and 1982 Entitlement Rules, in paragraph No.29 held thus:

> “29. 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.

The Hon’ble Supreme Court, thus, answered both the questions in affirmative in favour of the appellant-Dharmavir Singh and against the Union of India. From a reading of the judgment in Dharamvir

Singh, we can sum up the conclusions arrived at by the Hon'ble Supreme Court as under:

a) In the cases governed by 1961 Regulations, question as to whether disability is attributable to or aggravated by military service is to be determined under 1982, Entitlement Rules.

b) There is general presumption that the officer was in sound physical and mental condition when he entered the army service except as regards disability recorded at that time and in case such officer is subsequently discharged on medical grounds, it is to be presumed that deterioration in health is due to military service.

c) Onus of proof is not on the claimant and strong medical evidence is required to rebut the presumption envisaged under Rule 5.

d) While considering the Pension Regulations a liberal approach is to be adopted and benefit of doubt or ambiguity must be given to the claimant.

e) That under Rule 14(b), a disease leading to discharge from service would ordinarily deem to have arisen during service, if no note of it was made at the time of acceptance in military service. This is, however, subject to the medical opinion

which, for reasons to be stated, holds that the disease could not have been detected on medical examination prior to acceptance in service.

f) In cases in which accuracy or incompleteness of service record at the time of acceptance of service is due to non-disclosure essential facts by the member of the service, such as pre-enrollment medical history or owing to latency or obscurity of the symptoms, a disability has escaped detection on enrollment or there is direct evidence of the contraction of a disability, otherwise than by service, then though the disease cannot be considered as attributable to service, yet the question of aggravation by subsequent service conditions would be called for examination. However, under Rule 14(c), if a disease is accepted as having arisen in service, it must also be established that conditions of military service determined or contributed to the onset of the disease and that the conditions were due to circumstances of military duty.

g) That it is for the medical board to decide on the actual cause of disability or death and the circumstances in which it is originated. The medical board will specify the reasons in its opinion. The reasons should take into account the etiology of the disease and relevant circumstances and shall follow the Guidelines contained in Chapter II of the Guide to Medical

officers (Military Pensions) Rules, 2002-----"Entitlement: General Principles"

Sukhvinder Singh v. Union of India, (2014) 14 SCC 364.

In the aforementioned case, Hon'ble the Supreme Court expressed its anguish over the manner in which the pension authorities had been dealing with the disability pension cases of the members of the armed forces. The Supreme Court reminded that if the authorities are perceived as being impervious or unsympathetic towards members of the Armed Forces who have suffered disabilities, without receiving any form of recompense or source of sustenance, since these are inextricably germane to their source of livelihood. In paragraph No.11 of the judgment, the Supreme Court recorded its observations, which read thus:-

> "11. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically 10 Page 11 so. Fourthly, wherever a member of the

> Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

Union of India v. Rajbir Singh, (2015) 12 SCC 264.

In this case Hon'ble the Supreme Court got another occasion to consider the same question has had been considered by it in Dharamvir Singh's case (supra). Placing strong reliance on its earlier decision in Dharamvir Singh's case (supra), the Supreme Court in para 15 and 16 of the judgment held as under:

> "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 18 Page 19 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 19 Page 20 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."

It may be noted that case of Rajbir Singh was also covered by the 1961 Regulations and 1982 Entitlement Rules.

Union of India and others v. Ex Sub Gawas Anil Madso, 2025:DHC:2021-DB. A Division Bench of Delhi High Court considered the issue at length surveying entire case law and analyzing rule position obtaining on the issue. The Division Bench also considered the effect of changes brought about by the 2008 Entitlement Rules. What was said by the Division Bench of Delhi High Court in reference to 2008 Entitlement Rules is contained in para 74 to 81, which are reproduced hereunder:

> "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."

Bijender Singh v. Union of India, 2025 SCC OnLine SC 895.

In the aforementioned case, the appellant was enrolled in the army on 30.09.1985 and was invalided out of service w.e.f. 14.08.1989 on account of low medical category for the disease *'generalized tonic clonic seizure old 345 V-67'* assessed at less than 20% on the recommendations of the Invaliding Medical Board. The Invaliding Medical Board as well as Re-Survey Medical Board observed that the disability was neither attributable to nor aggravated by military service. Hon'ble Supreme Court once again placed strong reliance upon its earlier judgments rendered in Dharamvir Singh (supra) and Rajbir Singh (supra) and in paragraph No.45.1 held thus:-

> "45.1. Thus, this Court held that essence of the Rules 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 the service if there is no note or record to the contrary 36 made at the time of such entry. In the event of subsequent discharge from service on medical ground, any deterioration in health would be presumed to be due to military service. The burden would be on the

> employer to rebut the presumption that the disability suffered by the member was neither attributable to nor aggravated by military service. If the Medical Board is of the opinion that the disease suffered by the member could not have been detected at the time of entry into service, the Medical Board has to give reasons for saying so. This Court highlighted that the provision for payment of disability pension is a beneficial one which ought to be interpreted liberally. 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 upon proper physical and other tests, the member was found fit to serve in the army would give rise to a presumption that he was disease free at the time of his entry into service. For the employer to say that such a disease was neither attributable to nor aggravated by 37 military service, the least that is required to be done is to furnish reasons for taking such a view."

Close on the heels is another judgment by Hon'ble the Supreme Court in the case of **Rajumon T.M. v. Union of India and others, 2025 SCC OnLine SC 1064**. In the context of similar controversy, Hon'ble Supreme Court in paragraph No.20 to 25 held 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 Page 18 of 31 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."

Narsingh yadav v. Union of India, (2019) 9 SCC 667. This judgment is on the proposition that in the matter of determining nature and acceptance of disability, it is the opinion of the medical board that

prevails. However, the judicial review of such opinion is not altogether barred. Unless, there is strong medical evidence on record to the contrary, opinion rendered by the medical board possessing expertise cannot be disputed. paragraph No.21 of the judgment is relevant for our purposes and is set out below:

> "21. Though, the opinion of the Medical Board is subject to judicial 14 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. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board."

Union of India v. Manjit Singh, (2015) 12 SCC 275. In this case Hon'ble Supreme Court has dealt with the issue of burden to disprove the causal connection between disability and the military service and in paragraph No.20.6 and 20.7 held thus:-

> "20.6. The burden to disprove the correlation of the disability with the Army service has been cast on the authorities by the Regulations, Rules and the General Principles and thus, any inchoate, casual, perfunctory or vague approach of the authorities would tantamount to non-conformance with the letter and spirit thereof, consequently invalidating the decision of denial. Though the causative factors for the disability have to be the rigour of the military conditions, no insensitive and unpragmatic analysis of the relevant facts is envisaged so as to render any of the imperatives in the Regulations, Rules and General Principles otiose or nugatory. To the contrary, a realistic, logical, rational and purposive scrutiny of the service and medical profile of the member concerned is peremptory to subserve the true purpose and purpose of these provisions.

> 20.7. To reiterate, invaliding a member from the service presupposes truncation of his normal service tenure thus adjudging him to be unsuitable therefor. The disability as well has to exceed a particular percentage. The bearing of the Army service as an aggravating factor qua even a dormant and elusive constitutional or genetic disability in all fact situations thus cannot be readily rules out. Hence the predominant significance of the requirement of the reasons to be recorded by the Medical Board and the recommendations based thereon for boarding out a member from service. As a corollary, in absence of reasons to reinforce the opinion that the disability is not attributable to the Army service or is not aggravated thereby, denial of the benefit of disability pension would be illegal and indefensible."

From the reading of the relevant Rules and Regulations reproduced and discussed herein above and the legal position adumbrated by the Hon'ble Supreme Court and various other High Courts on the issue, we can cull out following principles, which are only enumerative and not exhaustive on the point of issue.

i) The grant of disability pension to the army personnel is not a charity or an act of generosity but a true act of acknowledge of the sacrifices made by them during their service, which manifest in the form of diseases and disabilities. The Pension Regulations and the Entitlement Rules framed by the Government of India for providing financial benefits to the soldiers and military personnel, who encounter diseases and disabilities which are attributable to or aggravated by military service are meant to provide absolute undiluted protection and recompense for the injury that leads to loss of service and leaves such soldiers without any effective means of sustenance. The Pension Regulations and the Entitlement

Rules being in the realm of welfare measures must receive liberal interpretation and in case of any doubt or ambiguity, the interpretation must tilt in favour of the claimant/pensioner.

ii) The nature and extent of disability or cause of death falls within the domain of medical experts and, therefore, the opinion of the medical board with regard to nature and extent of disease or disability should ordinarily be accepted as final, unless there is strong medical evidence on record to dispute such opinion. And even in such cases, the judicial review would be limited to the extent of directing the army authorities to consider review medical board for examination of the claimant.

iii) That since the entitlement of a member of the force to disability pension depends largely on the opinion of the medical board, as such, it is obligatory on the medical boards to record clear and cogent reasons in support of their medical opinion. Absent such clear and cogent reasons in support of the medical opinion, it shall be presumed that the disease that afflicted the soldier during service was due to army service.

iv) Under the 1982 Entitlement Rules, there was a presumption in favour of the claimant that he was in sound physical and mental condition when he joined the service except to a specific disability noted or recorded at the time of entrance into service. In the event of his subsequently being discharged from service on medical grounds, any deterioration of his health which has taken place, is due to service (Rule-5).

v) A disease which has led to an individual's discharge or death shall ordinarily be deemed to have been arisen in service, if no note of it has been made at the time of individual's acceptance in military service. This is, however, subject to medical opinion holding, for reasons to be stated, that the disease was such as could not have been detected on medical examination prior to acceptance for service. Even if, in the circumstances aforementioned, disease is accepted as having arisen in service, the army authorities must establish that conditions of military service determined or contributed to the onset of the disease and that the conditions were due to circumstances of duty in military service. The onus of proof is not on the claimant and it is for the employer to demonstrate the conditions for non-entitlement of the claimant, for, there is a presumption in favour of the army

personnel, who entered in service while being in fit physical and mental conditions and suffered from disease or disablement during service. This was the position precisely in the 1982 Entitlement Rules. However, in 2008 Entitlement Rules, there is no such presumption, yet the onus of proof is still on the employer to establish the disentitlement of the soldier to the benefit of disability pension on the prescribed grounds. It is only where claim for disability pension is lodged after 15 years, the initial onus will shift to the claimant.

vi) That notwithstanding the removal of presumption of entitlement envisaged in the 1982 Entitlement Rules, the legal position has not undergone any substantial change. An army personnel, who is accepted in army service after proper physical and mental examination shall be deemed to possess sound physical and mental condition. The Army would not accept an individual, who is not mentally and physically fit for army service. Though, as is now provided under the 2008 Entitlement Rules, the examination at the time of entering into service shall be of general nature and would not be exhaustive to find out latent and hidden hereditary, constitutional or congenital diseases, yet any onset of such disease during service has to be certified to be so by the

medical authorities supported by clear and cogent medical reasons.

vii) In terms of Rule 15 of 1982 Entitlement Rules, if onset and progress of a disease is affected by environmental factors relating to service conditions, dietic compulsion, exposure to noise, physical and mental stress and strain or is due to infection arisen in service, such disease would merit entitlement of attributability. The possibility of pre-service history of such condition as may be certified by the medical authorities may rule out entitlement of attributability but would require consideration regarding aggravation. Annexure-III to the 1982 Entitlement Rules classifies the diseases which are affected by environmental factors in service and would serve as guide to find as to whether a particular disease or disability is attributed to or aggravated by army service.

viii) However, the cases post 2008 Regulations and governed by 2008 Entitlement Rules would leave the attributability or aggravation to be determined by the medical authorities. The disease would be accepted as attributable to military service, if it has arisen during the period of military service and has been caused by the conditions of employment in military service. The diseases due to infection arisen during service,

other than sexually transmitted diseases, shall be deemed to be attributable to military service. In the case of diseases where their cause is not known, there shall be presumption of entitlement in favour of the claimant that it is also attributable to military service unless such presumption is rebutted on the basis of clinical picture and current scientific medical application.

ix) A disability shall be considered aggravated by service conditions, 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. This again would be subject to clear and cogent medical opinion by the competent medical authority.

x) A disease or disability shall not be held attributable to or aggravated by military service unless a causal connection between the disability or death and military service has been established by appropriate authority.

xi) That the Guide to Medical Officers (Military Pension), 1980 as amended from time to time shall be kept in mind by the medical boards and the authorities concerned to determine as

to whether disability or death is due to military service i.e. either attributable to or aggravated by military service.

xii) The amendments to Chapter-VI to Guide to Medical Officer (Military Pensions), 2008 analyze different type of diseases and lay down guidelines to determine whether a particular disease is attributable to or could be aggravated by military service. Diseases like, hypertension, diabetic mellitus, Ischaemic Heart Disease (IHD) etc etc. find mention in paragraph 43, 26 and 47 of the GMO, 2008 and serve as broad guide to determine attributability or aggravation aspects.

xiii) Burden to disprove the acceptance of causal connection between disability and the military service is on the authorities and the same cannot be said to have been discharged by any inchoate, casual, perfunctory or vague approach of the authorities. This underlines the profound significance of the requirement of recording reasons by the medical board(s).

xiv) That so long as it is established that the disability or death bears causal connection with the service condition, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active

service area or under normal peace condition (Regulation 423 of the Regulations for Medical Services to Armed Forces, 2010).

Having discussed the Regulations/Rule position, both pre and post promulgation of 2008 Regulations, we now proceed to discuss each case on its facts, particularly in the light of medical opinion rendered by the medical authorities of the petitioners.

1. **WP(C) No.3173/2023**

In the instant case, the respondent Nirman Singh Jamwal was enrolled in Army Medical Corps on 21st January, 1984 in medical category SHAPE-I and got permanent commission on 29th September, 1986. He suffered from disability of 'PRIMARY HYPERTENSION' and was superannuated on 30th June, 2017 from service with his disability assessed at 30% for life. The disability was held neither attributable to nor aggravated by army service. The disability pension claim of the respondent was, thus, rejected on the basis of the opinion of the medical board that the disability suffered by the respondent during service was neither attriburable to nor aggravated by military service. Feeling aggrieved, the respondent filed OA No.234/2021 before the Armed Forces Tribunal, Regional Bench Srinagar at Jammu ["AFT"] and prayed for quashing of the order dated 4th May, 2017, whereby his claim for disability pension had been rejected. The

respondent also sought a direction to the petitioners herein to release in his favour the element of disability pension w.e.f. 30.06.2017 with the benefit of rounding off to 50% as against 30%. The AFT considered the matter in the light of the law laid down by Hon'ble the Supreme Court in the case of **Dharamvir Singh** (supra) and **Union of India v. Ram Avtar**, **2014 SCC OnLine SC 1761** and came to the conclusion that the respondent was entitled to the disability element of pension assessed at 30% for life and rounded off to 50%. The judgment passed by the Tribunal dated 26th May, 2022 is subject matter of challenge in this petition.

Before we proceed to examine the medical record, we deem it appropriate to record that the respondent having been discharged with disability in the year 2017 is governed by 2008 Regulations read with 2008 Entitlement Rules. As provided in Rule 11 (b) of 2008 Entitlement Rules, the GMO 2008, as amended from time to time is required to be read with the said rules. Para 43 of GMO 2008 is relevant for determination in this case, which for facility of reference is reproduced hereunder:

> "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."

It is 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 hypertension, which led to his discharge from army service, occurred during service. To disentitle the respondent from claiming the disability pension, the petitioners ought to plead and demonstrate that the disability 'hypertension', which led to discharge of the respondent, though arisen during army service, is neither attributable to nor aggravated by army service. The burden to prove absence of causal connection between the disability and the army service also lies on the petitioners.

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 disability 'hypertension', which led to the invalidation of the respondent from military service is neither attributable to nor aggravated by army service, we have gone through the medical record produced. The relevant portion whereof is set out below:-

> "Disability was neither awarded attributability nor awarded aggravation as the disease was detected while indl was serving in peace(Gurdaspur)."

From the reading of the above, it transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have succeeded in discharging the burden to prove disentitlement on the ground of absence of causal connection between the disability and the army service. The one line opinion of the medical board that the disability is neither attributable to nor aggravated by army service is not a substitute for clear, unambiguous and cogent medical reason to disentitle the respondent from disability pension.

GMO, 2008 and in particular para 43 mandates that the medical authority must opine that the 'hypertension' that has apparently arisen during service career became worsened in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. Furthermore, the medical authority must consider the entire service career of the individual to find out as to whether any long or frequent spells of service in field/HAA/active operational area have created stressful situations, thus, aggravating primary hypertension. The medical opinion sans such reason and, therefore, the benefit of ambiguity in medical opinion has to be given to the respondent. Simply because the disease was detected when the respondent was serving in peace area i.e. Gurdaspur does not mean that the stress and strain of military serie has not contributed to the onset of

the disease or aggravated it. The disease of such nature develops over a period of time and may incidentally manifest when individual is serving in peace area.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity in the judgment passed by the AFT. This petition is, therefore, devoid of any merit and, therefore, deserves to be dismissed. **Ordered accordingly**.

2. <u>WP(C) No.233/2024</u>

In the instant case, the respondent Ex Naik Jagdish Lal was initially enrolled in Army on 28th October, 1983 and after rendering 17 years, 01 month and 04 days military service was discharged on 30th November, 2000 and was granted service pension. Thereafter, the respondent was enrolled in Defence Security Corps [‘DSC’] on 28th January, 2003 initially for a period of five years with an option not to count his earlier service towards DSC service. The respondent was placed in low medical category P3(T-24) with effect from February, 2016 and P2 permanent with effect from 24th December, 2016 for diagnosis “**CAD DVD (ANTERIOR WALL MYOCARDIAL INFRACTION)-P/PCE TO LAD & RCA (OLD) 9125.4**” Finally the respondent was discharged from DSC service w.e.f. 31st January, 2018 under the provisions of Army Rule 13(3) item III(iv). Since the respondent was placed in low medical category, he was brought before

a duly constituted Release Medical Board, which assessed his disability at 30% for life as neither attributable to nor aggravated by military service, therefore, qualifying for disability pension. The disability pension claim of the respondent was, thus, rejected on the basis of the opinion of the medical board that the disability suffered by the respondent during service was neither attriburable to nor aggravated by military service. Feeling aggrieved, the respondent filed OA No.33/2021 before the Armed Forces Tribunal, Regional Bench Srinagar at Jammu ["AFT"] and prayed for quashing of the offending part of the Release Medical Board opinion dated 05.11.2017 whereby it had been observed that the disability suffered by the respondent was neither attributable to nor aggravated by military service; and also for quashing of letter dated 4th May, 2020, whereby claim for grant of disability element of pension had been rejected. The respondent also sought a direction to the petitioners herein to release in his favour the disability element of disability pension w.e.f. 1st February, 2018 for life with the benefit of rounding off to 50% as against 30%. The AFT considered the matter in the light of the law laid down by Hon'ble the Supreme Court in the case of **Dharamvir Singh** (supra) and **Union of India v. Ram Avtar**, **2014 SCC OnLine SC 1761** and came to the conclusion that the respondent was entitled to the disability element of disability pension assessed at 30% for life and rounded off to 50%. The judgment passed by the Tribunal dated 7th April, 2022 is subject matter of challenge in this petition.

Before we proceed to examine the medical record, we deem it appropriate to record that the respondent having been discharged with disability in the year 2018 is governed by 2008 Regulations read with 2008 Entitlement Rules. As provided in Rule 1(b) of 2008 Entitlement Rules, the GMO 2008, as amended from time to time, is required to be read with the said rules. Para 47 of GMO 2008 is relevant for determination in this case, which for facility of reference is reproduced hereunder:

> "*47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in* ***myocardial infarction*** *in the territory of the artery occluded.*
>
> *Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias.*
>
> *The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory*

group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Entitlement in Ischemic heart disease will be decided as follows:-

(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.

(b) Aggravation will be conceded in cases in which there is evidence of:-

IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of

> *biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. 37 Neither attributability nor aggravation can be conceded in such cases."*

It is 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 'hypertension', 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 'hypertension', 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.

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 disability 'hypertension', which led to the invalidation of the respondent from military service is neither attributable to nor aggravated by army service, we have gone through the medical record produced. The relevant portion whereof is set out below:-

> "*No close time association with HAA/field areas/CI Ops, no delay in diagnosis and there is no history of compulsion involving severe trauma, emotional or physical strain, Hypertension, diabetes mellitus and vasculitis. As per charter of*

duties of individual, he was not in an exceptional stress & strain due to mil service. No delay in diagnosis."

From the reading of the above, it transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have succeeded in discharging the burden to prove disentitlement on the ground of non-acceptance of causal connection between the disability and the army service. The one line opinion of the medical board that the disability is neither attributable to nor aggravated by army service is not a substitute for clear, unambiguous and cogent medical reason to disentitle the respondent from disability pension. Ibid para 47 of GMO, 2008, stress and strain associated with military service are relevant factors aggravating the disease 'hypertension' and 'diabetes mellitus & vasculitis', which in turn contribute to either onset or aggravation of IHD.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity in the judgment passed by the AFT. This petition is, therefore, devoid of any merit and, therefore, deserves to be dismissed. **Ordered accordingly**

3. <u>WP(C) No.234/2024</u>

Briefly stated, the facts leading to the filing of this petition are that respondent- Karan Singh was initially enrolled in the Army on 24th October, 1976 and discharged on 01st July, 2000 in the rank of

Subedar, after rendering 23 years 08 months and 08 days service in terms of Rule 13(3) item III (iv) for which he was granted service pension. Thereafter, the respondent was enrolled in DSC service on 10th July, 2004 for a term of five years. The respondent was placed in low medical category P2 (T-24) w.e.f. 29th June, 2013 and thereafter P2 Permanent w.e.f. 14.12.2013 for the disabilities **Hypertension, Obesity and Dsylipidema**. Ultimately, the respondent was discharged from DSC service on 31st May, 2014. Before discharge, the respondent was brought before a duly constituted Release Medical Board, which assessed the disabilities incurred by the respondent @ 30%, neither attributable to nor aggravated to military service. Respondent's claim for disability pension was rejected by the petitioners herein. Feeling aggrieved the respondent preferred OA No.396/2019 before the AFT.

The AFT considered the rival stands of the parties in light of the judgment of Hon'ble Supreme Court in the case of Dharamvir Singh (supra) and held the respondent entitled to disability pension @ 50% as against 30% from the date of release from service after being rounded off as per the judgment of Ram Avtar (supra) vide order dated 5th August, 2021, which is impugned in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disabilities as neither attributable to nor aggravated by military service

can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2014 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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) PRIMARY HYPERTENSION	No	NO	Yes	Due to disability onset in peace stn
(b) OBESITY	NO	NO	YES	Due to metabolic disorder

(c) DYSLIPEDEMIA	No	NO	YES	Due to disability onset in peace Stn

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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability of the disabilities to military service.

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.

