

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 888/2024

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| 1. Union of India th. Secretary Ministry
of Defence, South Block, New Delhi
2. Chief of Army Staff, IHQ MoD
(Army) DHQ PO, South Block, New
Delhi th. its Director AG PS-4
(Pension/Legal) AG's Branch.
3. Director Adjutant General Branch
(MP 5 and 6) Army HQ West Block-3,
RK Puram, New Delhi
4. Principal Controller of Defence
Accounts (Pensions), Draupadi Ghat,
Allahabad, Uttar Pradesh-211014 | Appellant(s)/Petitioner(s) |
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Through: Mr. Suneel Malhotra, CGSC

vs

Col. Mohan Lal Gandotra (Retd.) IC-41324A S/o Sh. Baldev Raj Gandotra R/o H.No. 23 Lane 1 Suraksha Vihar, Paloura Top, Jammu	 Respondent(s)
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Through: Mr. Amit Singh, Advocate vice
Mr. B.S. Sarmal, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT(ORAL)
19.08.2025

Sanjeev Kumar 'J'

1. Impugned in this petition, filed by the petitioner-Union of India and three others under Article 226 of the Constitution of India, is an order/judgment dated 20.03.2023 passed by the Armed Forces Tribunal, Srinagar Bench at Jammu [**“the Tribunal”**] passed in OA No. 387/2020 titled *Col. Mohan Lal Gandotra Vs. UOI & Ors.*,

whereby the Tribunal has allowed the OA of the respondent and directed the petitioners herein to conduct post discharge Release Medical Board (RMB) of the respondent to assess his disability for deciding as to whether he is entitled to disability element of disability pension or not.

2. The impugned judgment of the Tribunal is called in question by the petitioners primarily on the ground that in terms of Regulation No. 81 of the Pension Regulations for the Army, 2008 (Part I), a service personnel, who is invalidated from service on account of disability, which is attributable to or aggravated by the army service, alone is entitled to disability pension consisting of service element and disability element in accordance with the provisions contained in Section I of the Regulations of 2008 (Part I).
3. Before we advert to the arguments advanced by Mr. Suneel Malhotra, learned CGSC to support his challenge to the impugned judgment, we deem it appropriate to set out few relevant facts.
4. The respondent was commissioned in the Indian Army on 21.09.1983 and retired from service on 31.08.2015 on attaining the age of superannuation in the medical category SHAPE-1. He was re-employed in the Indian Army on 17.09.2015 and ultimately discharged from the re-employment on 14.08.2019. Upon his discharge from the re-employment in the year 2019 itself, the respondent approached the petitioners vide his petition dated 15.11.2019 for conduct of post-discharge Release Medical Board to

assess his disability at the nearest military hospital and grant him the element of disability pension. On finding no response from the petitioners, the respondent filed OA No. 387/2020 before the Tribunal claiming *inter alia* a direction to the petitioners to conduct his post discharge Release Medical Board at the earliest so as to enable him to receive the disability element of pension w.e.f. 15.08.2019.

5. The petition was contested by the petitioners herein, who, in their reply affidavit filed before the Tribunal, took a stand that the respondent was re-employed on 17.09.2015 and finally released from re-employment on 14.08.2019 in low medical category S1H1A1P3 (T-24) E1 for disability “Allergic Bronchitis”. It was the stand of the petitioners before the Tribunal that in term of Para 72 (iii) of Pension Regulations for Army, 2008 (Part-II), the respondent, having retired from regular army service in medical category SHAPE-1 and discharged from re-employment in low medical category, is not eligible for disability pension.
6. The Tribunal having considered the rival contentions of the learned counsel appearing on both the sides and gone through the material on record, including the relevant Pension Regulations, came to the conclusion that as per Regulation No. 54 of the Pension Regulations for Army, 1961, an officer, who is retired, otherwise than on his own request, with a retiring pension is entitled to approach the army authorities for his examination by the Medical Board if he complains

that the disability, which he has suffered within ten years of his retirement is either attributable or aggravated by army service.

7. Relying upon Regulation No. 54 (supra), the Tribunal allowed the OA in terms of the judgment impugned and issued direction to the petitioners to conduct the RMB of the respondent to assess his disability and determine his claim for disability element of pension. It is this judgment, which the petitioners have assailed before us on the grounds, which we have taken note of hereinabove.
8. Having heard learned counsel for the parties and perused the material on record, we need to first set the record straight by holding that the respondent, who had retired from army service on attaining the age of superannuation on 31.08.2015, is governed by Pension Regulations for the Army, 2008 (Part-I and Part-II), and therefore, the reliance placed by the Tribunal on the Army Regulations, 1961 in particular Regulation No. 54 thereof is not correct, though, the Regulation 54 of the Pension Regulations for Army, 1961 is almost *in pari materia* with Regulation No. 86 of the Pension Regulations for Army (Part-I), 2008.
9. Before proceeding further, we deem it necessary to set out Regulation No. 86 of the Regulations of 2008, which reads as under:

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 from 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.