In view of the above, no case is made out warranting interference with the order of the AFT, which is legally perfect. Accordingly, this writ petition is dismissed.

4. <u>WP(C) No.301/2024</u>

In the instant case the respondent- Dass Ram was initially enrolled in Armoured Corp on 30th May, 1984 in a fit state of health and discharged therefrom on 31st May, 2008 after rendering 24 years and 29 days service for which he was granted service pension for life. Thereafter, the respondent was re-enrolled in DSC on 25th March, 2009. While in DSC service, the respondent incurred the disabilities *"TYPE-II DIABETES MELLITUS AND MODERATE DEPRESSIVE EPISODE*" and was thus, finally discharged from service on 31st March, 2019 on being placed in permanent low medical category under Rule 13 (3) item III(i) after rendering 10 years 07 days service. Before discharge from service, the respondent was brought before the Medical Board, which assessed the composite impact of both the disabilities @ 50% but declared the same neither attributable to nor aggravated by military service. Respondent's claim for grant of disability pension was rejected by the petitioners herein. The appeal preferred against rejection of disability pension claim of the respondent was also rejected.

Feeling aggrieved by the rejection of his disability pension claim, the respondent filed OA No.121/2021 seeking to quash and set aside the impugned order, whereby the respondent's claim for disability pension had been rejected. A direction to the petitioners herein was also sought to grant disability pension in favour of the respondent with rounding off to 75% as against 50% for life. The claim

of the respondent was resisted by the petitioners by contending that the disabilities of the respondent had been assessed by the Medical Board as neither attributable to nor aggravated by military service, hence he was not entitled for the grant of disability pension.

The AFT after considering the matter in light of the law down in Dharamvir Singh (supra) and Ram Avtar (supra) held the respondent entitled to disability pension @75% as against 50% for life vide order dated 10th November, 2022, which is subject matter of challenge in this petition filed by the Union of India and its functionaries.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2019 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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
(i) Moderate Depressive Episode (F-32.1)	No	NO	Yes	Onset in peace and there is no recorded h/o denial of leave to attend to domestic emergencies within three months of onset of disease and neither was indl posted of FD/CIOPS/HAA after diagnosis of disease as per service profile on para-1 vide Para 54 of Chapter-VI of GMO (MP)-2008
(ii) TYPE-2 DIABETES MELLITUS (e-11)	No	No	Yes	Onset in peace not related to mil. service. Vide para-26 of Chapter-VI of GMO(MP)-2008

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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability to military service.

Para 26 of GMO, 2008 deals with diabetes Mellitus. As per para 26 of the GMO, 2008, stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state. Type II Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolong afloat service. As per personal statement in the medical record produced by the petitioners, even after onset of the disabilities, the respondent was posted in field area, which, as per the respondent, has aggravated his medical condition.

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 element of pension.

In view of the above, no case is made out warranting interference with the order of the AFT, which is legally perfect. Accordingly, this writ petition is dismissed.

5. <u>WP(C) No.316/2024</u>

The respondent was enrolled in the Army (JAK RIF Regiment) on 11.12.1995 and discharged therefrom on 31.12.2017 under Rule 13(3) (III)(i) of Army Rules, 1954, on completion of terms of service and was granted service pension vide PPO No.195201700067-0100 dated 15.03.2018. During the course of service, the respondent incurred the disabilities "PRIMARY HYPERTENSION & OBESITY' and, thus, was brought before the Release Medical Board, which assessed the disabilities of the respondent compositely at 30% for life and regarded as neither attributable to nor aggravated by military service being unconnected with military service. Respondent's claim for grant of disability pension was rejected by the competent authority and he was advised to file an appeal before the AFCA within a period of six months. The first and second appeals filed by the respondent against rejection of his claim for disability pension also came to be rejected vide order dated 13.07.2018 and 06.05.2019 respectively.

Feeling aggrieved by rejection of his claim for disability pension, the respondent filed OA No.168 of 2021 before the AFT seeking, inter alia, to quash and aside impugned orders dated

06.05.2019 and 02.03.2021 and to grant disability element of pension w.e.f. 01.01.2018 along with benefit of rounding off.

The petitioners herein have resisted the claim of the respondent on the ground that the disability suffered is neither attributable to nor aggravated by military service. The Tribunal considered the matter in light of the rival contentions of the parties and placing reliance on Dharamvir Singh (supra) and Ram Avtar (supra) held the respondent entitled to disability element of pension with the benefit of rounding off to 50% as against 30% and accordingly, set aside the orders whereby the disability pension claim of the respondent was rejected by the petitioners herein. Order dated 8th December, 2022 passed by the AFT in this regard is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the two different disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged for disablement in the year 2017 is covered by 2008 Regulations read with 2008, Entitlement Rules. As

provided in Rule 1 (b) of 2008, Entitlement Rules Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

Para 43 of GMO, 2008 deals with 'Hypertension", which for facility of reference is reproduced hereunder:

> "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.

It is 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 diseases hypertension, and Obesity (E-66), which led to his discharge from service occurred during service. To disentitle him from claiming disability element of pension, the petitioners must plead and demonstrate that the disabilities which the respondent was found suffering from at the time of his release from army service had though arisen during military service were neither

attributable to nor aggravated by military service. The burden to prove absence of causal connection between the disabilities and military service would also lie on the petitioners.

With a view to determine as to whether the petitioners have successfully discharged the burden and have by clear, unambiguous and cogent medical evidence establish that the disabilities, which the respondent was found suffering at the time of his discharge from army service are neither attributable to nor aggravated to 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)	Reasons/cause/specific conditions and period in service
(a) PRIMARY HYPERTENSION (1-10)	No	No	Yes	The disability is onset in peace not related to service and as per letter No.16036/RMB/MB/ DGA…MA (Pen) Dated 05 May, 2018, not aggravation to service.
(b) OBESITY (e-66)	No	NO	Yes	The disability is not connected with service.

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 each disability with regard

to its attributability or aggravation by military service is not a substitute for clear, unambiguous and cogent medical reasons required to disentitle the personnel from disability element of pension.

The GMO, 2008, in particular, para 43 mandates that the medical authorities must clearly opine as to whether the disabilities which the individual has been found inflicted with at the time of his release, which apparently have arisen during service worsened in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE, operational area have created stressful situation, thus, aggravating the primary hypertension.

In view of the aforesaid prescription in 2008 GMO, it is abundantly clear that the factors like stress and strain of the military service, isolation and living of the individual away from his family, dietic compulsions of service are some of the factors which do have the effect of aggravating both the diseases noted above.

In the face of overwhelming medical opinion with regard to these diseases and guidelines laid down in 2008 GMO, it is a forgone conclusion that the disabilities, which the respondent was found

suffering at the time of his dicharge from army service are aggravated by military service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit and is dismissed, accordingly.

6. <u>WP(C) No.387/2024</u>

The respondent-Bodh Raj joined the military service on 15th October, 1995 in a fit state of health. During the course of his military service, the respondent incurred the disability of "**Primary Hypertension"** and was, thus, discharged on 31st October, 2017. At the time of release, the disability of the respondent was assessed @ 30% for life and held to be neither attributable to nor aggravated by the military service. The respondent's claim for disability pension was rejected. The appeal and representation made by the respondent against his rejection were also rejected. Feeling aggrieved, the respondent approached the AFT by filing OA No.58/2021, which was contested by the petitioners herein by filing objections.

The AFT, after considering the matter in the light of rival contentions and placing reliance on Dharamvir Singh (supra) and Ra Avtar (supra), has allowed the OA, holding the respondent entitled to

disability @ pension 50% as against 30% for life vide order dated 29th September, 2022.

Having heard counsel for the parties and perused the material on record, we are of the considered opinion that the petitioners have not succeeded in proving the disentitlement of the respondent to disability element of pension by clear and cogent medical evidence.

The opinion of the Release Medical Board, which held the disability neither attributable to nor aggravated by military service is vague and cryptic because as discussed herein above, one line reasons i.e. "*Neither Attributable to nor aggravated by military service due to the disability occurred in peace being a metabolic disorder not related to military service vide para 43 of Chapter VI of Guidelines to Medical Officers (GTMO) 2008"* cannot be a substitute to clear, unambiguous and cogent medical record.

No good ground warranting interference with the order of the AFT in these proceedings is made out by the petitioners. Accordingly, this writ petition, being devoid of any merit, is dismissed.

7. <u>WP(C) No.421/2024</u>

Respondent-Ex Naik Bhagwan Das was initially enrolled in the Army (Artillery Regiment) on 07 December, 1984 and was discharged on 31st December, 2001 after rendering 17 years and 25 days service

for which he was granted service pension for life. Thereafter he was re-enrolled in DSC on 15th January, 2004 in a physically and mentally fit condition. On 15th January, 2014, the respondent was granted extension, however, he was discharged from DSC service on 31st January, 2019 because of his disabilities "**FRACTURE DISTAL RADIUS (RT) WRITST OPTD' AND FRACTURE CALCANEUM (RT),** which was assessed @ 30% for life by the Release Medical Board but found neither attributable to nor aggravated by military service. Accordingly, respondent's claim for disability pension was rejected. First and Second appeal preferred by the respondent were also rejected. Feeling aggrieved by rejection of his claim for disability element of pension, respondent filed OA No.128/2021 thereby seeking setting aside the order whereby his disability pension claim stood rejected with a direction to the petitioners herein to grant disability element of pension.

The claim of the respondent in the OA was resisted by the petitioners herein on the ground that he is not entitled to disability element of pension under the provisions of Pension Regulations, as his disability has been declared neither attributable to nor aggravated by the military service by the Release Medical Board. The AFT placing strong reliance on Dharamavir Singh (supra) and Ram Avtar (Supra) held the respondent entitled to the grant of disability element of disability pension and rounded off the disability to 50% as against 30%

for life vide order dated 3rd March, 2022, which is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2019 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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
1. FRACTURE DISTAL RADIUS (RT) WRIST OPTD (S 52.5)	No	NO	yES	No, as per (IAFY-2006) Injury repoa dt. 03 Jan, 2015
2. FRACTURE CALCANEUM (RT) (S92)	No	No	yES	

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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability to military service.

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 element of pension.

In view of the above, no case is made out warranting interference with the order of the AFT, which is legally perfect. Accordingly, this writ petition is dismissed.

8. <u>WP(C) No.439/2024</u>

The respondent-Surendra Kumar Yadav was commissioned in the Army o 07.03.1992 in a fit state of health and was discharged on 31st May, 2020. At the time of discharge, the respondent was brought before the Release Medical Board, which assessed the disability "Type-2 Diabetes Mellitus" at 20% for life with the opinion that the same was neither attributable to nor aggravated by military service. Respondent's claim for disability element of pension was rejected by the petitioners herein. The first appeal filed by the respondent against rejection of his claim was also rejected, aggrieved whereby the respondent filed OA No.42/2021 before the AFT seeking grant of disability pension @50% as against 20% for life together with interest.

The OA was contested by the petitioners herein on the ground that since the disability of the respondent has been regarded as neither attributable to nor aggravated by military service, he is not entitled to disability pension.

The AFT considered the rival submissions in light of the law down by the Supreme Court in Dharamvir Singh (supra) and held the respondent entitled to disability pension @ 50% as against 20% for life

vide order dated 22.12.2022, which is subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability incurred by the respondent as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the army personnel to the disability element of pension in respect of army service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged for disablement in the year 2020 is covered by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1(b) of 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

Para 26 of the GMO deals with Diabetes Mellitus, which for facility of reference, is reproduced hereunder:

> "26. **Diabetes Mellitus**
>
> This is a metabolic disease characterized by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.

There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.

Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.

Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.

Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

It is 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, which

led to his discharge from army service, occurred during service. To disentitle him from claiming disability element of pension, the petitioners must plead and demonstrate that the disability which the respondent was found inflicted with at the time of his release from service had though arisen during military service was neither attributable to nor aggravated by military service. The burden to prove absence of causal connection between the disability and military service would also lie on the petitioners.

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 disability, which army personnel was found suffering at the time of his release from army service are neither attributable to nor aggravated to 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)	Detailed justification
TYPE -2 DIABETES MELLITUS (E-11.9)	NO	NO	Disability onset in peace area (Meerut). Hence is neither attributable nor aggravated by military service vide para 26 of GMO 2008.

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 disability and the military service, as the one line opinion by the medical board in respect of the disability with regard to its attributability or aggravation by military service is not a substitute for clear, unambiguous and cogent medical reasons required to disentitle the personnel from disability pension. The medical authorities must clearly opine as to whether the disability which the personnel has been found inflicted with at the time of his release, which have arisen during service worsened in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE operational area has created stressful situation, thus, aggravating the primary hypertension. As contained in paragraph 26 of GMO 2008, Type-II diabetes mellitus will be considered aggravated, if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service.

In view of the aforesaid prescription in 2008 GMO, it is abundantly clear that the factors like stress and strain of the military service, isolation and living of the individual away from his family,

dietic compulsions of service are some of the factors which do have the effect of aggravating the diseases noted above.

In the face of overwhelming medical opinion with regard to these diseases and guidelines laid down in 2008 GMO, it is a forgone conclusion that the disability, which the respondent was found suffering at the time of his discharge from army service was aggravated by military service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit, and is dismissed, accordingly.

9. <u>WP(C) No.526/2024</u>

In the case on hand, the respondent was enrolled in military service on 12th September, 2000 and was discharged on 31.01.2018 after rendering 17 years service in low medical category i.e. S1H1A1P1E2 (Permanent). The cause of disability, as indicated by the Medical Board, was for respondent's suffering from "KERATOCONUS BOTH EYES", which, as per the medical opinion, was a genetic and neither attributable to nor aggravated by military service. The respondent was, thus, held not entitled to disability pension. On the basis of the opinion of the Release Medical Board, the respondent was held not entitled to disability element of pension. Vide

letter dated 16th February, 2018, the decision not to grant disability element was communicated to the respondent and he was advised to file first appeal against the said order of rejection. The first appeal filed by the respondent was rejected on a technical ground that the respondent had not submitted alongwith his appeal the discharge book. Feeling aggrieved, the respondent filed OA No.278/2019 before the AFT seeking a direction to the petitioners herein to grant disability element of pension with rounding off to 50% for the purpose of computing the disability element along with interest @ 18% per annum. The OA was contested by the petitioners but the same was allowed by the AFT vide order dated 14.07.2021, which is impugned in this petition.

The AFT held the respondent entitled to disability element of pension @ 20% with benefit of rounding off to 50% w.e.f. 25th June, 2014 that is the date on which the law was declared by the Hon'ble Supreme Court in the case of Sukhwinder Singh (supra). The petitioners filed an application before the AFT for seeking leave to file appeal, which was dismissed by the AFT vide order dated 14.07.2021. Therefore, the instant petition under Article 226 of the Constitution of India in light of the law laid down by the Hon'ble Supreme Court in the case of Parshotam Dass (supra).

The impugned judgment is assailed by the petitioners primarily on the ground that the AFT has not appreciated the fact that for grant

of disability pension, it is required to be demonstrated that the army personnel discharged or invalided from service suffers from disability assessed @ 20% or more and such disability is either attributable to or aggravated by military service. It was argued that at the time of his discharge in low medical category, the respondent was found suffering from the disability Keratoconus both eyes, which, as per the opinion of the Release Medical Board, was a genetic disorder, hence neither attributable to nor aggravated by military service.

Before we proceed further to examine the medical record, we deem it appropriate to note that the respondent having been discharged with disability in the year 2018 is governed by the 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1(b) of 2008, Entitlement Rules, GMO, 2008, as amended from time to time, is required to be read with the said Rules.

The disease Keratoconus both eyes is not indicated in GMO 2008, though a similar disease known as Keratitis has been mentioned at para 48 of the GMO 2008. Keratitis mentioned at para 48 of GMO 2008 is an inflamation of cornea with or without ulceration and is essentially an infection by various micro organism excited by a number of causes like injury, foreign body exposure and conjunctivitis. The disease is not attributable to military service but may be said to have been attributable to it, if there is evidence of infection and trauma in relevance to service.

Keratoconus, as per the opinion available on the official website of mayo clinic is an eye condition in which the clear, dome-shaped front of the eye called cornea gets thinner and gradually bulges outward into a cone shape. Although, what actually causes keratoconus is not known, yet genetic and environmental factors are perceived as probable causes for the disease. Although, the medical opinion is not very clear in the case, yet we are of the view that the disease may be genetic in nature, yet environmental factors like UV radiations, exposure and allergies are factors responsible for aggravating the disease. It is not in dispute that when the respondent was accepted in service, he was found physically and mentally fit and therefore, the disease Keratoconus both eyes, which had manifested at the time of discharge of the respondent from army service, occurred during service. To disentitle the respondent from claiming disability pension, the petitioners were required to plead and demonstrate that the disability had, though arisen during army service but was neither attributable to nor aggravated by military service. The burden to disprove the causal connection between the disability and the military service would also lie on the petitioners.

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 disability of the respondent was neither attributable to nor aggravated by military

service, we have gone through the medical record produced by the petitioners. The relevant portion whereof reads thus:

> *"It is a genetic disorder hence neither attributable nor aggravation conceded."*

From the reading of above, it transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have succeeded in discharging the burden to disprove the entitlement on the ground of non existence of causal connection between the disability and the military service. One line opinion of the Medical Board sans any reason is not a substitute for clear, unambiguous and cogent medical reason to hold the respondent disentitled to disability pension.

Whether or not the army service, which carries with it stress and strain and exposure to different environmental factors including exposure to UV radiations could have been the cause of aggravation has not been dealt with by the Medical Board.

For the foregoing reasons, the only ground urged by the learned counsel for the petitioners is found without any substance. We do not find any illegality or infirmity in the judgment impugned passed by the AFT.

This petition is, therefore, found without any merit and the same is, accordingly, dismissed.

10. <u>WP(C) No.706/2024</u>

The respondent-Sat Paul joined military service on 15.12.1986 in a fit state of health. During the course of his service, he incurred disability "LEFT VESTIBULAR SCHWANNOMA (GKS DONE) (H-81.8)" and was finally released from service on 31.12.2016. The Release Medical Board assessed the disability of the respondent @ 20% and opined it to be neither attributable to nor aggravated by military service. The petitioners herein rejected the claim of the respondent for grant of disability pension. The first appeal preferred by the respondent against rejection of his disability pension claim came to be rejected.

Feeling aggrieved, the respondent filed OA No.214/2020 seeking quashment of impugned order dated 05.01.2017, whereby respondent's claim for grant of disability pension was rejected. He also sought a direction to the petitioners herein to grant/release the disability element of pension with the benefit of rounding off to 50% as against 20%.

The claim of the respondent was opposed by the petitioners herein by stating that the invaliding disease in the case of the respondent was neither attributable to nor aggravated by military service. The AFT considered the matter in light of the rival submissions and by placing reliance on Dharamvir Singh (supra) held the respondent entitled to disability pension, which included disability element and service element both and accordingly, allowed the OA.

The AFT also rounded off the disability @ 50% as against 20% for life by placing reliance on Ram Avtar (supra). Order dated 28th July, 2022 passed by the AFT is under challenge in this petition filed under Article 226 of the Constitution of India.

Before we proceed further, it needs to be taken note of that the respondent having been discharged for disablement in the year 2016 is covered by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1 (b) of 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

The disease 'vestibular schwannoma' with which the respondent was suffering at the time of his discharge is related to **vertigo** because it is a benign tumor on the vestibulocochlear nerve, which is crucial for balance and hearing. Para 84 of GMO, 2008 deals with 'Vertigo", which for facility of reference is reproduced hereunder:

> "**84. Vertigo.** It is due to disorder of vestibular system. The causes of vertigo are as under:
>
> | | |
> |---|---|
> | (a) Central : | Trauma to 8th nerve at the base of brain |
> | | Tumours at cerebellopontine angle(acoustic neuroma) |
> | | Disseminated sclerosis |
> | | Posterior inferior cerebellar artery thrombosis. |
> | (b)Peripheral: | Meniere's disease |
> | | Vestibular neuronitis |
> | | Vertebrobasillar insufficiency in cervical spondylosis |
> | | Labrynthitis |
> | | Diabetes mellitus, hypertension |
> | | Drugs(salicylates, quinine, dihydrostreptomycin, kanamycin,) |
> | | Otitis media |
>
> Vertigo arising out of infection during therapy and trauma connected with service should be treated as attributable. Aggravation can be

> conceded if stress and strain of service had played a role in onset of ID e.g. cervical spondylosis, hypertension."

It is 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 disability, which led to his discharge from service occurred during service. To disentitle him from claiming disability element of pension, the petitioners must plead and demonstrate that the disability which the respondent was found suffering from at the time of his release from service had though arisen during service was neither attributable to nor aggravated by military service. The burden to prove absence of causal connection between the disabilities and military service would also lie on the petitioners.

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 disability, 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)	Aggravted by service (Y/N)	Not Connected with service (Y/N)	Reasons/cause/specific conditions and period in service
LEFT VESTIBULAR SCHWANNOMA (GKS DONE) (h-81.8)	No	No	Yes	Not related with military service being tumor

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 or aggravation by military service is not substitute for a clear, unambiguous and cogent medical reasons required to disentitle the personnel from disability element of pension.

The GMO, 2008, in particular, para 84 mandates that the medical authorities must clearly opine as to whether the disability which the individual has been found inflicted with at the time of his release, which have arisen during service worsened in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE operational area have created stressful situation, thus, aggravating the primary hypertension.

In view of the aforesaid prescription in 2008 GMO, Vertigo arising out of infection during therapy and trauma connected with service should be treated attributable to military service and that

aggravation can be conceded if stress and strain of service have played a role in the onset of the disease. Even though, the disease is not related to military service, role of stress and strain of service on its onset and aggravation cannot be ruled out. The medical authorities have neither considered these aspects nor have stated in specific terms that the stress and strain of service had not played any role in the onset of the disease or aggravation thereof nor that the disease had not arisen out of infection.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit and is, accordingly, dismissed.

11. <u>WP(C) No.1000/2024</u>

This petition filed by Unions of India and its functionaries, under Article 226 of the Constitution of India is directed against an order dated 14.07.2021 passed by the Armed Forces Tribunal, Srinagar Bench at Jammu ["AFT"] in OA No.44/2020, whereby the petitioners herein have been directed to hold the Resurvey Medical Board of the respondent within three months from the date of receipt of the copy of the order with a further direction that if the respondent is found entitled to disability element of disability pension, his case shall be processed

further in accordance with the judgment of the Supreme Court in Dharamavir Singh (supra).

The order of the AFT impugned in this petition, is assailed by the petitioners herein primarily on the ground that there is long and unexplained delay on the part of the respondent in preferring the OA and that a dead or stale claim is not permitted to be revived.

Briefly stated, the facts leading to the filing this petition are that the respondent was enrolled in Army on 30th March, 1979 in a medically and physically sound condition. The respondent was invalided out of service on 1st July, 1998 in low medical category BEE(P) with less than 20% (15 to 19%) for two years, which was declared neither attributable to nor aggravated by military service. As per the respondent, he is still suffering with the disease with which he was found suffering at the time of his invalidment.

Having heard learned counsel for the parties and considered the material on record, we are of the considered view that the plea of limitation raised by the petitioners to assail the order of the AFT is not available in the present case.

It is widely established in Indian law that a claim for disability pension constitutes a "recurring" or "continuing cause of action," which prevents the plea of limitation from barring the entire claim. This principle flows from the fact that pension is a monthly

entitlement, and each month's denial of the correct pension gives rise to a fresh cause of action.

Since direction in the order impugned is only to conduct resurvey medical board of the respondent and if he is found entitled to disability pension to process his case accordingly, we see no good ground to interfere with the order impugned.

In view of the above, this writ petition is dismissed being devoid of any merit.

12. <u>WP(C) No.1007/2024</u>

In the instant case, the respondent was enrolled in Indian Army on 16.01.2004 and was discharged on 31st January, 2019 in low medical category after rendering 15 years and 16 days of service for which he was granted service pension for life. At the time of his discharge, the respondent was medically examined by the Release Medical Board held on 06.12.2018 and his disability 'Chondrosarcoma Left Distal Femur with Nodal Recurrence (OPTD) (ICD-C-46.7)' was assessed at 30% for life but neither attributable to nor aggravated by army service. Vide communication dated 19.01.2019, claim of the respondent for disability pension was rejected. This constrained the respondent to file OA No.163/2022 before the AFT seeking, *inter alia*, a direction to the petitioners to grant him disability pension by rounding off his disability to 50%. The OA was contested by the petitioners on the ground that since the disability, as per the medical

opinion, was neither attributable to nor aggravated by military service, the respondent was not entitled to disability element of disability pension.

The AFT considered the OA in the light of the rival contentions and came to the conclusion that rejection of respondent's claim for disability element of disability pension was legally untenable. The disability of the respondent was held aggravated by army service and, therefore, he was held entitled to disability element of pension @ 30% for life to be rounded off to 50% for life, to be paid with effect from three years preceding the filing of the OA. The order dated 18.04.2023 passed by the AFT in this regard is subject matter of challenge primarily on the ground that the AFT has not appreciated the fact that as per the opinion of the Release Medical Board, the disability suffered by the respondent during army service was neither attributable to nor aggravated by military service.

During the course of arguments, strong reliance was placed by the learned counsel for the respondent on the judgment of Hon'ble Supreme Court in the case of **Narsingh Yadav** (supra). It was argued that ordinarily the opinion of the medical board which consists of experts in the medical field ought to be accepted unless there is strong material on record to doubt its correctness.

Having heard learned counsel for the parties and perused the material on record, we deem it appropriate to record that the

respondent having been discharged with disability in the year 2019 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1(b) of the 2008, Entitlement Rules, the Guide to Medical Officers(Military Pension), 2008 [GMO 2008], as amended from time to time, is required to be read with the said Rules. Para 9, 10 and 12 of GMO, 2008 deal with Cancer and other malignancies and, therefore, are set out herein below with advantage:-

> "9. **Cancer.** Precise cause of cancer is unknown. There is adequate material both of scientific and statistical nature which brings into light the causative factors like radiation, chemicals, and viral infections.
>
> The recognized causative agents for carcinogenesis are:-
>
> (a) Viral infection
>
> (b) Radiation from nuclear sources
>
> (c) Ultra violet rays
>
> (d) Chemicals
>
> (e) Acquired chromosomal abnormalities
>
> (f) Trauma (chronic irritation leading to dermatological cancers
>
> eg: kangri cancer).
>
> The service related conditions in relation to carcinogenesis are as under:-
>
> (a) **Occupational Hazards**: All ranks working in nuclear powered submarines, doctors and paramedics working with electro-magnetic equipment, personnel working with radars, communication equipment, microwave and also those handling mineral oils such as petrol and diesel are exposed despite stringent safety measures.
>
> (b) **Infection**: As a cause of cancer has been documented in certain malignancies. Though identification of an organism may not be possible due to lack of facility but there is gross evidence clinically to suspect infection.
>
> (c) The question of relationship between a malignant condition and an accepted injury is difficult to establish. The vast majority of traumatic lesions however severe, show no tendency to be

followed by cancer either immediately or remotely. However chronic irritation leading to dermatological cancers have been documented (eg: Kangri Cancer),attributability will be conceded depending on the merit of the case.

10. Malignancies Considered Attributable to Service

(a) Due to Occupational Hazards:

(i) Any cancer in those personnel working or exposed to radiation source in any forms:

aa) Acute leukaemia

(ab) Chronic lymphatic leukaemia

(ac) Astrocytoma

(ad) Skin cancers

(ii) Any cancer in those exposed to chemical especially Petroleum products or other chemicals:-

(aa) Carcinoma bladder

(ab) Renal cell carcinoma

(ac) Carcinoma of Renal Pelvis

(iii) Any cancer in those exposed to coal dust, asbestos, silica & iron

(aa) Bronchogenic Carcinoma

(ab) Pleural Mesothelioma

(b) Due to Viral Infection:

(i) Hepato-cellular carcinoma (HV B&C)

(ii) Ca nasopharynx (EB virus)

(iii) Hodgkin's disease (EB virus)

(iv) Non-Hodgkin's Lymphoma (Viruses)

(v) Acute Leukaemia (HTLV1)

(vi) Ca anal canal (HTLV 1)

(vii) Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service)

(viii) Ca Cervix (HPV)

12. Malignancies Not Attributable and Not Aggravated

Tobacco related cancers in smokers and tobacco users e.g. carcinoma lung, carcinoma oral cavity, carcinoma bladder. Cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome identified."

It is not in dispute that when the respondent was accepted in army service, he was found physically and mentally fit by the

authorities, therefore, the disability, which the respondent was found suffering at the time of his discharge from army service, occurred during service. To disentitle the respondent from claiming disability pension, the petitioners were required to plead and demonstrate that the disability had, though, arisen during military service, was neither attributable to nor aggravated by army service. The burden to disprove the causal connection between the disability and the military service was also on the petitioners.

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 disability suffered by the respondent is neither attributable to nor aggravated by military service, we have gone through the medical opinion rendered by the Release Medical Board, which is part of the paper-book. The disability Chondrosarcoma Left Distal Femur with Nodal Recurrence (OPTD) (ICD-C-46.7) is indisputably assessed at 30% for life, but is found neither attributable to nor aggravated by military service for the following reason:-

> "Not attributable not aggravated as disability of unknown etiology not related to any factor like exposure to radiation, chemicals, infection and other carcinogenesis associated with military service vide Para 12 Ch-VI of GMO 2008"

From the reading of the opinion, it cannot be conclusively held that the disability suffered by the respondent is neither attributable to

nor aggravated by military service. The opinion given by the Release Medical Board is vague and inconclusive, though from reading of paragraph Nos.9, 10 and 12, it could be said that the disease, which led to the disability of the respondent may not be due to military service. In the absence of clear and cogent opinion backed by reasons, we are at loss to either accept or reject the opinion of the Release Medical Board.

In these circumstances, particularly keeping in view the advancement made in medical science, we deem it appropriate to direct the petitioners to conduct review/re-survey medical board consisting of experts in the field to render their opinion with regard to the attributability to and aggravation of the disease/disability to the military service.

For the foregoing reasons, we allow this petition and set aside the impugned judgment passed by the AFT and direct the petitioners to convene a review medical board consisting of experts in the field to re-assess the disability of the respondent and render a clear opinion as to whether the disability is attributable to or aggravated by the military service. In case, the review medical board is of the opinion that the disability in question suffered by the respondent is either attributable to or aggravated by army service, the petitioner shall allow the disability element of pension to the respondent @ 30% for life rounded off to 50% w.e.f. three years preceding the filing of OA before the AFT i.e.

19.07.2022. They shall disburse the arrears and release pension within three months from the date of such opinion, failing which the respondent shall be entitled to interest @ 8% per annum with effect from the expiry of three months till the payment is made.

13. <u>WP(C) No.1036/2024</u>

Husband of the respondent, Kuldip Kumar was initially enrolled in the Indian Army on 24.11.1977 and was discharged on 30.11.2021 after rendering 24 years and 07 days qualifying service for which, he was awarded the service pension. Said Kuldip Kumar was re-enrolled in DSC and was discharged from such service on 31st May, 2012 on completion of the his contractual engagement under the provisions of Army Rule 13(3)(III)(i). He was not granted extension beyond his initial contractual term of engagement, as he was placed in permanent low medical category by the Release Medical Board, which assessed his disabilities "(i) PRIMARY HYPERTENSION, (ii) Coronary Artery Disease and (iii) DIABETES Mellitus TYPE II" neither attributable to nor aggravated by military service. In the opinion of the medical board, the disabilities suffered by the said Kuldip Kumar were constitutional disorder and unconnected with military service. The degree of disablement for Primary Hypertension was assessed at 30% for life, for Coronary Artery Disease at 20% for life and for Diabetes Mellitus Type II at 1-5 % for life. The composite assessment arrived at by the medical board was put at 50% for life. The onset of the diseases

was on 25.04.2007, 31.07.2010 and 19.08.2011 respectively i.e. during DSC service. The claim of the respondent for disability pension was rejected on the ground that the disabilities were neither attributable to nor aggravated by military service. The matter was taken by the respondent before the higher authorities in first and second appeal but the same also came to be rejected on 15.02.2013 and 12.02.2015 respectively. This made the husband of the respondent to approach the AFT by way of OA No.1233/2016.

The OA was opposed by the petitioners herein on the ground that said Kuldip Kumar at the time of his initial contractual engagement in DSC service was not found suffering from any disease or disability. He was, however, refused extension beyond his initial term due to his placement in low medical category. Before discharge, the personnel was brought before the duly constituted Release Medical Board, which assessed his disabilities neither attributable to nor aggravated by military service. The AFT having considered the rival contentions and material on record, came to the conclusion that, as per Para 179 of the Pension Regulations for the Army 1961 (Part-I), an individual retired/discharged on completion of tenure or on completion of service limits, if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement,

provided the accepted degree of disability is 20% or more and service element if degree of disability is less than 20%. The AFT also referred to para 81 of the 2008 Regulations and relying upon the judgment of Supreme Court in the case of Dharamvir Singh (supra), came to the conclusion that the disease which resulted into disablement of the army personnel shall be deemed attributable to military service as there was no note recorded at the time of entry into service with regard to any disease suffered by the respondent prior to his entry in service. The OA was, accordingly, allowed and the relief prayed for was granted vide order dated 10.05.2018, which is impugned in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the three different disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the army personnel to the disability element of pension in respect of his DSC service.

Before we proceed further, it needs to be taken note of that said Kuldip Kumar having been discharged for disablement in the year 2012 is covered by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1 (b) of 2008, Entitlement Rules Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

Para 43 of GMO, 2008 deals with 'Hypertension" and para 26 with Diabetes Mellitus, which for facility of reference are reproduced hereunder:

> "26. **Diabetes Mellitus**
>
> This is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and associated with long term complications called microangiopathy (retinopathy, nephropathy and neuropathy) and macroangiopathy.
>
> There are two types of Primary diabetes, Type 1 and Type 2. Type 1 diabetes results from severe and acute destruction of Beta cells of pancreas by autoimmunity brought about by various infections including viruses and other environmental toxins in the background of genetic susceptibility. Type 2 diabetes is not HLA-linked and autoimmune destruction does not play a role.
>
> Secondary diabetes can be due to drugs or due to trauma to pancreas or brain surgery or otherwise. Rarely, it can be due to diseases of pituitary, thyroid and adrenal gland. Diabetes arises in close time relationship to service out of infection, trauma, and post surgery and post drug therapy be considered attributable.
>
> Type 1 Diabetes results from acute beta cell destruction by immunological injury resulting from the interaction of certain acute viral infections and genetic beta cell susceptibility. If such a relationship from clinical presentation is forthcoming, then Type 1 Diabetes mellitus should be made attributable to service. Type 2 diabetes is considered a life style disease. Stress and strain, improper diet non-compliance to therapeutic measures because of service reasons, sedentary life style are the known factors which can precipitate diabetes or cause uncontrolled diabetic state.
>
> Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service and having been diagnosed as Type 2 diabetes mellitus who are required serve in these areas.

> Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service.
>
> "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.

It is not in dispute that when husband of the respondent was accepted in DSC service he was found physically and mentally fit by the authorities and, therefore, the diseases hypertension, coronary artery disease and diabetes mellitus type-II , which led to refusal of his extension and release from DSC service occurred during service. To disentitle him from claiming disability element of pension, the petitioners must plead and demonstrate that the disabilities which husband of the respondent was found inflicted with at the time of his release from DSC service had though arisen during military service were neither attributable to nor aggravated by military service.. The burden to prove absence of causal connection between the disabilities and military service would also lie on the petitioners.

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 army personnel was found suffering at the time of his release from DSC service were neither attributable to nor aggravated to 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)	Reasons/cause/specific conditions and period in service
(a) PRIMARY HYPERTENSION (1-10)	N	N	Y	Disability not connected with service
(b) CORONARY ARTERY DISEASE (I-11)	N	N	Y	Disability discovered incidentally during recat for dis (a). Disability not connected with service
DM TYPE-II(E-11)	N	N	Y	Disability endogenous origin not connected with service

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 are successful in discharging 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 each disability with regard to its attributality or aggravation by military service is not a substitute

for clear, unambiguous and cogent medical reasons required to disentitle the personnel from disability element of pension.

The GMO, 2008, in particular, para 43 mandates that the medical authorities must clearly opine as to whether the disabilities which the personnel has been found inflicted with at the time of his release/discharge, which have arisen during service have worsened in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE operational area has created stressful situation, thus, aggravating the primary hypertension.

As is vividly contained in paragraph 26 of GMO 2008, Type-II diabetes mellitus will be considered aggravated, if onset occurs while serving in Field, CIOPS, HAA and prolonged afloat service.

In view of the aforesaid prescription in 2008 GMO, it is abundantly clear that the factors like stress and strain of the military service, isolation and living of the individual away from his family, dietic compulsions of service are some of the factors which do have the effect of aggravating all the three diseases noted above.

In the face of overwhelming medical opinion with regard to these diseases and guidelines laid down in 2008, GMO, it is a forgone

conclusion that the three disabilities, which the individual was found suffering at the time of his discharge from DSC service are aggravated by military service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, thus, found devoid to any merit and is dismissed, accordingly.

14. <u>WP(C) No.1094/2024</u>

The respondent-Shubdeep Singh was enrolled in Indian Army on 26th April, 1993 and discharged on 30th April, 2021 after rendering more than 28 years in Low Medical Category under Rule 13(3) (i) (a) of the Army Rule, 1954. At the time of discharge, the Release Medical Board was held at 172 Military Hospital on 20th March, 2021, which assessed his disabilities **(i) Primary Hypertension (110) @ 30% for life, (ii) Dyslipidaemia (E78) @ 5% for life and (iii) Obesity (E66) % 5% for life,** composite disability was assessed @ 36.82% or life and regarded the disabilities to be neither attributable to nor aggravated by service. The respondent's claim for grant of disability element of pension was rejected vide letter dated 15th June, 2021. The first appeal preferred by the respondent was also rejected whereafter a legal notice was served upon the petitioners, but of no avail. Feeling aggrieved, the respondent filed OA No.121/2022 before the AFT.

The OA was resisted by the petitioners herein on the ground that since the composite disabilities of the respondent @ 36.82% had been regarded as neither attributable to nor aggravated by military service, therefore, he was not entitled to disability element of pension under the provisions of Regulation 53 of 2008 Regulations.

Placing reliance on **Dharamvir Singh** (supra) and **Ram Avtar** (supra), the AFT held the respondent entitled to disability element of pension with the benefit of rounding off of the disability to 50% as against 30% for life. Accordingly, the OA was allowed and the rejection order of the respondent's claim for disability pension was set aside vide order dated 7th February, 2023, which is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2021 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers

(Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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)	Aggravted by service (Y/N)	Detailed Justification
Primary Hypertension	No	NO	Disability is neither attributable nor aggravated by service as onset of disability is while serving in peace area and there is no delay in diagnosis and treatment, there is no close time association of aggravation of disability while serving in HAA/Field/CIOPs(Ref Para 43 CH VI GMO pension 2008
Dyslipidemia (E78)	No	No	Disability is neither attributable nor aggravated by military service as disability is metabolic disorder as well as a life style disease and due to lack of exercise and dietary indiscretion which was within own control of individual. There is no causal relationship with military service.
OBESITY (E66)	No	No	Disability is neither attributable nor aggravated by military service as disability is metabolic disorder as well as a life style disease and due to lack of exercise and dietary indiscretion which was within own control of individual. There is no causal relationship with military service.

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 personnel from disability pension. The AFT has placed strong reliance on Dharamvir Singh (supra) in discarding the opinion of the medical board insofar as first disability i.e. Primary Hypertension' is concerned. However, as far as second and third disabilities suffered by the respondent i.e. 'Dyslipidaemia and Obesity are concerned, the AFT upheld the opinion of the Release Medical Board with regard to attributability to military service. The disability 'Primary Hypertension' is dealt with in para 43 of the GMO, 2008, which for facility of reference is reproduced hereunder:

> "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."

From a reading of para 43 of GMO, 2008, it becomes abundantly clear that where disablement on account of hypertension appears to have arisen or become worse in service, the question whether service compulsion have caused aggravation must be considered.

The GMO, 2008, mandates that the medical authorities must clearly opine as to whether the disability which the individual has been found inflicted with at the time of his release, which apparently have arisen during service became worse in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE operational area have created stressful situation, thus, aggravating the primary hypertension.

In view of the aforesaid prescription, it is abundantly clear that the factors like stress and strain of the military service, isolation, separation from family leaving the individual tense and anxious as

quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family are some of the factors which do have the effect of aggravating the disease noted above.

In the face of overwhelming medical opinion with regard to these diseases and guidelines laid down in GMO, 2008, it is a forgone conclusion that the disability of Primary Hypertension, which the respondent was found suffering at the time of his discharge from army service is aggravated by military service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit and is dismissed, accordingly.

15. <u>WP(C) No.1095/2024</u>

The respondent was enrolled in the Indian Army on 18th November, 1971 and discharged on 31st July, 1991 after rendering 19 years, 08 months and 19 days service, for which he was granted service pension. The respondent was re-enrolled in the Defence Security Corps (DSC) on 03.06.1994 and discharged therefrom on 31.07.2010 in low medical category. Before discharge, the Release Medical Board held on 15th February, 2010 assessed the disability of the respondent i.e. **"Somatoform Disorder F-45"** @ 40% for life and

opined that the disability is neither attributable to nor aggravated by military service. Disability pension claim of the respondent was rejected by the petitioners herein.

Feeling aggrieved, the respondent filed OA No.47/2022 before the AFT seeking, *inter alia*, a direction to the petitioners herein to grant disability pension w.e.f. 1st August, 2010 for life. The respondent's claim in the OA was resisted by the petitioners on the ground that since the disability incurred by the respondent has been regarded as 'neither attributable to nor aggravated by military service', the respondent is not entitled to disability pension. The AFT considered the matter in the light of the contentions of both the sides and held the disability incurred by the respondent as aggravated by Army/DSC service and, accordingly, held the respondent entitled to get disability element @40% for life with the benefit of rounding off to 50% for life with effect from three years preceding the date of filing of the OA i.e. 04.03.2022, vide order dated 14.02.2023, which is subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

Before we proceed further to examine the medical record, we deem it appropriate to note that the respondent having been discharged with disability in the year 2018 is governed by the 2008 Regulations read with 2008, Entitlement Rules. As provided in 1(b) of 2008,

Entitlement Rules, GMO, 2008, as amended from time to time, is required to be read with the said Rules.

The disease Somatoform Disorder is also known as somatic disorder is a mental health condition where a person has excessive worry about physical symptoms that are not explained by a medical condition. Individuals with this disorder genuinely experience physical symptoms but have an extreme, often exaggerated, reaction to them, leading to significant distress and impairment in daily life. The disease 'Mental & Behavioural (Psychiatric) Disorders is dealt with in paragraph No.54 of GMO 2008. For facility of reference para 54 of GMO 2008 is set out below with advantage:-

> "54. **Mental & Behavioural (Psychiatric) Disorders**. Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (Psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.
>
> The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.
>
> (a) Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in:-
>
> (i) Combat area including counterinsurgency operational area
>
> (ii) HAA service.
>
> (iii) Deployment at extremely isolated posts
>
> (iv) Diving or submarine accidents, lost at sea.

(v) Service on sea.

(vi)MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station.

(vii)Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies).

(b) Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neurocognitive deficit which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).

(c) Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:

(i) Death of parent when the individual is the only Child/son.

(ii) Death of spouse or children.

(iii)Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family.

(iv) Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces.

(v) Natural disasters such as cyclones/earthquakes involving the safety of the immediate family.

(vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.

(d) Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.

> (e) Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness."

The exact cause of somatic symptom disorder is not known, however, stress and psychological strain can be a major factor to the development and aggravation of somatic disorders. Chronic psychological distress can manifest as real, physical symptoms, especially in people with a heightened sensitivity to bodily sensations. It is not in dispute that that when the respondent was accepted in service, he was found physically and mentally fit and therefore, the disease Somatoform Disorder, which had manifested at the time of discharge of the respondent from army service, occurred during service. To disentitle the respondent from claiming disability pension, the petitioners are required to plead and demonstrate that the disability had, though arisen during army service but was neither attributable to nor aggravated by military service. The burden to disprove the causal connection between the disability and the military service would also lie on the petitioners.

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 disability of the respondent was neither attributable to nor aggravated by military service, we have gone through the medical record produced by the petitioners, however, we could not find any reason or justification

except 'Nil" recorded against Disability qualifying for disability pension with duration.

From the reading of above, it transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have succeeded in discharging the burden to disprove the entitlement on the ground of non existence of causal connection between the disability and the military service. One line opinion of the Medical Board sans any reason is not a substitute for clear, unambiguous and cogent medical reason to hold the respondent disentitled to disability pension.

Whether or not the army service, which carries with it stress and strain and exposure to different environmental factors could have been the cause of aggravation has not been dealt with by the Medical Board.

For the foregoing reasons, the only ground urged by the learned counsel for the petitioners is found without any substance. We do not find any illegality or infirmity in the judgment impugned passed by the AFT.

This petition is, therefore, found without any merit and the same is, accordingly, dismissed.

16. <u>WP(C) No.1096/2024</u>

The respondent in the instant case was enrolled in the Indian Army on 23rd August, 1969 and discharged on 31st August, 1986.