10. From a plain reading of Regulation 86 of 2008 Regulations, which is almost *in pari materia* with Regulation 54 of 1961 Regulation, it is crystal clear that a service personnel, who is retired/discharged (otherwise than at his own request or in any of the circumstances specified in Regulation 21 and Regulation 41) on a retiring pension is entitled to seek his examination from the Review Medical Board to be constituted by the Director General, Armed Forces Medical Services, if he complains that he is suffering from a disease and that the disease is manifested within a period of ten years from the date of his retirement from regular army service.
11. In the instant case, there is no dispute with regard to the fact that the respondent approached the petitioners with his written application seeking his examination by the Medical Board on 15.11.2019, that is well within ten years of his retirement from regular army service that is 31.08.2015.
12. Whether or not the disease, which the respondent was complaining of, was attributable to military service is a question to be determined only by the Review Medical Board.
13. Once the disease, "Allergic Bronchitis", claimed to have been suffered by the respondent within ten years of his retirement, the

same is required to be examined by the Review Medical Board, to be constituted by the Director General, Armed Forces Medical Services and if the Review Medical Board so constituted by the Director General comes to the conclusion that the disease suffered by the respondent, which has manifested itself within ten years of his retirement, is attributable to his military service, the pension authority will, accordingly, release the disability element of the pension.

14. The short grievance, that was projected by the respondent before the Tribunal, was only that despite his written petition made to the petitioners, he has not been subjected to examination by Review Medical Board. Although the petition, as it was filed before the Tribunal, was premised on different pedestal and the respondent before the Tribunal was essentially asking for his examination by post discharge Release Medical Board to assess his disability claimed to have been incurred by him during his re-employment, yet the fact remains that disease “Allergic Bronchitis” has occurred or manifested within a period of ten years from his retirement from regular army service. That being the position, the Tribunal has rightly treated his petition as having been filed in terms of Regulation No. 54 of the Pension Regulations for the Army, 1961.
15. Without going into the above noted technicality of the matter and also to render complete justice in the matter, we concur with the view taken by the Tribunal. We are, however, of the opinion that the case

of the respondent is covered by Regulation No. 86 of the Pension Regulations for Army, (Part-I), 2008.

16. The plea of the petitioners that the case of the respondent was covered by Regulation No. 81 of the 2008 Regulations is noticed only for rejection.
17. Regulation No. 81, for the facility of reference, is reproduced as under:-

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.

18. From a plain reading of Regulation 81, it is evident that the Regulation deals with the disability pension of a service personnel, who is invalidated from service on account of a disability which is either attributable to or aggravated by military service.
19. Similarly, the reliance placed by Mr. Suneel Malhotra, learned GA on Regulation 72(iii) of the Pension Regulations for the Army, 2008 (Part-II) is totally misplaced. Regulation 72(iii), for the facility of reference, is set out as under:-

72(iii) Officers who retire from Army service on completion of age limit in medical Category SHAPE-1 and are re-employed in Army are found to be low medical category during such re-

employment unless the re-employment is terminated on account of disability.

20. From a perusal of the Regulation 72, in particular Clause (iii), it is crystal clear that only such ex-army personnel, who retired from army service on completion of age limit in medical Category SHAPE-1 and are found to be in low medical category during their re-employment with the army have been held not eligible for grant of disability pension. Such person would be entitled to disability pension only if the re-employment is terminated on account of disability.
21. Viewed thus, the claim of the respondent that he should be re-evaluated by the post discharge Release Medical Board to assess his disability was liable to be turned down in view of the clear provisions of Para 72(iii). However, in the instant case, as is done by the Tribunal and to which we are concurring, the respondent was entitled to the benefit of Regulation No. 86 of 2008 Regulations (Part-I) for the reason that the respondent suffered from the disease “Allergic Bronchitis”, which manifested within the period of ten years from the date of his retirement on completion of his term in Indian Army.
22. For all these reasons, we are inclined to uphold the impugned judgment passed by the Tribunal, but with some modification so as to put the record straight.
23. This petition is, therefore, **disposed of** by directing the petitioners to consider the petition filed by the respondent dated 15.11.2019 as a

petition under Regulation No. 86 of the Pension Regulations for Army, 2008 (Part-I) and direct the Director General, Armed Forces Medical Forces to conduct the Review Medical Board of the respondent to find out as to whether the disease complained of by the respondent has occurred or manifested within a period of ten years from the date of his retirement and also as to whether the aforesaid disease is attributable to his military service. Further appropriate action by the petitioners shall be taken, on the basis of the opinion rendered by the Review Medical Board and in accordance with the Pension Regulations for Army, 2008 (Part-I and Part-II).

24. Let the respondent appear before the Review Medical Board, to be constituted by the Director General, Armed Forces Medical Services, within a period of 30 days, on a date to be intimated to the respondent by the petitioners.
25. The entire proceeding, as directed above, shall be completed within a period of three months from today.
26. The judgment passed by the Tribunal is modified only to the aforesaid extent.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
19.08.2025
Vishal Sharma

Whether the judgment is speaking:	Yes
Whether the judgment is reportable:	Yes