Thereafter, the respondent was re-enrolled in DSC on 23rd August, 1987 and discharged from DSC service on 31st August, 2004 in low medical category. At the time of discharge, the respondent was brought before the Release Medical Board, which assessed the disabilities (i) *Primary Hypertension* @ 20% for life and (ii) *Ischaemic stroke"* @ 60% for life and composite disability was assessed at 70%. Respondent's claim for disability pension was rejected by the petitioners herein, which was communicated to the respondent vide letter dated 28.01.2005, on the ground that the disabilities suffered by the respondent are not connected with the DSC service. The appeal filed against rejection of his claim for disability pension, too, was rejected by the petitioners. Aggrieved, the respondent approached the AFT by filing OA No.334/2017 seeking, *inter alia*, a direction to the petitioners herein to grant disability pension as assessed @ 70% for life from the date of his discharge from DSC service.

The claim of the respondent in the OA was opposed by the petitioners herein by stating that since the disabilities of the respondent have been regard as neither attributable to nor aggravated by military service, he is not entitled to disability element of pension as per Regulation 81 of the 2008 Regulations.

AFT after considering the rival stands of the parties in light of the settled legal position obtaining on the subject, held the respondent entitled to disability element of pension @ 70%, to be rounded off to

75% for life with effect from three years preceding the date of filing of the writ petition in the High Court in the year 2010, which was later on transferred to the AFT. Order dated 25th April, 2023 of the AFT, has been impugned by the petitioners in this petition filed under Article 226 of the Constitution of India.

Before we proceed to examine the medical record, we deem it appropriate to record that the respondent having been discharged with disability in the year 2004 is governed by 1961 Regulations read with 1982, Entitlement Rules. As provided in 1982, Entitlement Rules, the GMO 1980, as amended from time to time, is required to be read with the said rules. Para 43 of GMO 2002 is relevant for determination in this case, which for facility of reference is reproduced hereunder:

> "43. Hypertension - The first consideration should be to determine whether the hypertension is primary (essential) 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. It is better to clearly indicate whether it is a case of essential hypertension, giving the evidence in support.
>
> As in the case of artherosclerosis, 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. Each case should be judged on its merits taking into account particularly the physical condition on entry into service, the age, the amount and duration of any stress and whether any other service compulsion has operated.

> Hypertension generally arising in close time relationship to service in field area, active operational area, war like situation both in peace and field area , counter-insurgency areas and high altitude areas are acceptable as aggravated when exceptional stress and strain of service is in evidence. 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. Aggravation can be considered taking into account the duration of service in active operational areas and sector profile.

It is 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 disabilities, which led to his discharge from army service, occurred during service. To disentitle the respondent from claiming the disability pension, the petitioners are required to plead and demonstrate that the disabilities '*hypertension*' and '*Ischaemic stroke'*, which led to discharge of the respondent, though arisen during army service, is neither attributable to nor aggravated by army service. As per Para 47 of the GMO, 2002, attributability will be conceded where myocardinal infaraction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical. IHD arising while serving in Field Area/HAA/CI Ops area or during OPS in an individual who was previously in shape-I will be considered as attributable to military service. Further under 1982, Entitlement Rules, a member is presumed to have been in sound physical and

mental condition upon entering service, if no note of any disease is made at the time of acceptance into service and in the event of his subsequent discharge on medical grounds, any deterioration in his health would be due to service.

The burden to prove absence of causal connection between the disability and the army service also lies on the petitioners.

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 led to the invalidation of the respondent from DSC service is neither attributable to nor aggravated by army service, we have gone through the medical record produced. The relevant portion whereof is set out below:-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with Service (Y/N)	Reason/cause conditions and period in service
(a) PRIMARY HYPETENTION I-10	No	No	Yes	Due to normal stress and strain of life in peace military service
(b) ISCHAEMIC STROKE (L) BASAL GANGLION	No	No	Yes	

From the reading of the above, it transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said

that the petitioners have succeeded in discharging the burden to prove disentitlement on the ground of absence of causal connection between the disability and the DSC service. The one line opinion of the medical board that the disabilities are neither attributable to nor aggravated by army service is not a substitute for clear, unambiguous and cogent medical reason to disentitle the respondent from disability pension.

GMO, 2008 mandates that the medical authority must opine that the disabilities that have arisen during service career worsened in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. Furthermore, the medical authority must consider the entire service career of the individual to find out as to whether any long or frequent spells of service in field/HAA/active operational area have created stressful situations, thus, aggravating primary hypertension. The medical opinion sans such reason and, therefore, the benefit of ambiguity in medical opinion has to be given to the respondent. Simply because the disease incurred due to normal stress and strain of life in peace military service, does not mean that the stress and strain of service has not contributed to the onset of the disease or aggravated it. The disease of such nature develops over a period of time and may incidentally manifest when individual is serving in peace area.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity in the judgment

passed by the AFT. This petition is, therefore, found devoid of any merit and deserves to be dismissed. **Ordered accordingly**.

17. <u>WP(C) No.1097/2024</u>

The respondent, in the instant petition, was enrolled in Indian Army on 21.11.1984 in a fit state of health and discharged on 30.11.2006 for which he was granted service pension. He was re-enrolled in DSC on 16.09.2007. During the course of DSC service, the respondent incurred the disability *"Non Obstructive CAD*" and was discharged on 30.09.2019 in low medical category. At the time of discharge, the disability of the respondent was assessed @30% for life, held to be neither attributable to nor aggravated by military service. Respondent's claim for disability pension came to be rejected by the petitioners. The appeal preferred by the respondent against rejection of his disability pension claim was of no avail. Feeling aggrieved, the respondent approached the AFT by way of OA No.296/2021, *seeking inter alia*, grant of disability pension from the day next to his discharge @ 50% as against 30% along with interest. The claim of the respondent in OA was opposed by the petitioners on the ground that since respondent's disability had been regarded as neither attributable to nor aggravated by military service, the respondent was not entitled to disability pension.

The AFT considered the matter in the light of the law laid down by Hon'ble the Supreme Court in the case of **Dharamvir Singh**

(supra) and **Union of India v. Ram Avtar**, **2014 SCC OnLine SC 1761** and came to the conclusion that the respondent was entitled to the disability at 30% for life and rounded off to 50%. The judgment passed by the Tribunal dated 22nd September, 2022 is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability pension in respect of his DSC service.

Before we proceed to examine the medical record, we deem it appropriate to record that the respondent having been discharged with disability in the year 2019 is governed by 2008 Regulations read with 2008 Entitlement Rules. As provided in Rule 1(b) of 2008 Entitlement Rules, the GMO 2008, as amended from time to time, is required to be read with the said rules.

It is not in dispute that when the respondent was accepted in DSC service, he was found physically and mentally fit by the authorities and, therefore, the disease 'Non obstructive CAD', which led to his discharge from DSC service, occurred during service. To disentitle the respondent from claiming the disability pension, the

petitioners were required to plead and demonstrate that the disability, which led to his discharge, though arisen during service, was neither attributable to nor aggravated by DSC service. The burden to disprove acceptance of causal connection between the disability and the DSC service was also on the petitioners.

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 disability, which led to the invalidation of the respondent from service is neither attributable to nor aggravated by army service, we have gone through the medical record produced. The relevant portion whereof is set out below:-

> "*Onset of ID in Apr 2018 while serving in Delhi (peace area). During routine AME Indl found to have ECG abnormality Holter study and 2D Echo were within normal limits. His TMT was positive CAG showed MID LAD-40% plaque 14 days charter of duties shows no contributory factors. There is no close time association with FD/HAA/CI Ops area. Hence ID conceded neither attributable nor aggravated by mil service as per Para 47. Chapter VI, GMO's (Mil Pension), 2008 amendment."*

From the reading of the above, it transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have succeeded in discharging the burden to prove disentitlement on the ground of non-acceptance of causal connection between the disability and the DSC service. The one line opinion of the medical board that the disability is neither attributable to nor

aggravated by army service is not a substitute for clear, unambiguous and cogent medical reason to disentitle the respondent from disability pension. As per para 47 of GMO, 2008, stress and strain associated with military service are relevant factors aggravating the disease. Apart from this, compulsory group living restricts freedom of activity. These factors jointly and severally can become chronic source of mental stress and strain precipitating an attack of IHD. These factor have not been taken into consideration by the medical board while rendering its opinion.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity in the judgment passed by the AFT. This petition is, therefore, devoid of any merit and, therefore, deserves to be dismissed. **Ordered accordingly**

18. <u>WP(C) No.1184/2024</u>

This writ petition filed under Article 226 of the Constitution of India by the Union of India and its functionaries is directed against an order dated 10th April, 2023 passed by the AFT in Original Application (OA) No.72 of 2023, whereby respondent's claim for disability pension with rounding off was allowed.

The facts leading to the filing of this petition are that the respondent was enrolled in the Indian Army on 20th March, 1984 and discharged on 1st July, 2000 on completion of 16 years and 03 months

of service for which he was granted service pension. He was re-enrolled in Defence Security Corps (DSC) on 23rd March, 2001 in Medical category SHAPE-1 as per AFMSF-2A dated 26.01.2001. The respondent was invalided out of service on 31st May, 2021 in Low Medical Category P2 (P) **"PRIMARY HYPERTENSION"** and **"SIMPLE OBESITY".** Before discharge, the respondent was brought before the Release Medical Board held on 17th February, 2021 assessed the disabilities incurred by the respondent @ 33.5% (composite) for life with the opinion that the same is neither attributable to nor aggravated by military service. Respondent's claim for the grant of disability element of disability pension was rejected by the petitioners herein vide letter dated 5th April, 2021. The first appeal preferred by the respondent was also rejected. Feeling aggrieved, the respondent approached the AFT by way of OA No.72/2023, which was allowed by holding the respondent entitled to get disability element of pension @ 30% for life and rounded off to 50% for life vide order dated 10th April, 2023, which is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2021 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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)	
PRIMARY HYPERTENSION (ICD-I10)	N	N	Due to onset in peace stn (Para 43 Chapter VI of GMO (MP) 2008
(i) Simple Obesity (ICD-E66)	N	N	Not related to Mil service. Due to interplay of various factors such as faulty dietary habits & life style etc.

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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability to military service.

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. The Release Medical Board has not considered whether service compulsions have caused aggravation or not, which is mandated as per Para 43 of GMO, 2008.

In view of the above, no case is made out warranting interference with the order of the AFT, which is legally perfect. Accordingly, this writ petition is dismissed.

19. <u>WP(C) No.1218/2024</u>

This petition is directed against an order dated 22nd September, 2022 passed by the AFT in OA No.321/2011 titled Ex Naik Bhagwan

Dass v. Union of India and others, whereby the respondent claim for disability element of pension has been allowed.

In brief, the facts leadings to the filing of this petition are that the respondent-Bhagwan Dass was enrolled in Army on 13th September, 1976 in a fit state of health and discharged on 30th September, 2000, after rendering 24 years and 18 days qualifying service. He was re-enrolled in DSC on 15th May, 2002. During the course of his service in DSC, the respondent incurred disabilities **"Chronic Obstructive Pulmonary disease** and **Cataract Both Eyes (OPTD) Pseudophakia"** and discharged from DSC service on 31st December, 2015 in low medical category. At the time of discharge, disability of the respondent was assessed @ 40% for life and held to be neither attributable to nor aggravated by military service. Respondent's claim for disability pension was rejected. Feeling aggrieved, the respondent filed OA No.321/2021 *inter alia* seeking a direction to the petitioners herein to grant the disability element of pension to the respondent. The claim of the respondent in the OA was resisted by the petitioners herein on the ground that since the disability is assessed as neither attributable to nor aggravated by military service, as such, the respondent is not entitled to disability pension.

The AFT considered the rival contentions in the light of law laid down in **Dharamvir Singh** (supra) and held the respondent entitled to grant of disability pension @ 50% as against 40% after being rounded

off in terms of the ratio of the judgment in the case of **Ram Avtar** (supra). The order of the AFT order dated 22nd September, 2021 is subject matter of challenge in this petition filed by the Union of India and its functionaries.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2015 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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 conditions and period in service
(i)Chronic Obstructive Pulmonary Disease	No	NO	Yes	Not related to mil service
(ii)CATARACT BOTH EYES (OPTD) PSEUDOPHAKIA				

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, for, 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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability to military service.

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 element of pension. The Release Medical Board has not considered whether service compulsions have caused aggravation or not.

In view of the above, no case is made out warranting interference with the order of the AFT, which is legally perfect. Accordingly, this writ petition is dismissed.

20. <u>WP(C) No.1219/2024</u>

Respondent-Bharat Bhushan Sharma was initially enrolled in Dogra Regiment of Indian Army on 14th March, 1987 and discharged on 31st December, 2011. He was re-enrolled in Defence Security Corps (DSC) on 24th December, 2011 and discharged from DSC service on 31st December, 2021 having been placed in low medical category after rendering 10 years and 8 days service in terms of Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge, respondent was brought before the Release Medical Board held on 11th November, 2021, which assessed the disability '*Peripheral Neuropathy (ICD 10-G 90.09)*' @ 20% for life and opined that the disability is neither attributable to nor aggravated by service. Respondent's claim for grant of disability pension was rejected vide letter dated 24.01.2022. It is in this background, the respondent filed OA No.113/2022 before the AFT seeking, *inter alia*, a direction to the petitioners herein to grant

disability pension along with benefit of rounding off of disability to 50%.

The claim of the respondent in the OA was resisted by the petitioners by contending that respondent's disability @ 20% has been regarded as neither attributable to nor aggravated by the Release Medical Board, hence he is not entitled to disability element of pension.

The AFT, after considering the matter in light of the settled legal position of law, held the respondent entitled to disability pension @ 20% for life and rounded off the same to 50% for life vide order dated 28th March, 2023, which is subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the Release Medical Board, which assessed the disability as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his DSC service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2021 is governed by 2008 Regulations read with 2008, Entitlement Rules.

As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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)	Details justification
PERIPHERAL NEUROPATHY	No	NO	The ID is NANA due to onset in peace area and as per initial AFMSF dated 10 Mar, 2021 and spl. opinion. Hence ID is conceded as NANA. Ref. para 62 of Ch.VI of GMO 2008.

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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability to military service.

The disability "Peripheral Neuropathy' is dealt with in para No.62 of the GMO, 2008, which indicates that the cause of peripheral neuropathy may be due to infection. In terms of Rule 10(b)(iii) of 2008, Entitlement Rules, diseases due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability.

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 element of pension. The Release Medical Board has not stated in clear terms about the cause of the disease.

In view of the above, no case is made out warranting interference with the order of the AFT, which is legally perfect. Accordingly, this writ petition is dismissed.

21. <u>WP(C) No.1239/2024</u>

In this case, the respondent-Shamsher Singh was enrolled in Indian Army on 4th April, 1978. After completing 18 years and 8 months service, he was discharged on 1st January, 1997. He was re-enrolled in Defence Security Corps (DSC) on 30th June, 2001 and was discharged from DSC service on 30th June, 2011 in low medical category for the disability "**Primary Hypertension**". Before discharge, the Release Medical Board held on 15.20.2010, assessed the disability incurred by the respondent @30% for life and opined that the disability is neither attributable to nor aggravated by military service. Respondent's claim for disability pension was rejected. Feeling Aggrieved, the respondent approached the AFT by way of OA No.263/2022 seeking inter alia a direction to the petitioners herein to grant disability pension of DSC service w.e.f. 01.07.2011 for life. The claim of the respondent was resisted by the petitioners herein on the ground that since the disability of the respondent has been regarded as neither attributable to nor aggravated by the Release Medical Board, hence he is not entitled to disability element of pension.

The AFT, having considered the rival contentions in the light of judicial pronouncements made by the Supreme Court, held the respondent entitled to disability element of pension with the benefit of rounding off to 50% as against 30% and allowed the OA vide order dated 21st February, 2023, which is under challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2011 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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 conditions and period in service
PRIMARY HYPERTENSION	No	NO	Yes	A life style related disorder. Onset in Dec., 08 while serving in peace station. After onset till date he is serving in peace only. No close time association with FD/CIOPS service. Hence NANA vide Para 43 of Ch-IV of GMO 2008

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 disability 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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability to military service.

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 element of pension. The Release Medical Board has not considered whether service compulsions have caused aggravation or not, which is mandated as per Para 43 of GMO, 2008.

In view of the above, no case is made out warranting interference with the order of the AFT, which is legally perfect. Accordingly, this writ petition is dismissed.

22. <u>WP(C) No.1242/2024</u>

The respondent-Nanak Chand was enrolled in Indian Army on 29th December, 1990 in a fit state of health. Before start of his basic training, second medical examination of the respondent was conducted in which he was found not suffering from any kind of disease. The respondent was invalided out from service on 31st December, 2014 in Low Medical Category P2 (Permanent) on completion of 24 years and 03 months of service for the disabilities "Obesity and Dyslipidemia". Before invalidation, the respondent was brought before Release Medical Board held on 17th July, 2014, which assessed the disabilities incurred by the respondent as Nil, neither attributable to nor aggravated by military service. The respondent's claim for disability element of pension was rejected. The first and second appeals preferred by the respondent were, too, rejected by the petitioners herein. Feeling aggrieved, the respondent filed OA No.172/2017 seeking quashment of the proceedings of the Invaliding Medical Board

as also the orders, whereby his claim for disability pension came to be rejected with a further direction to the petitioners herein to assess the percentage of the disability dyslipidemia by holding a fresh medical board and grant disability pension.

The claim of the respondent in the OA was opposed by the petitioners by filing written objections. The AFT considered the rival contentions in light of the law down by the Supreme Court in *Dharamvir Singh* (supra) held the respondent entitled to disability pension, treating the disability incurred by the respondent as 20%, rounded off to 50% by placing reliance on *Ram Avtar* (supra) vide order dated 26th May, 2022, which has been impugned in this petition by the petitioners.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2014 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers

(Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

The disease 'dyslipidemia' is related to Ischaemic Heart Disease (IHD), which is dealt with in para 47 of the GMO, 2008. In terms of para 47 of the GMO, 2008, attributability will be conceded where myocardinal infaraction arises during service in close time relationship to a service compulsions involving severe trauma or exceptional mental, emotional or physical stress. IHD also arises while an individual is serving in Field Area/HAA/CI Ops area or during OPS. In case of such individual who was previously in shape-I, disability will be considered as attributable to military service. Further Rule 10(b)(i)(b) of 2008, Entitlement Rules, provides that if disease has arisen during the period of military service or the disease has been caused by the conditions of employment in military service, its attributability to military service would be accepted. Rule 11 of 2008, Entitlement Rules deals with aggravation and provides that 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, as such posting in places of extreme climatic conditions, environmental factors related to service conditions i.g. Fields, Operations, High Altitudes etc.

In the instant case, the disease has arisen while the respondent was on Field Duty in Tamang area of Arunchal Pradesh. Therefore, it

cannot be ruled out that onset of the disease was hastened by the conditions of military service because at the time of onset of the disease the respondent was serving in Field.

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 was 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 conditions and period in service
DYSLIPIDEMIA	No	NO	Yes	It is a life style disorder. Disablility is NANA to mil service

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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability to military service. As has been clearly held by the Supreme Court in Sukhwinder Singh (supra), wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent and that as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability 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 element of pension.

In view of the above, no case is made out warranting interference with the order of the AFT, which is legally perfect. Accordingly, this writ petition is dismissed.

23. <u>WP(C) No.1258/2024</u>

The respondent-Jagtar Singh was enrolled in Army on 02.05.1985 in a physically and mentally fit condition and discharged from Army service on 31.05.2004 after rendering more than 19 years

of service in medical category AYE. He was re-enrolled in DSC service with effect from 17th February, 2007 as a fit person and no note of any disability/disorder was made at the time of his enrolment in DSC service by the medical board. The respondent was placed in low medical category P@ (Permanent) for the diagnosis 'PRIMARY HYPERTENSION' and 'DIABETES MELLITUS TYPE 2' with effect from 12th June, 2013 and remained in the same medical category. The respondent was ultimately discharged from DSC service on 30th September, 2017 after rendering 10 years and 226 days service. Prior to discharge, the respondent was brought before the Release Medical Board, which assessed his disabilities @ 40% composite as neither attributable to nor aggravated by military service for life with NIL percentage qualifying for disability pension. Respondent's claim for disability pension was rejected. The first appeal filed by the respondent, too, was rejected. Feeling aggrieved, the respondent approached the AFT by way of OA No.52/2019 seeking directions to the petitioners herein to grant disability pension with rounding off to 50% as against 40%.

The OA was opposed by the petitioners herein on the ground that the disability has been declared "neither attributable to nor aggravated by military service by the medical board, hence the respondent is not entitled to disability pension. The AFT after considering the matter in light of the judgments of Hon'ble Supreme

Court in Dharamvir Singh (supra) and Ram Avtar (supra), held the respondent entitled to disability pension with the benefit of rounding off @ 50% as against 40% for life vide order dated 16th September, 2019, which is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2017 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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 conditions and period in service
1. PRIMARY HYPERTENSION Code:(1-10)	No	NO	Yes	As per Para 43 CH VII of GMO 2008. Onset in peace area.
2. DIABETES MELLITUS TYPE-2	NO	NO	YES	As per Para 43 of GMO 2008. Onset in peace area

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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability to military service.

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 element of pension.

In view of the above, no case is made out warranting interference with the order of the AFT, which is legally perfect. Accordingly, this writ petition is dismissed.

24. <u>WP(C) No.1279/2024</u>

The respondent, in the instant case, was enrolled in the Army on 31st January, 1986 and was discharged on 31st January, 2010 after rendering more than 24 years of service in medical category AYE and granted service pension. The respondent was re-enrolled in DSC service on 1st September, 2010 in a physically and mentally fit condition and no note of any disability or disorder was made at the time of his enrollment in DSC service by the Medical Board. The respondent was discharged from DSC service on 31st January, 2020 after rendering 09 years and 05 months of service in low medical category P-2 (Permanent), under Rule 13(3) III (iii) (a) (i) of the Army Rules, 1954. At the time of discharge, the Release Medical Board was held on 28th January, 2020, which assessed the disability, suffered by the respondent, i.e. **'Primary Hypertension'** @ 30% for life and opined the same neither attributable to nor aggravated by service. Respondent's claim for disability pension was rejected vide letter dated 09.05.2020 against which first appeal was preferred but with no

positive result. The respondent also filed a representation dated 25th March, 2021 through his counsel, in response whereof, the respondent was intimated that he was not entitled to disability pension. Feeling aggrieved, the respondent approached the AFT by way of OA No.222/2021. The relief claimed in the OA was opposed by the petitioners herein on the ground that the disability of the respondent @ 30% for life has been regarded as neither attributable to nor aggravated by Release Medical Board, hence as per Regulation 81 of the 2008 Regulations, the respondent is not entitled to disability pension.

Placing strong reliance on decisions of the Supreme Court in the case of **Dharamvir Singh** (supra) and **Ram Avtar** (supra), the AFT held the respondent entitled to disability pension and rounded off the disability to 50% as against 30% for life and allowed the OA vide order dated 12th January, 2023. It is this order of the AFT which is under challenge in this petition.

Having heard learned counsel for the parties and considered the material on record, we find no fault with the view taken by the AFT.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2021 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers

(Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 disability, which the respondent was found suffering at the time of his discharge from DSC service was 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)	Aggravted by service (Y/N)	Detailed Justification
Primary Hypertension (1-10) Auth Para 43 of Ch-VI of GMNO-2008	N	N	ID is conceded NANA as onset of ID in peace area.

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, for, 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 personnel from disability element of pension. One line opinion of the Medical Board that the **'ID is conceded NANA as onset of ID in peace area'** is vague and cryptic, to be relied upon to disentitle the respondent from disability pension. The factors to be considered as responsible for aggravation have been completely ignored by the Medical Board.

For the foregoing reasons, and in view of the clear dictum of law, the writ petition is found to be without merit, hence dismissed.

25. <u>WP(C) No.1319/2024</u>

The respondent in this petition, namely, Ex Naik Som Nath was enrolled in Jammu & Kashmir Light Infantry Regiment on 1st September, 2003 in a fit state of health. While in service, the respondent was found suffering from "Parakeratosis Oral Cavity (K13.2)" and discharged from service on 30th November, 2019 after being placed in low medical category S1H1A1P2 (Permanent). Before discharge, the respondent was brought before a duly constituted Release Medical Board held on 26th August, 2019, which assessed the disability "PARAKERATOSIS ORALCAVITY (K13.29) @ 5% neither attributable to nor aggravated by military service. Respondent's claim for disability pension was rejected by the petitioners herein and communicated to the respondent vide letter dated 27th December, 2019,

against which an appeal was preferred on 1st February, 2021, which also came to be rejected.

Feeling aggrieved, the respondent approached the AFT seeking quashment of the offending part of Release Medical Board's opinion dated 23rd August, 2019 and letters, whereby the disability pension claim of the respondent came to be rejected. The respondent also sought a direction to the petitioners herein to grant disability pension to the respondent w.e.f. 01.12.2019 for life @ 20% and then rounded off to 50% for life with all consequential benefits.

The relief claimed for in the OA was resisted by the petitioners herein on the ground that the Release Medical Board has not found the disability incurred by the respondent attributable to military service and aggravated thereby.

The AFT, placing reliance on **Sukhwindr Singh** (supra) and **Dharamvir Singh** (supra) held the respondent entitled to disability pension for life treating the disability incurred @ 20%, which was rounded off to 50% by relying on **Ram Avtar** (supra) and accordingly, allowed the OA vide order dated 17th March, 2022, which is impugned in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the

disability as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2019 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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)	Aggravted by service (Y/N)	Detailed Justification
(a) PARAKERATOSIS ORAL CAVITY (K 13.2)	No	NO	The disability developed in CI Ops area at Barnai (J&K) in May 2008 as per initial medical board. Parakeratosis is a histological finding on biopsy. No causal relationship to military service is evident. Hence attributability and aggravation is not conceded.

			Disability is not mentioned in GMO Military pension, 2002 and amendments 2008

From the reading of above, it clearly transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said with certainty that the disease is either attributable to or aggravated by military service. Strong medical evidence is required to accept the causal connection of the disease with military service.

Indisputably, there was no note of any disease made by the medical board at the time of acceptance of the respondent into army service. There is no medical evidence on record, which shows that the disability incurred by the respondent is due to army service. So far as, degree of disability incurred by the respondent is concerned, which has been assessed by the medical board below 20%, Hon'ble the Supreme Court in Sukhwinder Singh's case has clearly held that whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above 20% and that as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension.

For the foregoing reasons, the petition is allowed and the judgment impugned in the petition is set aside. And a direction is issued to the petitioners to convene a review medical board to render clear opinion with regard to the disease and its attributability to or

aggravation by military service. If the disability suffered by the respondent is found attributable to or aggravated by military service, on the basis of the opinion of the review medical board, the respondent shall be granted disability pension with effect from his invalidation

26. <u>WP(C) No.1365/2024</u>

The respondent, who was enrolled in the JAK RIF Regiment of Indian Army on 30.12.1994, was discharged on 31st December, 2020 in Low Medical Category. At the time of discharge, the Release Medical Board held on 26th October, 2020 assessed the disability **'Primary Hypertension"** @ 30% for life and opined the disability to be neither attributable to nor aggravated by military service. The respondent's claim for grant of disability pension was rejected vide letter dated 06.02.2021. The first and second appeals preferred by the respondent, too, were met with the same fate, which constrained the respondent to file OA No.247/2022 before the AFT.

The relief claimed in the OA was opposed by the petitioners herein on the ground that disability of the respondent @ 30% for life has been regarded as neither attributable to nor aggravated by military service by the Release Medical Board, hence the respondent is not entitled to disability element of pension.

The OA was allowed by the AFT holding the respondent entitled to disability element of pension by placing reliance upon *Dharamvir*

Singh (supra). Relying on *Ram Avtar* (supra), the AFT rounded off the disability to 50% as against 30%. The order of the AFT dated 2nd May, 2023, whereby the OA was allowed, is assailed by the petitioners on the customary grounds, which have already been taken note of in preceding cases.

Having heard learned counsel for the parties and considered the material on record, we found no fault with the view taken by the AFT.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from military service in the year 2020 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 disability, which the respondent was found suffering at the time of his discharge from service was neither attributable to nor aggravated by the military service, we have gone through the medical record produced by the petitioners. In answer to the question "why is the disease not related to service as per job profile and place of posting", the answer given by the Medical Board is "**Individual is of GD Trade and Onset of the**

disorder is in peace. There is no evidence of any exceptional stress and strain due to service conditions like posting to field area, HAA, CIOPS Area or Prolonged Afloat Service causing aggravation of the Disorder."

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 personnel from disability element of pension.

The medical authorities, while deciding attributability, were obliged to consider whether service compulsions have caused aggravation. As per 2008, Entitlement Rules 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 posting in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitudes etc. From the personal statement noted in the medical record produced by the petitioners, it is evident that the disease "Primary Hypertension" was noticed in December, 2010 while

the respondent was posted in Lalgarh Jattan (Rajashtan), specified as M/F, which means Modified Field Area. Before this, the respondent remained posted almost in Field and after 2010 also the respondent was posted in Field duty in Diphu (Assam). The opinion of the medical board is not clear, unambiguous and cogent, which could be relied upon to disentitle the respondent for disability element of pension on the ground of absence of attributability or aggravation.

For the foregoing reasons, and in view of the clear dictum of law, the writ petition is found to be without merit, hence dismissed.

27. <u>WP(C) No.1504/2024</u>

The respondent-Naik Subash Singh came to be enrolled in the Indian Army on 8th February, 2003 and discharged on 29th February, 2020 in low medical category P-2 (Permanent) for the disabilities ***"(i) Primary Hypertension (1-10)*** *and* ***(ii) Dyslipidsemia (ICD-E-78.9)"*** after rendering 17 years and 19 days of service. Before discharge, the Release Medical Board (RMB) was held on 21st December, 2019 at Military Hospital Ranikhet, which assessed the disabilities of the respondent @ 33% composite for life and declared the same as neither attributable to nor aggravated by military service. Respondent's claim for disability pension was rejected vide letter dated 02.05.2020. The first appeal preferred by the respondent against rejection of his claim, too, was rejected vide letter dated 20.07.2021. Thereafter a

representation was also made through counsel but same remained un-considered, which compelled the respondent to file OA No.30/2023.

The OA was resisted by the petitioners herein on the ground that since the composite disabilities of the respondent @ 33% have been regarded as neither attributable to nor aggravated by military service, therefore, he is not entitled to disability element of pension under the provisions of Regulation 53 of 2008 Regulations.

Relying on **Dharamvir Singh** (supra) and **Ram Avtar** (supra), the AFT held the respondent entitled to disability element of pension and rounded off the disability to 50% as against 33% for life. Accordingly, the OA was allowed and the rejection order of the respondent's claim for disability pension was set aside vide order dated 31st January, 2023, which is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from army service in the year 2020 is governed by 2008 Regulations read with 2008, Entitlement Rules.

As provided in 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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)	Detailed Justification
(i) Primary Hypertension	No	NO	The onset of the disability is at peace area and individual kept serving I peace area after the onset of the disability was at FAIZABAD (UP) PEACE MAR 2019. Hnce conceded NANA by Mil Service as per Para 43-VI GMO-2008. Primary Hypertension will be considered aggravated if dis occurs while serving in Field areas, HAA, CI OPS area or prolonged afloat service.
(ii) Dyslipidemia (E-E78.9)	No	No	The onset of the disability was at FAIZABAD (UP) PEACE MAR 2019. The disability is a life style disease due to intake of fatty diet etc. Hence it is neither attributable to nor aggravated (NA NA) by military service.

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. The AFT has placed strong reliance on **Dharamvir Singh** (supra) in discarding the opinion of the Release Medical Board with regard to attributability to military service.

From a reading of para 43 of GMO, 2008, it becomes abundantly clear that where disablement on account of hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered.

The GMO, 2008, mandates that the medical authorities must clearly opine as to whether the disability which the individual has been found inflicted with at the time of his release, which has arisen during service became worse in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE

operational area have created stressful situation, thus, aggravating the primary hypertension.

In view of the aforesaid prescription, it is abundantly clear that the factors like stress and strain of the military service, isolation, separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family are some of the factors which do have the effect of aggravating the disease noted above.

In the face of overwhelming medical opinion with regard to the disease and guidelines laid down in GMO, 2008, it is a forgone conclusion that the disability of Primary Hypertension, which the respondent was found suffering at the time of his discharge from army service is aggravated by military service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit and is, accordingly, dismissed.

28. <u>WP(C) No.1617/2024</u>

In the instant case, the respondent-Yash Paul was initially enrolled in Madras Regiment of Indian Army on 17th March, 1979 in a

fit state of heath and discharged from service on 31st March, 1994 for which he was granted service pension for life. Thereafter, the respondent was re-enrolled in DSC on 31st October, 1994. During the course of his DSC service, the respondent incurred disability, namely **"Recurrent Depressive Disorder"** and was ultimately discharged from service on 31.10.2004 in permanent low medical category under Rule 13(3)(III) (i). Before discharge from DSC service, the respondent was brought before the Release Medical Board, which assessed the disability @ 11-14 % neither attributable to nor aggravated by military service.

The petitioners herein have rejected the respondent's claim for disability pension on the ground that the Release Medical Board had found the disability neither attributable to nor aggravated by military service. Feeling aggrieved, the respondent filed OA No.80/2022 seeking setting aside of the impugned orders whereby his claim for disability pension was rejected and to grant disability pension in his favour with the benefit of rounding off.

The AFT considered the rival contentions and by placing reliance on Dharamvir Singh (supra) and Sukhvinder Singh (supra) has allowed the OA, holding the respondent entitled to disability pension consisting of service element as well as disability element both @ 50% as against 20% after being rounded off as per the ratio laid by the Supreme Court in Ram Avtar (supra) vide order dated 10th November,

2022. It is this order of the AFT, which is under challenge in this petition filed by the Union of India and its functionaries.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from DSC service in the year 2004 is governed by 1961 Regulations read with 1982, Entitlement Rules. As provided in 1982, Entitlement Rules, the Guide to Medical Officers (Military Pension), 1980, as amended from time to time, is required to be read with the said Rules.

It is not in dispute that when the respondent was accepted in DSC service he was found physically and mentally fit by the authorities and, therefore, the disease “Recurrent Depressive Disorder, which led to his discharge from service occurred during service. To disentitle him from claiming disability element of pension, the petitioners must plead and demonstrate that the disability, which the respondent was found suffering from at the time of his release from service had though arisen during service was neither attributable to nor

aggravated by military service. The burden to prove absence of causal connection between the disability and military service was also on the petitioners.

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 was 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)	Aggravted by service (Y/N)	Not connected with service Y/No	Detailed Justification
DEPRESSION (RECURRENT DEPRESSIVE DISORDER)	No	NO	YES	The disability is not connected with service

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 or aggravation by military service is not a substitute

for clear, unambiguous and cogent medical reasons required to disentitle the personnel from disability element of pension.

The GMO, 2008, mandates that the medical authorities must clearly opine as to whether the disabilities which the individual has been found inflicted with at the time of his release, which apparently have arisen during service became worse in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE operational area have created stressful situation, thus, aggravating the primary hypertension.

In view of the aforesaid prescription in 2002 GMO, it is abundantly clear that the factors like stress and strain of the military service, isolation, separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family are some of the factors which do have the effect of aggravating the disease noted above.

In the face of overwhelming medical opinion with regard to these diseases and guidelines laid down in GMO, 2008, it is forgone conclusion that the disabilities, which the respondent was found

suffering at the time of his discharge from DSC service is aggravated by military service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit and is, accordingly, dismissed.

29. <u>WP(C) No. 1644/2024</u>

The respondent-Dilawar Singh was enrolled in Indian Army on 15th May, 1998 and was discharged from service on 31st August, 2015 after completing the term of engagement in the rank of Naik in low medial category. The release medical board held on 30.08.2015 assessed his disability "CAD STEIWMI NORMAL LV FUNCTION PATENT EPICARDIAL CORONARIES @ 30% for life and opined that the disability was neither attributable to nor aggravated by military service. Vide letter dated 06.11.2015, the claim of disability element of pension was rejected by the petitioners. The appeal preferred by the respondent on 16.01.2016 before the appellate medical authority also came to be rejected on 11.04.2017. The respondent preferred second appeal on 14.02.2018, but with no favourable result.

Feeling aggrieved, the respondent filed OA No.237/2021 before the AFT seeking setting aside of the order dated 06.11.2015, order dated 11.4.2017 and the order passed in the second appeal rejecting

claim of the respondent for disability element and prayed for a writ of mandamus to the petitioners to grant in his favour disability element of pension w.e.f. 01.09.2015 with the benefit of rounding off to 50%.

The AFT considered the matter in light of the law laid down by the Hon'ble Supreme Court in the case of **Dharamvir Singh** (supra) and came to the conclusion that the respondent was entitled to disability element of pension assessed at 30% to be rounded off to 50%. The judgment rendered by the AFT dated 24.01.2023 in OA No.237/2021 is subject matter of challenge in this petition.

Before we proceed to examine the medical record, we deem it appropriate to note that the respondent having been discharged with disability in the year 2015 is governed by 2008 Regulations read with 2008, Entitlement Rules. As is provided in 2008, Entitlement Rules, GMO 2008, as amended from time to time, is required to be read with the said rules.

Para 28 and 47 of the GMO 2008 may be relevant for our purposes and are, therefore, reproduced hereunder:-

> "28. Disorders of Cardiac Rhythm and Conduction. These are aberrations in heart rate due to varied pathological and physiological states. These conditions may arise from some organic heart disease like rheumatic heart disease, ischaemic heart disease, hypertension, infective endocarditis, myocarditis, vascular disease and drugs. It also occurs as a result of focal sepsis, thyrotoxicosis, and excessive use of tea, coffee, tobacco, alcohol and as a result of

flatulent distension of the stomach or intestine. Physical exertion or emotional excitement may predispose to an attack.

Attributability is conceded if arrhythmia and heart blocks develop as sequelae to infections in the heart. Aggravation is awarded based on the primary disease affecting heart in relevance to service profile.

……..

……

47. **Ischaemic Heart Disease (IHD)**. IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded.

Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias.

The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of 35 solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops

area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Entitlement in Ischemic heart disease will be decided as follows:-

(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.

(b) Aggravation will be conceded in cases in which there is evidence of:-

IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions. There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. 36 Neither attributability nor aggravation can be conceded in such case

It is not in dispute that when the respondent was accepted in military service he was found physically and mentally fit by the

authority and, therefore, the disease CAD STEWMI NORMAL LV FUNCTION PATENT EPICARDIAL CORONARIES", he was found suffering at the time of his discharge, occurred during service. To disentitle the respondent from claiming disability element of pension, the petitioners were required to plead and demonstrate that the disability noted by the release medical board, though, having arisen during military service was neither attributable to nor aggravated by military service. The burden to prove absence of causal connection between the disability and the military service was also on the petitioners.

With a view to determining as to whether the petitioners have discharged the burden and have by clear and cogent medical evidence established that the disability assessed by the Release Medical Board at the time of discharge of the respondent was neither attributable to nor aggravated by the military service, we have gone through the medical record produced by the petitioners. The relevant portion whereof is set out below:

> "As per 14 duty charter does not prove attributable or aggravation to as he is a smoker, which is a life style disorder vide para 47 of GMO 2008."

From the reading of above, it transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have succeeded in discharging the burden to prove

disentitlement on the ground of absence of causal connection between the disability and the military service. This one line opinion of the medical board that the disability is neither attributable nor aggravated would not substitute a clear, unambiguous and cogent medical reasons to disentitle the respondent from claiming disability element of pension.

GMO, 2008 and in particular, para 47 mandates that while rendering opinion on such disability, prolonged stress and strain that hastened atherosclerosis by triggering of neurohormonal mechanism and autonomic storms is required to be considered for aggravation. Para 47 further says that it is well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increases platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The factors like service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crises, disturbance of child education and lack of security for family etc.

Para 47 of the GMO to which the reference is also made by the Release Medical Board calls upon the medical officer to look into all the factors enumerated above to find out whether the disease, which

has manifested during military service is due to or aggravated by military service. In the instant case, the opinion of the Release Medical Board is vague and cryptic to be relied upon. From the personal service statement of the respondent given in the proceedings of the Release Medical Board, it also comes out clearly that 50% out of the entire service has been rendered by the respondent in the field area.

Be that as it may, we are of the considered opinion that the medical opinion rendered in the case of the respondent is vague and cryptic. Therefore, benefit of such ambiguity must be given to the respondent. Para 47 of the GMO of 2008 leaves no manner of doubt that the stress and strain of the military service does aggravate the disease suffered by the respondent during military service.

For the foregoing reasons and in view of the clear legal position on the issue, we find no merit in this petition and the same is, accordingly, dismissed.

30. <u>WP(C) No.1653/2024</u>

The respondent-Aijal Ram was initially enrolled in Army on 15th May, 1967 and was discharged on 31st January, 1982 after rendering 15 years of service. Later on, the respondent got enrolled in DSC on 11th November, 1986 in medical category "AYE". The respondent was discharged from DSC service on 31st May, 2003 in low medical category "BEE (Permanent)" due to disability "CATRACT (LT)

OPTD PCIOL IMPLANT OLD". The Release Medical Board assessed the disability suffered by the respondent at 15 to 19% for life with the opinion that the same is neither attributable to nor aggravated by military service. The respondent's claim for disability pension was rejected in terms of para 173 of the Pension Regulations of 1961 Part-I.

Feeling aggrieved, the respondent filed OA No.09/2020 seeking benefit of disability element with benefit of rounding off to 50% as against 15 to 19 % from the date of discharge. The OA was contested by the petitioners herein by filing their written statement in which the stand taken by the petitioners was that since, as per the opinion of the medical board, the disability suffered by the respondent was neither attributable to nor aggravated by the military service, as such, the respondent was not entitled to disability element of pension. The AFT considered the matter in light of the rival contentions of the parties and material on record and came to the conclusion that the disability of the respondent, which was assessed by the medical board at 15 to 19% for life has to be taken as disability not less than 20% in view of the law laid down by the Hon'ble Supreme Court in **Sukhvinder Singh v. Union of India, (2014) 14 SCC 364,** wherein it has been held that whenever a member of armed force is invalided out of service, it perforce has to be assumed that his disability was found to be above 20%. With regard to the question of disability being attributable to or aggravated by the military service, strong reliance has been placed by

the AFT on **Dharamvir Singh** (supra) and concluded that in the case of respondent the disability did not exist before entry into service and therefore, the disease which incurred during service has to be presumed to be due to military service. The OA was, thus, allowed by the AFT vide its order and judgment dated 14th July, 2021, impugned in this petition.

Having heard learned counsel for the parties and perused the material on rerecord, we deem it appropriate to record that the respondent having discharged from with disability form DSC service in the year 2003 is governed by 1961 Regulations read with 1982, Entitlement Rules. As provided in 1982, Entitlement Rules, the Guide to Medical Officers (Military Pensions), 1980, as amended. The GMO, 180 was replaced by GMO, 2002.

It is not in dispute that when the respondent was enrolled in DSC service he was found physically and mentally fit by the authorities and no note of any disease was made at the time of entry in DSC service. The disease, thus, occurred during military service. Whether or not the disease/disability which the respondent was found suffering at the time of discharge is attributable to or aggravated by military service would depend upon the medical opinion of the medical board. Opinion of the medical board on record reads thus:-

"Disability is constitutional in nature."

Needless to say that burden to prove absence of causal connection between the disability and the military service would lie on the petitioners. In the 1982, Entitlement Rules, there is a presumption in favour of the claimant that he was in sound physical and mental condition when he joined the service except the specific disability noted or recorded at the time of his entry into service. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service. Furthermore, the disease which has led to individual's discharge or death shall, ordinarily be deemed to have been arisen in service, if no note of it has been made at the time of individual's acceptance in military service. This presumption, however, is rebuttable by medical opinion holding by reasons that the disease could not have been detected on medical examination prior to acceptance of service.

In short, the burden to prove disentitlement of the respondent was heavily on the petitioners, more particularly, in view of the presumption contained in 1961 Regulations read with 1982, Entitlement Rules. In the instant case, the medical opinion does not say anything more than that *"the disability is constitutional in nature"*. We have made some efforts to find out the nature of disability assessed by the medical board and found that the disability noted, prima facie, cannot be attributed to military service, though, the circumstances like

infection or some ocular injury during military service may aggravate it. The opinion on record is deficient for arriving at a right conclusion.

We have already discussed the legal position at length herein before. The judgment passed in **Narsingh Yadav** (supra) would be relevant in the context of facts and circumstances of this case. Hon'ble Supreme Court has categorically ruled that the opinion of the medical board should be ordinarily accepted and given deference by the Courts, for, the Courts are not possessed of expertise to dispute such opinion. Opinion of the medical board may be subject to judicial review only when there is strong medical evidence on record to dispute the opinion of the medical board warranting constitution of review medical board.

At this juncture, it would be apt to refer to para 13 of the GMO 2002, which was applicable to the instant case. It reads thus:-

> **"13. Cataract**
>
> Cataract is primarily due to degenerative changes in the lens causing defective vision.
>
> The causes of cataract are many :-
>
> (a) Senile cataract
>
> (b) Metabolic disease - Diabetes mellitus Hypocalcaemia Galactosemia
>
> (c) Trauma - Direct penetrating injury eye Concussion Ionizing radiation (Radiographer) Electric shock and lightning Prolonged exposure to UV Light (for decades)
>
> (d) Complicated cataract - Secondary to uveitis Chroiditis High myopia Glaucoma
>
> (e) Drugs - Steroids, chlorpromazine, amiodarone
>
> (f) IOL Implant
>
> (g) Complications of atopic dermatitis and psoriasis
>
> It is unaffected by conditions of military service in both its onset and course unless the onset or course is brought about or

> hastened by an ocular injury or infection during service. The disability could also be aggravated by long service under adverse conditions, as for example in prolonged active operations or as a prisoner of war.
>
> Senile cataract is not usually affected by service unless the disease shows abnormal rapid rate of progress associated with a debilitating disease or illness or long service under bad conditions when aggravation is appropriate.
>
> Attributability is conceded when the cataract is secondary to trauma related to service, infection, post drug therapy and unforeseen complication to surgery.
>
> In diabetic cataract, entitlement depends whether diabetes itself is brought about by service."

From a reading of para aforesaid, it is abundantly clear that the disease is unaffected by the conditions of military service in both its onset and course unless the onset or course is brought about or hastened by an ocular injury or infection during service. The attributability is conceded when the cataract is secondary to trauma related to service, infection, post drug therapy and unforeseen complication to surgery.

From the above, it is clear that medical board has not approached the disability in the light of what is contained in paragraph 13 of the GMO, 2002 to find out whether the disability suffered by the respondent was due to conditions of military service. We could have brushed aside the opinion of the medical board and held the respondent entitled to disability element of pension on the ground that the disability suffered by him shall be deemed to have arisen due to military service. However, having regard to the nature of disability suffered and the guidelines provided in paragraph 13 of the GMO 2002, as were applicable at the relevant point of time, we deem it

appropriate to refer the case of the respondent back to the review medical board for conducting fresh examination of the respondent and rendering its opinion keeping in view para-13 of the GMO 2002 and other advancements in medical science.

For the foregoing reasons, this petition is partly allowed. The judgment impugned passed by the AFT to the extent it holds that the disability suffered by the respondent should be taken as 20% is not disturbed. However, rest of the judgment holding that the disability suffered by the respondent during service is attributable to military service is set aside. The respondent shall be examined afresh by the review medical board to render clear, cogent and specific opinion; *'whether the disability suffered by the respondent is attributable to or aggravated by military service'*. If the opinion of the review medical board goes in favour of the respondent, he shall be released the disability element of pension within a period of three months from the date of receipt of medical opinion of the review medical board, failing which the petitioners shall be liable to pay interest @ 8% per annum from the date of expiry of the period of three months from the actual payment. The arrears on account of disability pension, if allowed in favour of the respondent, shall be paid with effect from three years prior to the filing of the OA before the AFT.

31. <u>WP(C) No.1694/2024</u>

The respondent-Jagdev Singh joined military service on 28th September, 1978 obviously in a fit physical and mental condition. During the course of service, he incurred disability *"Leprosy Indeterminate-030(C)"* and, thus, was released from service on 30th September, 1995. At the time of his discharge, the respondent was brought before the Release Medical Board on 29th March, 1995. The Release Medical Board assessed his disability as 30% for five years and held it to be attributable to military service. On the basis of medical opinion, the respondent was granted disability element w.e.f. 01.10.1995. The respondent was brought before Resurvey Medical Board on 16.03.2000 and his disability was assessed at 30% for five years. The decision of the Resurvey Medical Board was interfered with by the Principal Controller of Defence Accounts (Pension), Allahabad on the basis of the opinion rendered by the Medical Advisor (Pensions) attached with PCDA (P), Allahabad and the disability of the respondent was re-assessed at 40% for two years and was, accordingly, granted disability element. The respondent was once again brought before the Resurvey Medical Board on 26th March, 2002 where the medical authority assessed his disability at less than 20%. On the basis of aforesaid opinion of the Resurvey Medical Board held on 26th March, 2002, the PCDA(P), Allahabad rejected the disability claim of the respondent vide communication dated 14th August, 2002 on the ground that the respondent was not suffering from the disability assessed at 20% or more.

Feeling aggrieved, the respondent filed OA No.340/2018 before the AFT seeking, inter alia, setting aside of offending part of the report of the Resurvey Medical Board that assessed his disability less than 20% and prayed for granting disability element of pension from the date of its discontinuance i.e. 16th March, 2002 taking his disability @ 40% with the benefit of rounding off to 50% w.e.f. 01.01.1996 onwards.

The petition was contested by the petitioners herein on the ground that unless the disability of the respondent as assessed by the medical authority is 20% or more, the disability element of pension cannot be granted. The AFT having considered the matter in light of the decision of the Supreme Court in **Sukhvinder Singh** (supra) came to the conclusion that once a person is discharged or invalided out of service due to disability in low medical category, the disability suffered by such individual must be taken as 20% or more. The AFT, thus, allowed the OA and granted the relief to the respondent, as prayed for in the OA vide order dated 28th July, 2022.

Having heard learned counsel for the parties and perused the material on record, we are of considered opinion that the judgment rendered by the AFT impugned in this petition does not call for interference by us in this petition filed under Article 226 of the Constitution of India.

We are not upholding the judgment impugned on the basis of the law laid down in Sukhvinder Singh's case, for, the judgment in Sukhvinder Singh would be relevant to a case where a person is boarded out or invalided out from military service due to the disability. In the instant case, the respondent has been discharged from military service on completion of the term of his engagement and, therefore, was not boarded out or invalided from service primarily on the ground of any disability. The judgment of **Sukhwinder Singh** was, thus, not attracted to the case. The relevant extract of the judgment is reproduced by the AFT in its judgment needs to be set out below:

> "Thirdly, there appear to be no provision authorizing the discharge or invaliding out of service where the disability is below 20 percent and seems to us to be logically so.
>
> Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above 20%.
>
> Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension."

From a reading of the relevant extract of the judgment reproduced above, it is abundantly clear that in Sukhvinder Singh (supra) Hon'ble the Supreme Court was persuaded to hold that when an army personnel is discharged or invalided out of service due to disability, it has to be perforce presumed that his disability was not less than 20% notwithstanding contrary medical opinion on record. The

logic behind such observation seems to be that a person, who suffers disability less than 20% is not rendered completely disabled to perform duties in army and could be given some alternative appointment. However, once the army authorities decide to invalid him out on account of disability, it must be presumed that the individual has been rendered unfit for army service and, therefore, must be compensated by paying him the disability pension and this is possible only if the disability of such person is taken to be 20% or more to meet the requirement of Pension Regulations.

Having said that we are of the considered view that in the instant case the opinion of the second Resurvey Medical Board dated 26.03.2002, which has brought down the disability from 30% to less than 20% for life, sans any clear and cogent reasons. Once the Release Medical Board conducted at the time of discharge of the respondent in the year 1995 followed by the First Resurvey Medical Board assessed the disability at 30%, the same could have been varied by the subsequent Resurvey Medical Board conducted in respect of the respondent in 2002 only by giving very clear and cogent reasons. The proceedings of the Resurvey Medical Board dated 26.03.2002 clearly indicate that the disability which was assessed by the First Resurvey Medical Board in the year 2000 was brought down to below 20% without giving any reasons.

For the aforesaid reasons, we hold the opinion of the second Resurvey Medical Board rendered on 26.03.2002, totally arbitrary. As a matter of fact, it is now the policy of the Government of India, Ministry of Defence not to pursue the cases of disability pension where the change of opinion of medical board by subsequent medical board/medical authority is not supported by strong reasons.

Without delving much into the matter, we are of the opinion that in the instant case, the respondent shall be deemed to have suffered disability assessed at 30% to be rounded off to 50%, which is indisputably attributable to military service. In that view of the matter, we are in sync with the decision of the AFT that the respondent is entitled to the continuation of his disability pension.

For the foregoing reasons, we uphold the judgment of the AFT, though, on different grounds and for different reasons and as a consequence dismiss this petition being devoid of any merit.

32. <u>WP(C) No.1708/2024</u>

The respondent-Bodh Raj was enrolled in the Indian Army on 26th February, 1990 in a fit medical condition and was discharged from service in low medical category P2 (P) on 29th February, 2016 after rendering 26 years and 03 days service for which he was granted service pension. During the course of service, the respondent incurred the disability of '**Mesenchymal Tumor Bladder (PECOMA)**", which

was assessed by the Release Medical Board @ 15-19% for life. Respondent's claim for disability pension was, however, rejected by the petitioners on the ground that the disability is "neither attributable to nor aggravated being detected incidentally and not related to military service". The first and second appeal filed by the respondent against rejection of his claim for disability pension also came to be rejected by the petitioners. Aggrieved, the respondent filed OA No.203/2019 before the AFT seeking a direction to the petitioners for grant of disability pension. The OA was contested by the petitioners herein on the ground that since the disability has been declared "neither attributable to, nor aggravated by military service" by the medical board, the respondent is not entitled to disability pension.

The AFT considered the OA in the light of rival contentions and came to the conclusion that rejection of respondent's claim for disability element of disability pension was legally untenable. The disability of the respondent was held aggravated by army service and, therefore, he was held entitled to disability element of pension @ 20% for life to be rounded off to 50% for life. The order passed by the AFT in this regard dated 25.07.2019 is subject matter of challenge in this petition primarily on the ground that the AFT has not appreciated the fact that as per the opinion of the Release Medical Board, the disability suffered by the respondent during army service was neither attributable to nor aggravated by military service. During the course of arguments, strong reliance was placed by the learned counsel for the petitioners on

the judgment of Hon'ble Supreme Court in the case of **Narsingh Yadav** (supra). It was argued that ordinarily the opinion of the medical board which consists of experts in the medical field ought to be accepted unless there is strong material on record to doubt its correctness.

Having heard learned counsel for the parties and perused the material on record, we deem it appropriate to record that the respondent having been discharged with disability in the year 2016 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1(b) of the 2008, Entitlement Rules, the Guide to Medical Officers(Military Pension), 2008 [GMO 2008], as amended from time to time, is required to be read with the said Rules. Para 9, 10 and 12 of GMO, 2008 deal with Cancer and other malignancies and, therefore, are set out herein below with advantage:-

> "9. **Cancer.** Precise cause of cancer is unknown. There is adequate material both of scientific and statistical nature which brings into light the causative factors like radiation, chemicals, and viral infections.
>
> The recognized causative agents for carcinogenesis are:-
>
> (a) Viral infection
>
> (b) Radiation from nuclear sources
>
> (c) Ultra violet rays
>
> (d) Chemicals
>
> (e) Acquired chromosomal abnormalities
>
> (f) Trauma (chronic irritation leading to dermatological cancers
>
> eg: kangri cancer).
>
> The service related conditions in relation to carcinogenesis are as under:-

(a) **Occupational Hazards**: All ranks working in nuclear powered submarines, doctors and paramedics working with electro-magnetic equipment, personnel working with radars, communication equipment, microwave and also those handling mineral oils such as petrol and diesel are exposed despite stringent safety measures.

(b) **Infection**: As a cause of cancer has been documented in certain malignancies. Though identification of an organism may not be possible due to lack of facility but there is gross evidence clinically to suspect infection.

(c) The question of relationship between a malignant condition and an accepted injury is difficult to establish. The vast majority of traumatic lesions however severe, show no tendency to be followed by cancer either immediately or remotely. However chronic irritation leading to dermatological cancers have been documented (eg: Kangri Cancer),attributability will be conceded depending on the merit of the case.

10. Malignancies Considered Attributable to Service

(a) Due to Occupational Hazards:

(i) Any cancer in those personnel working or exposed to radiation source in any forms:

aa) Acute leukaemia

(ab) Chronic lymphatic leukaemia

(ac) Astrocytoma

(ad) Skin cancers

(ii) Any cancer in those exposed to chemical especially Petroleum products or other chemicals:-

(aa) Carcinoma bladder

(ab) Renal cell carcinoma

(ac) Carcinoma of Renal Pelvis

(iii) Any cancer in those exposed to coal dust, asbestos, silica & iron

(aa) Bronchogenic Carcinoma

(ab) Pleural Mesothelioma

(b) Due to Viral Infection:

(i) Hepato-cellular carcinoma (HV B&C)

(ii) Ca nasopharynx (EB virus)

(iii) Hodgkin's disease (EB virus)

(iv) Non-Hodgkin's Lymphoma (Viruses)

(v) Acute Leukaemia (HTLV1)

(vi) Ca anal canal (HTLV 1)

(vii) Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service)
(viii) Ca Cervix (HPV)

12. Malignancies Not Attributable and Not Aggravated
Tobacco related cancers in smokers and tobacco users e.g. carcinoma lung, carcinoma oral cavity, carcinoma bladder. Cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome identified."

It is not in dispute that when the respondent was accepted in army service, he was found physically and mentally fit by the authorities, therefore, the disability, which the respondent was found suffering at the time of his discharge from army service, occurred during service. To disentitle the respondent from claiming disability pension, the petitioners were required to plead and demonstrate that the disability had, though, arisen during military service, was neither attributable to nor aggravated by army service. The burden to disprove the causal connection between the disability and the military service was also on the petitioners.

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 disability suffered by the respondent was neither attributable to nor aggravated by military service, we have gone through the medical opinion rendered by the Release Medical Board, which is part of the paper-book. The disability 'Mesenchymal Tumor Bladder (PECOMA) (OPTD) is indisputably

assessed at 15 to 19% for life, but was found neither attributable to nor aggravated by military service for the following reason:-

> "Detected incidentally. Not related to military service. Ref Para 12 Chapter-VI of GTMO Mil Pension 2008"

From the reading of the opinion, it cannot be conclusively held that the disability suffered by the respondent is neither attributable to nor aggravated by military service. The opinion given by the Release Medical Board is vague and inconclusive, though from reading of paragraph Nos.9, 10 and 12, it could be said that the disease, which led to the disability of the respondent may not be due to military service, in the absence of clear and cogent opinion backed by reasons, we are at loss to either accept or reject the opinion of the Release Medical Board.

In these circumstances, particularly keeping in view the advancement made in medical science, we deem it appropriate to direct the petitioners to conduct review/re-survey medical board consisting of experts in the field to render their opinion with regard to the attributability and aggravation of the disease/disability to the military service.

For the foregoing reasons, we allow this petition and set aside the impugned judgment passed by the AFT and direct the petitioners to convene a review medical board consisting of experts in the field to re-assess the disability of the respondent and render a clear opinion as to whether the disability is attributable to or aggravated by the military

service. In case, the review medical board is of the opinion that the disability in question suffered by the respondent is either attributable to or aggravated by army service, the petitioner shall allow the disability element of pension to the respondent @ 20% for life rounded off to 50%. They shall disburse the arrears and release pension within three months from the date of such opinion, failing which the respondent shall be entitled to interest @ 8% per annum with effect from the expiry of three months till the payment is made.

33. <u>WP(C) No.2018/2024</u>

In the instant case, the respondent was enrolled in the Army on 27.11.1970 and was discharged in the rank of Naik on 30.11.1992 after completion of term of engagement and was granted service pension. After discharge from army, the respondent was re-enrolled in DSC on 05.02.1994 after having found medically fit but was invalided out of service on 29.02.2004 in low medical category with 30% disability of 'Primary Hypertension' for life, which was held to be neither attributable to nor aggravated by military service. Respondent's claim for disability pension was rejected by the petitioners, which led to the filing of an OA No.614/2018 before the AFT.

The OA was contested by the petitioners herein on the ground that since the disability has been declared neither attributable to nor aggravated by military service by the Medical Board, therefore, the

respondent is not entitled to disability pension and that the opinion of the medical board must be respected being an expert body.

The AFT considered the rival contentions in light of the judgment of the Supreme Court in the Case of **Dharamvir Singh** (supra) and held the respondent entitled to disability element of pension from the day next to the date of discharge with benefit of rounding off of the disability to 50% vide order dated 10th September, 2021, which is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged for disablement in the year 2004 is covered by 1961 Regulations read with 1982, Entitlement Rules. As provided in the 1982, Entitlement Rules, the Guide to Medical Officers (Military Pension), 1980, as amended from time to time, is required to be read with the said Rules. GMO, 1980 was amended/ replaced by GMO, 2002.

Para 43 of GMO, 2002 deals with 'Hypertension", which for facility of reference is reproduced hereunder:

> "43. Hypertension The first consideration should be to determine whether the hypertension is primary (essential) 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. It is better to clearly indicate whether it is a case of essential hypertension, giving the evidence in support.
>
> As in the case of artherosclerosis, 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. Each case should be judged on its merits taking into account particularly the physical condition on entry into service, the age, the amount and duration of any stress and whether any other service compulsion has operated.
>
> Hypertension generally arising in close time relationship to service in field area, active operational area, war like situation both in peace and field area , counter-insurgency areas and high altitude areas are acceptable as aggravated when exceptional stress and strain of service is in evidence. 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. Aggravation can be considered taking into account the duration of service in active operational areas and sector profile."

It is 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 hypertension, which led to his discharge from DSC service occurred during service. To disentitle him

from claiming disability element of pension, the petitioners must plead and demonstrate that the disability which the respondent was found suffering from at the time of his release from army service had though arisen during military service was neither attributable to nor aggravated by military service. The burden to prove absence of causal connection between the disability and military service would also lie on the petitioners.

With a view to determine as to whether the petitioners have successfully discharged the burden and have by clear, unambiguous and cogent medical evidence establish that the disabilities, which the respondent was found suffering at the time of his discharge from army service are neither attributable to nor aggravated to 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)	Reasons/cause/specific conditions and period in service
(a) PRIMARY HYPERTENSION ICD I 10.0	No	No	Yes	Constitutional disorder not connected with service

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 disability and the military service, as the one line opinion by the medical board in respect of disability with regard to its attributability or aggravation by military service is not a substitute for a clear, unambiguous and cogent medical reasons required to disentitle the personnel from disability element of pension.

Under 1982, Entitlement Rules, which are applicable to the instant case, a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disability noted or recorded at the time of entrance and that in the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

The GMO, 2002, in particular, para 43 mandates that the medical authorities must clearly opine as to whether the disability which the individual has been found inflicted with at the time of his release, which have arisen during service worsened in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE operational area have created stressful situation, thus, aggravating the primary hypertension.

In view of the aforesaid prescription in 2002 GMO, in cases where hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered by the medical authorities and while determining attributability, physical condition on entry into service, the age, the amount and duration of any stress and whether any other service compulsions have operated should be taken into consideration.

In the face of overwhelming medical opinion with regard to the disease and guidelines laid down in 2002 GMO, it is a forgone conclusion that the disability, which the respondent was found suffering at the time of his discharge from army service was aggravated by military service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit and is dismissed, accordingly.

34. <u>WP(C) No.2022/2024</u>

The respondent was enrolled in Indian Army on 01.11.1967. During 1971 Indo-Pak War, the respondent sustained injury "GUN SHOT WOUND (RT) LEG and FROST BITE BOTH FEET EFFECTS OF. He was, however, discharged from service on 31st October, 1982 with service pension. At the time of his discharge, the

respondent was brought before the Release Medical Board, which assessed his disability at 30% attributable to military service. He was, thus, granted disability element from 8th July, 1984 to 26th January, 1987, which was revised from 1st January, 1984 to 31st December, 1995. He was also granted war injury element from 01.01.1996 to 11.10.2001 and thereafter @ 30% for life w.e.f. 01.01.2006. The respondent preferred an appeal before the higher authorities for grant of war injury element from 01.11.1982 to 31.12.1995 and 12.10.2001 to 31.12.2005 along with benefit of rounding off. However, the same was rejected on the ground that the rounding off of war injury element was granted to only those individuals, who had been invalided out from service prior to 01.01.1996. Aggrieved, the respondent filed OA No.179/2021 before the AFT for grant of war injury element with benefit of rounding off. The AFT vide order dated 01.05.2023 allowed the OA holding the respondent entitled to disability element from 01.11.1982 to 31.12.1995 and war injury element w.e.f. 12.10.2001 to 31.12.2005 @ 30% with the benefit of rounding off to 50%. The petitioners were also directed to grant disability element @ 30% for the intervening period w.e.f. 01.11.1982 to 31.12.1995, if not already granted. The petitioners filed an application for leave to file appeal against the impugned judgment of the AFT dated 01.05.2023, which was declined by the AFT. However, having regard to the law laid down by the Hon'ble Supreme Court in Union of India and others v. Parshotam Dass, the petitioners have now filed the instant petition

invoking extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India.

The impugned judgment is called in question by the petitioners on the ground that the AFT has not appreciated that as per para 3 of PCDA (P) Allahabad Circular No.529 dated 13.10.2014, the benefit of rounding off of war injury element is applicable only to those army personnel, who have been invalided out of service prior to 01.01.1996 and also that the benefit of rounding off is only applicable to army personnel, who is invalided from service.

Having heard learned counsel for the parties and perused the material on record, we find that the issue raised by the petitioners in this petition is no longer *res integra*. Hon'ble Supreme Court in the case of **KJS Buttar v. Union of India (2011) 11 SCC 429** has already held the cut-off date of 01.01.1996 for grant of benefit of rounding off of the disability arbitrary and violative of Article 14 and 16 of the Constitution of India. It was, thus, held that the army personnel, who retired or were invalided before 01.01.1996 cannot be denied the same benefit as has been given to those, who have retired after that date.

For the foregoing reasons and also in view of the settled legal position taken note of herein above, we find no merit in this petition, the same is, accordingly, dismissed.

35. <u>WP(C) No.2068/2024</u>

In the instant case, the husband of the respondent, namely Pritam Singh was enrolled in the Indian Army on 4th December, 1973 in a fit state of health and discharged therefrom on 30.04.1991. Thereafter, he was re-enrolled in DSC in a fit state of health on 22nd June, 1992 and invalided out from DSC service w.e.f. 30.04.2011 after being placed in low medical category for the disability '**Carcinoma Esophagus Middle 1/3**'. At the time of discharge, the disability incurred by the husband of the respondent was assessed @ 20% for life and held to be neither attributable to nor aggravated by military service. The petitioners herein have rejected the disability pension claim of the respondent's husband vide letter dated 11.09.2011. Feeling aggrieved, husband of the respondent filed OA No.198/2021 before the AFT, seeking *inter alia* a direction to the petitioners herein to grant disability element of pension to him @ 50% as against 20% for life w.e.f. 01.05.2011 along with benefit of rounding off. The OA was contested by the petitioners herein on the ground that the disability was neither attributable to nor aggravated by military service. During pendency of the OA, Pritam Singh had expired on 04.12.2021 and was, accordingly, substituted by his legal representative i.e. respondent herein being his widow.

The AFT after considering the rival submissions in the light of law laid down by the Supreme Court in ***Dharamvir Singh*** (supra), held the husband of the respondent entitled to disability pension which includes disability element and service element vide order dated

26.05.2022, which is under challenge in this petition filed by the petitioners primarily on the ground that the AFT has not appreciated the fact that as per the opinion of the Release Medical Board, the disability suffered by the individual during DSC service was neither attributable to nor aggravated by military service.

During the course of arguments, strong reliance was placed by the learned counsel for the petitioners on the judgment of Hon'ble Supreme Court in the case of **Narsingh Yadav** (supra). It was argued that ordinarily the opinion of the medical board which consists of experts in the medical field ought to be accepted unless there is strong material on record to doubt its correctness.

Having heard learned counsel for the parties and perused the material on record, we deem it appropriate to record that the respondent having been discharged with disability in the year 2011 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1(b) of the 2008, Entitlement Rules, the Guide to Medical Officers(Military Pension), 2008 [GMO 2008], as amended from time to time, is required to be read with the said Rules. Para 9, 10 and 12 of GMO, 2008 deal with Cancer and other malignancies and, therefore, are set out herein below with advantage:-

> "9. **Cancer.** Precise cause of cancer is unknown. There is adequate material both of scientific and statistical nature which brings into light the causative factors like radiation, chemicals, and viral infections.
>
> The recognized causative agents for carcinogenesis are:-
> (a) Viral infection
> (b) Radiation from nuclear sources

(c) Ultra violet rays
(d) Chemicals
(e) Acquired chromosomal abnormalities
(f) Trauma (chronic irritation leading to dermatological cancers
eg: kangri cancer).

The service related conditions in relation to carcinogenesis are as under:-

(a) **Occupational Hazards**: All ranks working in nuclear powered submarines, doctors and paramedics working with electro-magnetic equipment, personnel working with radars, communication equipment, microwave and also those handling mineral oils such as petrol and diesel are exposed despite stringent safety measures.

(b) **Infection**: As a cause of cancer has been documented in certain malignancies. Though identification of an organism may not be possible due to lack of facility but there is gross evidence clinically to suspect infection.

(c) The question of relationship between a malignant condition and an accepted injury is difficult to establish. The vast majority of traumatic lesions however severe, show no tendency to be followed by cancer either immediately or remotely. However chronic irritation leading to dermatological cancers have been documented (eg: Kangri Cancer),attributability will be conceded depending on the merit of the case.

10. Malignancies Considered Attributable to Service

(a) Due to Occupational Hazards:

(i) Any cancer in those personnel working or exposed to radiation source in any forms:
aa) Acute leukaemia
(ab) Chronic lymphatic leukaemia
(ac) Astrocytoma
(ad) Skin cancers

(ii) Any cancer in those exposed to chemical especially Petroleum products or other chemicals:-
(aa) Carcinoma bladder
(ab) Renal cell carcinoma
(ac) Carcinoma of Renal Pelvis

(iii) Any cancer in those exposed to coal dust, asbestos, silica & iron
(aa) Bronchogenic Carcinoma
(ab) Pleural Mesothelioma

(b) Due to Viral Infection:
(i) Hepato-cellular carcinoma (HV B&C)
(ii) Ca nasopharynx (EB virus)
(iii) Hodgkin's disease (EB virus)
(iv) Non-Hodgkin's Lymphoma (Viruses)
(v) Acute Leukaemia (HTLV1)
(vi) Ca anal canal (HTLV 1)
(vii) Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service)
(viii) Ca Cervix (HPV)

12. Malignancies Not Attributable and Not Aggravated

Tobacco related cancers in smokers and tobacco users e.g. carcinoma lung, carcinoma oral cavity, carcinoma bladder. Cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome identified."

It is not in dispute that when the husband of the respondent was accepted in DSC service, he was found physically and mentally fit by the authorities, therefore, the disability, which he was found suffering at the time of his discharge from service, occurred during service. To disentitle the individual from claiming disability pension, the petitioners were required to plead and demonstrate that the disability had, though, arisen during service, was neither attributable to nor aggravated by army service. The burden to disprove the causal connection between the disability and the military service was also on the petitioners.

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 disability suffered by the respondent is neither attributable to nor aggravated by military service, we have gone through the medical opinion rendered by the Release Medical Board, which is part of the paper-book. The disability Carcinoma Esophagus Middle was indisputably assessed at 20% for life, but found neither attributable to nor aggravated by military service for the following reason:-

"Vide para 12 GMO Mil Pension 2002 and 2008"

From the reading of the opinion, it cannot be conclusively held that the disability suffered by the husband of the respondent was neither attributable to nor aggravated by military service. The one line

opinion cannot be substitute to a clear, unambiguous and cogent medical reasons, which are necessary to prove disentitlement of the respondent to disability pension. The opinion given by the Release Medical Board is vague and inconclusive; however, keeping in view the death of the individual, even review medical board cannot be conducted.

In these circumstances, we are not inclined to interfere with the judgment of the AFT. The writ petition is, accordingly, dismissed being devoid of any merit.

36. <u>WP(C) No.2275/2024</u>

In the present case, the respondent-Tarseem Singh was initially enrolled in the Army on 3rd May, 1984 and discharged from service on 31st March, 2000 under the provisions of Rule 13(3) (III(iv) of the Army Rules, after rendering 15 years 10 months and 29 days qualifying service for which he was granted service pension. Thereafter, the respondent was re-enrolled in DSC service on 2nd August, 2002. He was medically and physically examined by the Medical Officer at the time of re-enrollment and found fit as per the prescribed standard in medical category SHAPE-1. The respondent was invalided out from DSC service on 31st August, 2012 in low medical category P2 (Permanent), for, he was not granted further extension having been placed in low medical category for disability 'Primary Hypertension'.

The Categorization Medical Board placed the respondent in low medical category for six months for the disability 'Primary Hypertension'. Again Re-categorization Board held on 28th April, 2012 placed the respondent in low medical category and assessed the degree of disability @ 30% for life, however, the disability was held neither attributable nor aggravated by military service. The petitioners herein rejected the respondent's claim for grant of disability pension. Feeling aggrieved, the respondent filed OA No.5/2022 before the AFT thereby seeking setting aside of the impugned orders whereby his claim for grant of disability pension had been rejected. The respondent also sought directions to the petitioners herein to grant disability pension w.e.f. 01.09.2012 for life along with interest @ 18% per annum.

The relief sought for by the respondent before the AFT was opposed by the petitioners herein by stating that since the disease of the respondent was neither attributable to nor aggravated by military service, therefore his case for grant of disability pension stood rightly rejected.

The AFT, after considering the rival contentions in light of the law laid down by the Supreme Court in **Dharamvir Singh** (supra), held the respondent entitled to grant of disability element of pension. Further, placing reliance on **Ram Avtar** (supra), the AFT rounded off the disability to 50% as against 30% for life. Order of the AFT dated

24th November, 2022 is under challenge in this writ petition filed by the petitioners under Article 226 of the Constitution of India.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the two different disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged for disablement in the year 2012 is covered by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1 (b) of 2008, Entitlement Rules Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

Para 43 of GMO, 2008 deals with 'Hypertension", which for facility of reference is reproduced hereunder:

> "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.

It is not in dispute that when the respondent was accepted in DSC service he was found physically and mentally fit by the authorities and, therefore, the disease hypertension, which led to his discharge from service occurred during DSC service. To disentitle him from claiming disability element of pension, the petitioners must plead and demonstrate that the disability which the respondent was found suffering from at the time of his release from service had though arisen during service was neither attributable to nor aggravated by military service. The burden to prove absence of causal connection between the disability and DSC service was also on the petitioners.

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 disability, 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)	Aggravted by service (Y/N)	Not Connected with service (Y/N)	Reasons/cause/specific conditions and period in service

PRIMARY HYPERTENSION (1-10)	No	No	Yes	No close time association with service of Field/HAA/active operational area……

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 a clear, unambiguous and cogent medical reasons required to disentitle the personnel from disability element of pension. Service in field, HAA or active operational area is not the only factor contributing to the onset or aggravation of 'hypertension'.

The GMO, 2008, in particular, para 43 mandates that the medical authorities must clearly opine as to whether the disability which the individual has been found inflicted with at the time of his release, which have arisen during service became worse in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of

service in field/HAA/ACTIVE operational area have created stressful situation, thus, aggravating the primary hypertension.

In view of the aforesaid prescription in 2008 GMO, it is abundantly clear that the factors like stress and strain of the military service, isolation and living of the individual away from his family, dietic compulsions of service are some of the factors which do have the effect of aggravating both the diseases noted above.

In the face of overwhelming medical opinion with regard to the disease and guidelines laid down in GMO, 2008, it is a forgone conclusion that the disabilities, which the respondent was found suffering at the time of his charge from army service are aggravated by military service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit and the same is, accordingly, dismissed.

37. <u>WP(C) No.2298/2024</u>

In the instant case, the respondent-Rattan Singh was enrolled in Army as Sepoy on 09.11.1970 in a fit state of health and discharged on 30.06.1989, for which he was granted service pension. The respondent was re-enrolled in DSC on 16.06.1990 and discharged from DSC

service on 01.01.2005. During the course of his DSC service, the respondent incurred disabilities "IPSILATERAL SUPRACONDYLAR FRACTURE SHAFT TIBIA (LT) OPTD and FRACTURE LATERAL TIBIAL CONDYLE (RT) OPTD" as a result of the injury sustained during road traffic accident while he was going for purchasing torch cells. The disabilities incurred by the respondent were compositely assessed @ 30% for life with the opinion that the same were neither attributable to nor aggravated by military service. Therefore, respondent's claim for disability pension was rejected by the petitioners. The appeal preferred by the respondent against rejection of his claim for disability pension was also rejected.

Feeling aggrieved, the respondent approached this Court by filing SWP No.1407/2007, which was disposed of by a learned Single Judge of this Court with a direction to the petitioners herein to consider the respondent's claim for disability pension having regard to the recommendations made by the Medical Board and in accordance with the rules occupying the field.

The respondent's claim was again rejected by the petitioners herein vide communication dated 20.03.2014. Feeling aggrieved, the respondent once again approached this Court by filing another writ petition, which was subsequently transferred to the AFT. The claim of the respondent was opposed by the petitioners on the ground that since the disabilities suffered by the respondent were neither attributable to

nor aggravated by military service, he is not entitled to disability pension.

The AFT having considered the rival submissions in the light of law laid down in **Dharmavir Singh** (supra), held the respondent entitled to disability pension @50% as against 30%, after being rounded off. However, arrears on account of disability pension were restricted to three years preceding the institution of TA i.e. 17.04.2014, vide order dated 18.08.2022, which is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, we deem it appropriate to record that the respondent having been discharged with disability in the year 2005 is governed by 1961 Regulations read with 1982, Entitlement Rules. As provided in 1982, Entitlement Rules, the Guide to Medical Officers (Military Pension), 1980, as amended from time to time, is required to be read with the said Rules.

It is not in dispute that when the respondent was accepted in DSC service, he was found physically and mentally fit by the authorities, therefore, the disabilities, which the respondent was found suffering at the time of his discharge from DSC service, occurred during service. To disentitle the respondent from claiming disability pension, the petitioners were required to plead and demonstrate that the disability had, though, arisen during service, was neither attributable to

nor aggravated by army service. The burden to disprove the causal connection between the disability and the military service was also on the petitioners.

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 disability suffered by the respondent is neither attributable to nor aggravated by DSC service, we have gone through the medical opinion rendered by the Release Medical Board, which is part of the paper-book. The disabilities incurred by the respondent have been assessed at 30% for life, but was found neither attributable to nor aggravated by military service for the following reason:-

"IAFY-2006 dt 27 June, 2003"

Admittedly, the respondent had suffered injuries while he was going for purchasing the torch cells, when he was off duty. **O**ff duty **means** an individual is temporarily free from assigned work, but not free from military authority**.** An armed forces member even on casual leave is treated as on duty, but for an injury to be attributed to military service and qualify for benefits, there must be a proven causal connection between the injury and service-related duties

In view of the above, it cannot be said that the petitioners have successfully discharged the burden to disprove the causal connection between the disabilities and the service of the respondent. One line

opinion is not a substitute to the clear, unambiguous and cogent medical opinion.

For the foregoing reasons, we find no merit in this petition, the same is, accordingly, dismissed.

38. <u>WP(C) No.2301/2024</u>

This petition is directed against order dated 12.05.2022 passed by the AFT in OA No.474/2018, whereby the respondent has been held entitled to disability pension @ 50% as against 30% for life.

Briefly stated, the facts leading to the filing of this petition are that the respondent joined the military service on 20.07.1979 in a fit state of health and was discharged on 28th February, 2003 for which he was granted service pension. He was enrolled in the Defence Security Corps (DSC) on 27th March, 2003. After completion of the initial term of engagement, the respondent was granted extension and was discharged from DSC service on 28th February, 2017 being placed in low medical category P2 (Permanent) w.e.f. 12.08.2013 for the disability ***"Tricuspid Valve Disease (Ebsteins Anomaly) ICD No.1 07.8"***. Before discharge, the respondent was brought before the Release Medical Board, which assessed his disability at 30% for life but declared the same as neither attributable to nor aggravated by military service. Respondent's claim for disability pension was rejected by the petitioners, aggrieved whereby the respondent filed OA No.474/2018 seeking grant of disability pension from the date of

discharge i.e. 01.03.2017 @ 30% for life by rounding off toe 50%. The claim of the respondent in the OA was opposed by the petitioners on the ground that the invaliding disease of the respondent was neither attributable to nor aggravated by military service, hence he is not entitled to disability pension.

The AFT after considering the rival submissions in light of the law laid down by the Supreme Court in the case of ***Dharamvir Singh*** (supra), held the respondent entitled to the grant of disability pension vide order impugned dated 12.05.2022.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability incurred by the respondent as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the army personnel to the disability element of pension in respect of DSC service.

Before we proceed to examine the medical record, we deem it appropriate to record that the respondent having been discharged with disability in the year 2017 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1(b) of 2008 Entitlement Rules, the GMO 2008 is required to be read along with the Rules.

The disease 'Tricuspid Valve Disease" with which the respondent was found suffering from at the time of his discharge is not mentioned in the GMO, 2008. However, as per the information available on the website of Mayo Clinic, Tricuspid Valve Disease is a type of heart valve disease also called as *valvular heart disease*, which is dealt with at para 83 of the GMO, 2008. For facility of reference Para 83 is reproduced hereunder:

> "83. **Valvular Heart Disease**.
>
> The principal causes of valvular heart disease are Rheumatic carditis, other causes being congenital, ischemic heart disease, infective endocarditis and cardiomyopathy. It takes several years for valvular disease to develop from the onset of rheumatic fever. Attributability or aggravation can be conceded by judging the merit of each case and also considering the primary disease.
>
> Mitral valve prolapse (floppy mitral valve) is commonly detected in Armed Forces. It is primarily a congenital abnormality. Hence it will be conceded as neither attributable nor aggravated by military service."

It is 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, which led to his discharge from DSC service, occurred during service. To disentitle the respondent from claiming the disability pension, the petitioners are required to plead and demonstrate that the disability, which led to discharge of the respondent, though arisen during army service, is neither attributable to nor aggravated by army service. As per Para 83 of the GMO, 2008, attributability to or aggravation can be conceded by judging the merit of each case and also considering the primary disease. The burden to

prove absence of causal connection between the disability and the army service also lies on the petitioners.

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 disability, which led to the invalidation of the respondent from DSC service was neither attributable to nor aggravated by army service, we have gone through the medical record which is part of the paper-book. The relevant portion whereof is set out below:-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with Service (Y/N)	Reason/cause conditions and period in service
Tricuspid Valve Disease (Ebsteins Anomaly) ICD No.1 07.8	No	No	Yes	Not attributable or aggravated to service. It is a congenital anamoly of heart. Ref para 22 of Ch.VI of GMO 2008

From the reading of the above, it transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have succeeded in discharging the burden to prove disentitlement on the ground of absence of causal connection between the disability and the DSC service. The one line opinion of the medical board that the disability is neither attributable to nor aggravated by army service is not a substitute for clear, unambiguous and cogent medical reason to disentitle the respondent from disability pension.

The disease tricuspid, as per the literature available on the internet can be caused by both congenital, environmental factors and other conditions that develop over the time.

We are not in a position to accept or reject the medical opinion rendered by the Release Medical Board, for, its opinion is vague and cryptic sans any reasons.

In view of the above, order impugned passed by the AFT is set aside. The petitioners are directed to convene Review Medical Board of the respondents to render clear and unambiguous opinion with regard to the attributablity of the disease incurred by the respondent to the DSC service. If the Review Medical Board finds the disability attributable to or aggravated by the military service, the petitioners shall grant the disability pension to the respondents the date of his discharge from DSC service. However, arrears on account of disability pension are restricted to three years preceding the filing of the OA.

39. <u>WP(C) No.2572/2024</u>

In the instant case, the respondent was enrolled in Indian Army on 21.01.1971 and was discharged on 12.09.1986 after rendering 15 years seven months and 22 days service for which he was granted service pension for life. He was re-enrolled in 129 Infantry Battalion (Territorial Army) Ecological on 17.06.1988 and was discharged on 14.09.1998 after rendering nine years and eight months of embodied

service without any pensionary benefits. Prior to the discharge, the respondent was examined by the Release Medical Board which assessed the disability 'I.H.D (Inferior Wal M.I.) incurred by the respondent @ 30% for two years and regarded the same as aggravated by military service.

The claim of the respondent for grant of disability pension was, however, rejected by the PCDA(P), Allahabad holding the disability suffered by the respondent neither attributable to nor aggravated by army service. The respondent was advised to prefer appeal against the rejection of disability element of disability pension within a period of six months. Accordingly, the appeal was preferred by the respondent before the higher authorities, which was rejected on 03.07.2001. Aggrieved, the respondent filed OA No.377 of 2020 before the AFT claiming seeking, *inter alia*, a direction to the petitioners herein to grant him the disability element of pension on the ground that the opinion of the Medical Board that the disability was aggravated by military service could not have been reviewed by the PCDA(P), Allahabad without having any expertise in the matter.

The matter was contested by the petitioners and an attempt was made to justify the rejection of the claim of the respondent for grant of disability element of pension by the PCDA(P), Allahabad. Additionally it was argued before the AFT that the respondent being a

member of the Territorial Army was otherwise not entitled to any pension including the disability element of pension.

The AFT having considered the rival contentions and taking note of the law laid down by the Hon'ble Supreme Court in various judgments, came to the conclusion that the PCDA(P), Allahabad cannot sit over the expert opinion given by a duly constituted Medical Board and, therefore, had no authority to reject the claim of the respondent for disability element of pension despite there being a medical opinion clearly holding the disability aggravated by military service. The OA was, thus, allowed and the respondent was held entitled to disability element of disability pension for a period of two years with a further direction to the petitioners herein to constitute Re-assessment Medical Board to take a final decision in the matter. The judgment passed by the AFT dated 22.09.2022 is subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that once the medical authorities consisting of medical experts rendered an opinion, be it with regard to the attributability to army service or aggravation by it, the PCDA(P), which is devoid of any such expertise, cannot sit over its opinion and take a view contrary to the one expressed by the experts.

Hon'ble Supreme Court in the case of Narsing Yadav (supra) has clearly held that though opinion of the Medical Board is subject to judicial review, yet the Courts are not possessed of expertise to dispute such opinion unless there is strong medical evidence on record to the contrary. If the judicial review of the medical opinion is so restricted, it is difficult to conceive that the Pension Sanctioning Authority like PCDA(P), Allahabad can sit over the medical opinion and take a view contrary to the one taken by the medical experts. This Court has already ruled on the issue in WP(C) No.1633/2024 titled *Union of India v. Shukar Singh*, decided on 19.08.2025. What is held in paragraph Nos. 9, 10 and 11 of the judgment is relevant and, therefore, set out below with advantage:

> 9. In view of the clear legal position obtaining on the subject, it can be held without any hesitation that power and scope of PCDA(P), Allahabad is very limited and normally the jurisdiction to sit over the opinion of the Medical Board cannot be conceded to it. It is only in exceptional cases and as may be provided in Army instructions, the PCDA (P) may refer the matter back to the competent authority for placing it before the appellate Medical Board for reconsideration. This issue was examined by the Supreme Court in the case of Ex Sapper Mohinder Singh v. Union of India and another [Civil Appeal No.164 of 1993 decided on 14.01.1993, wherein it was held thus:
>
> > "From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is a very narrow compass viz, whether the Chief Controller of Defense Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is no where stated that the petitioner was subjected to any higher medical board before the Chief Controller of defense Accounts (Pension) decided to decline the disability pension to the petitioner. we are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line and comment upon the extent of disability without making any reference to a detailed or higher medical board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Corp."

> 10. Similar question was considered by the Punjab and Haryana High Court in Janak Raj v. Union of India and others, 2000 (1) RSJ 706. What was held by the Punjab and Haryana High Court needs to be reproduced herein below:
>
> > "The short question that falls for consideration of this Court in the present writ petition is whether the findings of the medical board could be altered to the prejudice of the petitioner by the CDA and could the CDA sit in judgment over the findings recorded by the medical board. This question is quite settled and does not call for any detailed discussion on the subject. It is a settled principle of law that the C.D.A. is not an expert body in regard to the determination of extent of medical disability or its attributability or aggravation to the military service....."
>
> 11. It is, thus, no longer res integra that the administrative decision taken by the PCDA(P), Allahabad denying the disability element of pension to the respondent runs counter to the legal position enunciated by various High Court and the Supreme Court in Ex-Sapper Mohinder Singh (supra). We are, therefore, in agreement with the Tribunal that the PCDA(P), Allahabad could not have sat over the opinion of the RSMB held on 6th September, 1996 in which the disability of the respondent was assessed @ 20% for ten years. The decision of the PCDA (P), Allahabad reducing the disability of 20%, assessed by the RSMB, to 11-14% arbitrarily and that, too, for five years was, thus, not tenable in law. The convening of second RSMB on 04.06.2002 for assessing the disability of the respondent was totally uncalled for and, therefore, has been rightly ignored by the Tribunal. Going by the medical opinion of the doctors constituting RSMB held on 06.09.1996, the respondent is treated to have suffered disability @ 20% for ten years and, therefore, entitled to disability element of pension for all these ten years. The petitioners are, however, at liberty to bring the respondent to the Re-Survey Medical Board again for assessing his disability post 06.09.2006."

In view of the clear legal position obtaining on the subject, we find no merit in the contention of learned counsel for the petitioners that the PCDA(P), Allahabad was entitled in law to take a view contrary to the medical opinion and hold the respondent not entitled to disability element of disability pension. The issue as to whether an individual, who has been invalided out of Territorial Army is entitled to the benefit of disability pension or not is also no longer *res integra* and that has been rightly not pressed by the petitioners.

For the foregoing reasons, we find no merit in this petition, the same is, accordingly, dismissed. The judgment passed by the AFT

impugned in this petition is upheld. Let the respondent be placed before the Re-assessment Medical Board in terms of the judgment of the AFT with regard to the entitlement of the respondent for disability element of disability pension and decision with regard to the disability pension on the basis of the opinion of the Re-assessment Medical Board taken. If the petitioners find the respondent suffering from the same disability, they shall restore the disability pension payable to the respondent for life including the intervening period. However, arrears shall be restricted to the period of three years preceding the filing of OA before the AFT.

40. <u>WP(C) No.2594/2024</u>

The respondent-Nk Satpal Singh was enrolled in the Indian Army on 28th March, 1985 and was discharged from service on 31st March, 2003 after rendering 18 years and 04 days service for which he was granted service pension. The respondent was re-enrolled in DSC on 22.09.2004 and discharged from service on 30.06.2020 in low medical category. The Release Medical Board held on 29th February, 2020 assessed the disabilities (i) STROKE ISCHEMIC POSTERIOR CIRCULATION (G46.3) @ 30% for life and (ii) PRIMARY HYPERTENSION (1-10) @ 30% for life, with composite disability @ 51% for life and opined that the disabilities are neither attributable to nor aggravated by military service being not related to military service

and originated in peace station. The respondent's claim for disability pension was denied vide DSC records letter dated 16th July, 2022.

Feeling aggrieved, the respondent approached the AFT by filing OA No.205 of 2022 seeking setting aside of the impugned letters, whereby claim of the respondent for grant of service element of disability pension of DSC service had been rejected. A direction to the petitioners herein was also sought to grant disability element of pension to the respondent w.e.f. 01.07.2020 for life with arrears along with interest @ 18% per annum.

The relief sought for in the OA was opposed by the petitioners herein by stating that both the disabilities suffered by the respondent have been regarded as neither attributable to nor aggravated by military service by the Release Medical Board, therefore, the respondent is not entitled to disability element of pension.

The AFT after considering the matter in the light of rival contentions and judicial pronouncements, held the disabilities suffered by the respondent aggravated by military service. Accordingly, the OA was allowed holding the respondent entitled to disability element of pension @51% for life with the benefit of rounding off to 75% as against 51% vide order dated 25th April, 2023. It is this order of the AFT, which is subject matter of this petition filed under Article 226 of the Constitution of India by the Union of India and its functionaries.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the two different disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged for disablement in the year 2020 is governed by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1 (b) of 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

Para 14 of GMO, 2008 deals with Cerebrovascular Accident (Stroke) and 43 of GMO, 2008 deals with 'Hypertension", which for facility of reference are reproduced hereunder:

> "14. **Cerebrovascular Accident (Stroke)**. Stroke or cerebrovascular accident is a disease of acute onset leading to neurological deficit such as hemiplegia caused by intravascular events. Cerebral infarction following thrombosis and embolism accounts for a large number of cases whereas cerebral hemorrhage is the cause only in a few cases. Atherosclerotic thrombosis is of gradual onset and any permanent neurologic deficit is preceded by TIAs (Transient Ischaemic Attacks).
>
> TIAs result mostly from embolism of thrombus or platelet material from an extra cerebral artery (Internal carotid) and some times due to stenosis of a major artery, altering hemodynamics in the event of change of posture and exertion.
>
> Mural thrombus from the heart in IHD and SBE and ulcerated plaques of atherosclerotic arteries are the principal source of embolism.

Among other causes, physical trauma (heat) and mechanical trauma and arteritis associated with infection like TB, connective tissue disorder (PAN, SLE) can give rise to stroke. Service in HAA can precipitate stroke by virtue of hypercoagulable state.

About half of the strokes caused by cerebral hemorrhage are due to subarachnoid hemorrhage from rupture of a berry aneurysm (Circle of Willis) and less commonly due to arteriovenous malformation. Remaining cases of hemorrhage in cerebral substance are due to rupture of small perforating arteries/arterioles weakened by hypertension or atheromatous degenerations.

The majority cases exhibit greater degree of hemiparesis, dysphasia(if dominant hemisphere is involved), hemianaesthesia and hemianopia. In some cases ataxia, cranial nerve palsy, nystagmus may be the presentation depending on the territory of brain involved.

It will be appropriate to award attributability if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service.

Aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field.

It nearly takes 6 months for complete recovery. However, cases showing no sign of improvement up to two years are unlikely to improve further and should be labelled as permanent."

……

…….

"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."

It is not in dispute that when the respondent was accepted in DSC service he was found physically and mentally fit by the

authorities and, therefore, the diseases “Stroke Ischemic Posterior Circulation” and “Hypertension”, which led to his discharge from service occurred during service. To disentitle him from claiming disability element of pension, the petitioners must plead and demonstrate that the disabilities, which the respondent was found suffering from at the time of his release from service had though arisen during service were neither attributable to nor aggravated by military service. The burden to prove absence of causal connection between the disabilities and military service would also lie on the petitioners.

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 was 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)	Aggravted by service (Y/N)	Detailed Justification
(a) STROKE ISCHEMIC POSTERIOR CIRCULATION (G 46.3)	No	NO	Disabilities do not attributable/aggravation to military service. As the disabilities occurred in peace area as per Para 14 and 43 of GMO(MP) 2008.
PRIMARY HYPERTENSION (1-10)	No	No	

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 personnel from disability element of pension.

The GMO, 2008, in particular, para 43 mandates that the medical authorities must clearly opine as to whether the disabilities which the individual has been found inflicted with at the time of his release, which have arisen during service worsened in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE operational area have created stressful situation, thus, aggravating the primary hypertension.

Further as per para 14 of the GMO, 2008, in the cases of Stroke Ischemic posterior circulation, if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service, attributability would be awarded. Even aggravation

can be conceded when atheroscelerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field.

In view of the aforesaid prescription in 2008 GMO, it is abundantly clear that the factors like stress and strain of the military service, isolation and living of the individual away from his family, dietic compulsions of service are some of the factors which do have the effect of aggravating both the diseases noted above.

In the face of overwhelming medical opinion with regard to these diseases and guidelines laid down in GMO, 2008, it is a forgone conclusion that the disabilities, which the respondent was found suffering at the time of his discharge from DSC service were aggravated by service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit and is, accordingly, dismissed.

41. <u>WP(C) No.2613/2024</u>

The respondent – Shabir Ahmed Wani joined the Indian Army in a fit medical condition on 28th October, 1995. During the course of his employment, the respondent incurred the disability of 'Chronic

Otitis Media (LT) OPTD' and was finally discharged from military service on 31.10.2019 in low medical category. At the time of discharge, the Release Medical Board assessed the disability of the respondent as 15% (less than 20%) for life attributable to military service.

The claim of the respondent for grant of disability element of pension was rejected by the petitioners herein. The first appeal preferred by the respondent against rejection of his claim for disability element of pension was also rejected. Feeling aggrieved, the respondent filed OA No.46/2021 seeking setting aside of impugned communications dated 22.01.2020, whereby the disability pension claim of the respondent was rejected and 27.11.2020 whereby the appeal preferred against rejection was also rejected. A direction was also sought to the petitioners herein to grant disability pension to the respondent with benefit of rounding off.

The relief sought for in the OA was opposed by the petitioners herein on the ground that since the disability of the respondent is assessed as 15% (less than 20%), as such, he is not entitled to disability pension.

The AFT relying upon a judgment of the Supreme Court in the case of **Sukhwinder Singh** (supra) held that the disability which has been assessed by the Release Medical Board at less than 20% (i.e.

15%) shall be deemed to be 20% and rounded off to 50% and, accordingly, allowed the OA vide order dated 25th November, 2021, which is under challenge in this petition filed under Article 226 of the Constitution of India.

Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the respondent is entitled to disability element of pension.

Indisputably, the respondent has incurred the disability 'Chronic Otitis Media (Lt) Optd" during his military service due to which he was discharged from service in low medical category. Attributability of the disability suffered by the respondent is also conceded because as per the opinion of the Release Medical Board, onset of infection was during military service.

The only question that begs determination in this case is whether an army personnel suffering from disability of less than 20% is entitled to disability pension or not?

It is not in dispute that the respondent was discharged from service on medical grounds for having suffered the disability before completion of term of engagement, as such, is deemed to have been invalided from service in terms of Rule 4(b) of 2008, Entitlement Rules. In **Sukhwinder Singh** (supra), the Supreme Court has held that there appear to be no provision authorizing the discharge or invaliding

out of service where the disability is below 20% and whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above 20%. It was also held that as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension.

For the foregoing reasons and in view of the clear legal position obtaining on the subject, we find no merit in this petition and the same is accordingly, dismissed. Consequently, the order of the AFT is upheld.

42. <u>WP(C) No.540/2025</u>

In the instant case, the respondent Rajesh Kumar was enrolled in the Dogra Regiment of Indian Army on 12th April, 1999 and discharged on 31.03.2021 in low medical category before completion of tenure of his service. At the time of discharge from service, the Release Medical Board held on 27th February, 2021 assessed the disabilities **(i) 'HYPERTENSION (1.10)' @ 30% for life** and **(ii) Obesity (E 66.0)' @ 5% for life, composite disabilities @ 30% for life** and opined that the disabilities were neither attributable to nor aggravated by military service. The disability pension claim of the respondent was, thus, rejected on the basis of the opinion of the medical board, communicated to the respondent vide letter dated 24th

July, 2021. The first appeal preferred by the respondent against rejection of his disability pension claim, too, was rejected, which was communicated to the respondent vide letter dated 31st May, 2022. Feeling aggrieved, the respondent filed OA No.87/2022 before the Armed Forces Tribunal, Regional Bench Srinagar at Jammu ["AFT"] and prayed for quashing of the offending part of the Release Medical Board opinion, whereby it had been observed that the disability suffered by the respondent was neither attributable to nor aggravated by military service and also for quashing letter dated 24th July, 2021, whereby claim for grant of disability element of pension had been rejected. The respondent also sought a direction to the petitioners herein to grant disability element of disability pension in favour of the respondent w.e.f 1st April, 2021 @ 30% for life with arrears and interest with the benefit of rounding off to 50% as against 30%.

The AFT considered the matter in the light of the law laid down by Hon'ble the Supreme Court in the case of **Dharamvir Singh** (supra) and **Union of India v. Ram Avtar**, **2014 SCC OnLine SC 1761** and came to the conclusion that the respondent was entitled to the disability element of pension assessed at 30% for life and rounding off to 50%. The petitioners herein have been further directed to give effect to the order within a period of four months from the date of receipt of certified copy of the order and in default will invite interest @8% per

annum till actual payment. It is this judgment of the AFT dated 14th March, 2023, which is subject matter of challenge in this petition.

Before we proceed to examine the medical record, we deem it appropriate to record that the respondent having been discharged with disability in the year 2021 is governed by 2008 Regulations read with 2008 Entitlement Rules. As provided in Rule 11 (b) of 2008 Entitlement Rules, the GMO 2008, as amended from time to time is required to be read with the said rules. Para 43 of GMO 2008 is relevant for determination in this case, which for facility of reference is reproduced hereunder:

> *"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.."*

It is 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 hypertension, 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 'hypertension', 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 was also on the petitioners.

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 disability 'hypertension', which led to the invalidation of the respondent from military service is neither attributable to nor aggravated by army service, we have gone through the medical record produced. The relevant portion whereof is set out below:-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Detailed justification
HYPERTENSION(1.10)	No	No	As per posting profile indl was posted in Hasimara (WB) w.e.f. 04 Mar 2018 to 20 Aug 2020 and as per spl opinion dated 13 Dec 2018 onset of disease was in HAA during 1st stage of HAA acclimatization. When Indl was on temp duty to Surasoi (Sikkim) wef 17 Dec 2018 to 19 Dec 2018. Hypertension has long incubation period and short stay in HAA has no casual factor related to service condition. Hence, the disability is conceded NANA by military service vide para 43 of Chapter VI of GMA 2008.
OBESITY (E 66.0)	No	No	Disability is due to dietary indiscretion by individual

			despite medical advice and not related to military service. Hence, conceded NANA by mil service.

From the reading of the above, it transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have succeeded in discharging the burden to prove disentitlement on the ground of absence of causal connection between the disability and the army service, for, the instant case is covered by Rule 10(b) of the 2008 Entitlement Rules, which provides that for acceptance of a disease as attributable to military service, two conditions are to be satisfied; (i) that the disease has arisen during the period of military service; (ii) and that the disease has been caused by the conditions of employment in military service.

Admittedly, onset of the disease was in High Altitude Area (HAA) during first stage of HAA acclimatization, when the respondent was posted on duty to Surasoi (Sikkim). Therefore, it cannot be ruled out that the disease has been caused by the conditions of employment in military service. 'Hypertension" in any case is augmented by stress and strain associated with army service (refer Para 43 of GMO 2008).

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity in the judgment

passed by the AFT. This petition is, therefore, devoid of any merit and, therefore, deserves to be dismissed. **Ordered accordingly.**

43. <u>WP(C) No.544/2025</u>

The respondent in this case was enrolled in the Indian Army on 2nd February, 1980. During service the respondent served in field areas/ OP Rakshak/ CI OPS/ High Altitude Areas. In addition, the respondent had served in "OP PAWAN" in Sri Lanka w.e.f. 26.12.1987 to 14.06.1989 during which he sustained severe injury "CSOM (RT)" due to bomb blast in a shop near to his place of duty. The respondent was discharged from service on 30th June, 1999 after rendering 19 years four months and 21 days of service. Before discharge, the respondent was examined by the Release Medical Board on 08.06.1999 and the disability incurred by the respondent i.e. "CHRONIC SUPPURATIVE OTITIS MEDIA (CSOM (RT)" was assessed @ 15-19% (less than 20%) for two years. The disability was declared attributable to military service. The respondent's claim for war injury pension was rejected vide letter dated 05.02.2019. Feeling aggrieved, the respondent approached the AFT by filing OA No.175/2019 seeking, *inter alia*, a direction to the petitioners herein to release the war injury pension to the petitioner @ 50% w.e.f. 01.07.1999 for life with arrears and interest @ 18% per annum.

The claim of the respondent in the OA was contested by the petitioners herein on the ground that the disability incurred by the

respondent has been assessed @ 15-19%, as such, he is not entitled to disability/war injury element in terms of Regulation 179 of Pension Regulations for the Army, 1961.

The AFT considered the matter in light of the rival contentions of the parties and held the respondent entitled to disability element of pension @ 50% for two years with a direction to the petitioners to conduct Re-survey Medical Board of the respondent vide order dated 23.02.2023. A strong reliance was placed on **Sukhwinder Singh** (supra) it which it was held that where a member of the armed force is invalided out of service, it perforce has to be assumed that his disability was found to be above 20%. Relying on **Ram Avtar** (supra), the AFT rounded off the disability to 50% as against 20%. Order dated 23.02.2023 passed by the AFT is under challenge in this petition filed under Article 226 of the Constitution of India.

Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the order impugned passed by the AFT is legally perfect and does not require any interference by this Court.

Law on the point is very clear that whenever a member of the armed forces is invalided/discharged from service due to disability, it perforce has to be assumed that his disability was found to be above 20% and that a disability leading to invaliding out of service would attract grant of fifty percent disability pension. In the instant case, the

only ground on which the respondent has been denied disability pension was that the disability incurred by the respondent was below 20%, as such, in view of the settled legal position in **Sukhwinder Singh** (supra), the respondent is entitled to disability pension @ 20% to be rounded off to 50% for two years.

Accordingly, we find no good ground to interfere with the order of the AFT, hence the writ petition is dismissed. The petitioners shall conduct Re-survey Medical Board to assess the further entitlement of the respondent for the disability pension.

44. <u>WP(C) No.657/2025</u>

In the instant case, the respondent was enrolled in Indian Army on 26.08.1994. He was promoted to the rank of Havildar. The respondent was granted five days PAL w.e.f. 21.04.2006 to 25.04.2006 with a preparatory leave of six days from 26.04.2006 to 01.05.2006. On 24.04.2006, while the respondent was going to the railway station for getting his ticket reserved for reporting back to his duty, he met with an accident when a stray cow came in front of his motorcycle. Due to accident, left leg of the respondent was injured. He was taken to nearest Military Hospital in Panagarh. After discharge from the hospital, the respondent joined back in his regiment wherefrom he was shifted to Command Hospital, Chandimandir. He was operated on 22.09.2006 for the injury "ACL TEAR GRADE III (LT)". However, due to the injury, the respondent could not perform his duties w.e.f.

28.07.2006. Medical Board proceedings were conducted, in which the respondent was placed in low medical category S1H1A3 (T-24) for having suffered "(a) ACL TEAR (OPTD) AND (b) PCL RETEAR (LEFT) KNEE". Court of inquiry proceedings were also held to investigate the circumstances under which the respondent sustained aforesaid injuries while on leave. He was put to re-categorization medical board proceedings from time to time. Subsequently, Release Medical Board examined the respondent, which found the respondent suffering from the disabilities "ACL TEAR (OPTD)" and "PCL TEAR (LT) KNEE" and regarded the same neither attributable to nor aggravated by military service. The composite disabilities incurred by the respondent had been assessed @ 20% for life. On the basis of the opinion of the medical board, the respondent was discharged from military service on 01.08.2010 in terms of Rule 13 (3) item III (iv) of the Army Rules, 1954.

The respondent was granted service pension, however, benefit of disability pension was denied to the respondent. A legal notice came to be served upon the petitioners by the respondent for grant of disability pension but of no avail. Feeling aggrieved, the respondent preferred OA No.1020/2014 before the Armed Forces Tribunal, Chandigarh Bench seeking, *inter alia*, a direction to the petitioners herein to grant disability pension for the disabilities suffered by him due to which he had been invalided out of the Army Service with the benefit of rounding off to 50%. The said OA, on its transfer to AFT, came to be

registered as TA No.75/2016. The respondent's claim in the OA was resisted by the petitioners herein on the ground that since the disability of the respondent has been regarded as neither attributable to nor aggravated by military service, as such, he is not entitled to disability pension.

The AFT, having considered the rival submissions and the material on record, held the disability incurred by the respondent attributable to army service and, accordingly, allowed the OA thereby directing the petitioners herein to grant disability pension to the respondent @ 20% for life with the benefit of rounding off to 50% as against 20% with effect from three years preceding the filing of the TA i.e. 30.06.2014 vide order dated 09.05.2023, which has been impugned by the petitioners in this petition filed under Article 226 of the Constitution of India.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged from army service in the year 2010 is governed by 2008 Regulations read with 2008, Entitlement Rules.

As provided in Rule 1(b) of 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

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 was 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 conditions and period in service
ACL TEAR (OPTD) PCL TEAR (CT) KNEE	No	No	Yes	Not attributable to as per IAFY-2006 dt. 28 Apr 2007

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 pension.

Hon'ble Supreme Court in the case of **Madan Singh Shekhawat v. Union of India and others, (1999) 6 SCC 459** has held that there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties and the injury must be connected with military service howsoever remote it may be.

In the case of respondent, he met with an accident while was going to the railway station in order to get the seat reserved for joining back his military duty, which fact has not been disputed by the petitioners at any stage. It is, thus, an admitted case that the respondent suffered injuries while he was going to get the seat reserved for joining back his duties, which establishes clear connection with his duty in military service. He suffered unfortunate accident only because he was to arrange railway ticket to reach his unit to perform military duty.

We are of the considered opinion that the going to railway station in order to get the seat reserved is preparation to rejoin back the duty after leave, as such, the injuries suffered by the respondent in the accident bears causal connection with military service.

In view of the above, we find no merit in this petition, the same is, accordingly, dismissed.

45. <u>WP(C) No.658/2025</u>

In this case, the respondent was enrolled in the Dogra Regiment of Indian Army on 05.03.2003 and discharged on 31st March, 2020 in Low Medical Category. At the time of discharge of the respondent, Release Medical Board was held on 13th January, 2020, which assessed his disabilities (i) **PRIMARY HYPERTENSION (ICD NO.I 10.0) @ 30%** for life and **(ii) HYPER TRYGLYCERIDEMIA (ICD NO.E-78.1) @ 1-5%** for life, composite disabilities @ 30% for life and opined the disabilities to be neither attributable to nor aggravated by military service. Respondent's claim for disability pension was rejected vide letter dated 02.05.2020 against which the first appeal preferred by the respondent was also rejected vide letter dated 20.07.2021. The Second appeal dated 24.09.2021 filed by the respondent, too, met the same fate. Feeling aggrieved by rejection of his claim for disability pension, the respondent filed OA No.162 of 2022 before the AFT.

The claim of the respondent was resisted by the petitioners herein. It was contended that since the composite disabilities of the applicant @30% for life have been regarded as neither attributable to nor aggravated by military service, hence as per Regulation 53(a) of the Pension Regulations for the Army, 2008, the respondent is not entitled to disability element of pension. The Tribunal considered the matter in light of the rival contentions and by placing reliance on

Dharamvir Singh (supra), held the disabilities suffered by the respondent as aggravated by military service. Accordingly, the OA came to be allowed holding the respondent entitled to get disability pension @30% for life with the benefit of rounding off to 50% vide order dated 22nd May, 2023, which is subject matter of challenge in this petition.

Having heard learned counsel for the parties and perused the material on record, the only question that begs determination in this case is whether opinion of the medical board, which assessed the two different disabilities as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the respondent to the disability element of pension in respect of his military service.

Before we proceed further, it needs to be taken note of that the respondent having been discharged for disablement in the year 2020 is covered by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1 (b) of 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

Para 43 of GMO, 2008 deals with 'Hypertension", which for facility of reference is reproduced hereunder:

> "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.

It is 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 diseases primary hypertension hyper tryglyceridemia, which led to his discharge from service occurred during service. To disentitle him from claiming disability element of pension, the petitioners must plead and demonstrate that the disabilities which the respondent was found suffering from at the time of his release from army service had though arisen during military service were neither attributable to nor aggravated by military service. The burden to prove absence of causal connection between the disabilities and military service would also lie on the petitioners.

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, are 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)	Aggravted by service (Y/N)	Reasons/cause/specific conditions and period in service
1. PRIMARY HYPERTENSION (ICD NO-1-10)	No	No	Disease onset on May 2018 at Faizabad (UP) Neither attributability nor aggravation awarded to ind as per chapter VI para 43 of GMO (Military pension)
2. Hyper Tryglyceridemia (ICD NO-E 78.1)	No	No	Disease onset May 2018 at Faizabad (UP) Neither attributability nor aggravation awarded to ind because Disability is a life style disease.

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 each disability with regard to its attributability or aggravation by military service is not substitute for a clear, unambiguous and cogent medical reasons required to disentitle the personnel from disability element of pension.

The GMO, 2008, in particular, para 43 mandates that the medical authorities must clearly opine as to whether the disabilities which the individual has been found inflicted with at the time of his release, which have arisen during service became worse in service or not. The medical authority must answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the

individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE operational area have created stressful situation, thus, aggravating the primary hypertension.

In view of the aforesaid prescription in 2008 GMO, it is abundantly clear that the factors like stress and strain of the military service, isolation and living of the individual away from his family, dietic compulsions of service are some of the factors which do have the effect of aggravating both the diseases noted above.

In the face of overwhelming medical opinion with regard to these diseases and guidelines laid down in 2008 GMO, it is a forgone conclusion that the disabilities, which the respondent was found suffering at the time of his discharge from army service were aggravated by military service.

For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid of any merit and the same is, accordingly, dismissed.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
03.11.2025
Vinod

Whether the order is speaking : Yes
Whether the order is reportable: Yes

Vinod Kumar
2025.11.04 10:45
I attest to the accuracy and
integrity of this document