

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

Case No: WP(C) No. 703/2024

*Reserved on: 08.12.2025
Pronounced on: 24.12.2025
Uploaded on: 24.12.2025*

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

1. Union of India through its
Secretary to Government of
India, Ministry of Defence,
South Block,
New Delhi-110 011.
2. Additional Director General
Personnel Services,
Adjutant General's Branch,
Integrated HQ of Ministry of
Defence (Army), DHQ PO,
New Delhi- 110 001.
3. Principal Controller of Defence
Accounts (Pensions), Draupadi
Ghat, Allahabad, Uttar Pradesh-
211 014.

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

Through: Mr. Vikas Sharma Sr.Panel Counsel.

v/s

Bachan Lal S/O Shri Dhayan Chand, R/O
Village: Dugbalotra, Post Office, Ramgarh,
Tehsil: Samba, District Jammu, J&K-
181141.

.... Respondent(s)

Through: Mr. P.L.Sharma, Advocate.

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

JUDGMENT

PER OSWAL-J

1. The respondent was enrolled in the Indian Army on 29.10.1997 in a fit state of health and was granted extension of service w.e.f. 29.10.2014 to 28.10.2016. During that period of service, he was placed in Low Medical category for '**PRIMARY HYPERTENSION**' and thus, was finally released from service on 31.05.2015 after rendering 17 years, 06 months and 20 days of service. At the time of his release, his disability was assessed @ **30% for life** by the Release Medical Board and held to be neither attributable nor aggravated by the military service. Accordingly, the petitioners rejected the claim of the respondent for grant of disability element of service pension on the ground that the Release Medical Board has found the disability neither attributable to nor aggravated by military service.
2. Aggrieved thereof, the respondent filed OA No. 173 of 2021 before the Armed Forces Tribunal, Regional Bench, Srinagar at Jammu (for short-'AFT'). The OA was disposed of by the learned Tribunal vide order dated 28th April, 2022 thereby holding the respondent entitled for disability pension @50% as against 30% for life from the date of discharge, i.e. 01.06.2015. It was also held by the learned AFT that since the respondent had approached AFT after a gap of about six

years, the entitlement of arrears would stand restricted to a period of three years preceding the date of institution of the Original Application, i.e. 26.04.2021. The learned AFT considered the matter in the light of the law laid down by the Hon'ble Supreme Court of India in the case of **Dharamvir Singh v. Union of India & Others, (2013) 7 SCC 316** and **Union of India Vs. Ram Avtar, 2014 SCC Online SC 1761**.

3. Aggrieved thereby, the petitioners have assailed the order of learned AFT on the grounds, inter alia, that the learned AFT has failed to appreciate that the disability suffered by the respondent, namely '**Primary Hypertension**' had been assessed by a duly constituted Release Medical Board as neither attributable to nor aggravated by military service and as per the settled legal position, due weight is required to be accorded to the findings of the Medical Board while arriving at a conclusion and this aspect which, according to the petitioners, has been overlooked by the learned AFT. It is further urged that the instant case does not fall within the parameters laid down in **Dharamvir Singh v. Union of India & Others, (2013) 7 SCC 316** and **Union of India Vs. Ram Avtar, 2014 SCC Online SC 1761**.
4. Mr. Vikas Sharma, learned counsel for the petitioners, has reiterated the submissions as recorded above.
5. *Per contra*, learned counsel for the respondent-applicant has placed reliance upon the judgment passed by the coordinate Bench of this

Court in **WP(C) No. 3173/2023, 'Union of India and others v. Nirman Singh Jamwal'** to justify the order impugned.

6. Heard learned counsel appearing for the parties and perused the record meticulously.
7. It needs to be noted that the co-ordinate Bench of this Court, dismissed the writ petition **WP(C) No. 3173/2023, 'Union of India and others v. Nirman Singh Jamwal'**, preferred by Union of India, against the order of learned AFT where the respondent was suffering from '**Primary Hypertension**' and was held entitled to disability element of pension. It was held that it is incumbent upon the medical authorities to render a clear and unequivocal opinion as to whether the disability with which the individual stood afflicted at the time of discharge had arisen during the course of service and had undergone any deterioration attributable to the exigencies of service. The medical authorities are mandated to specifically address whether the compulsions and rigours of service had the effect of aggravating the said disability. It has further been emphasized that, while forming such an opinion, the medical authorities must take into account the entirety of the individual's service career.
8. 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.”

9. It is also not in dispute that when the respondent was accepted in army service, he was found physically and mentally fit by the authorities and, therefore, the disease ‘**Primary 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 of ‘**Primary 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 existence of causal connection between the disability and the army service would also lie on the petitioners.
10. With a view to determine as to whether the petitioners have successfully discharged the burden and have by clear, unambiguous and cogent medical evidence established that the 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)	Aggravated by service (Y/N)	Not connected with Service (Y/N)	Reason/cause/specific conditions and period in service
Primary Hypertension	No	NO	Yes	The individual was posted in from Bangalore (Peace area, period 17 Apr 2011 to 30 Aug 2014) at Hasimara (W.B.) Modified Field Area on 31 Aug 2014. And the disability was diagnosed during evaluation on induction to 17 Mile Sikkim (HAA). However as per DGAFMS letter No. DGAFMS/MA (Pers) dated 16 Dec 2008 and para 43 of guide to medical officers Military Pensions 2008, the disability is neither attributable nor aggravated by service.

11.From the reading of above, it clearly transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have successfully discharged the burden to prove disentitlement on the ground of absence of causal connection between the disability and the military service, as the 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.

12.GMO, 2008 and in particular para 43 mandates that ‘**Primary Hypertension**’ will be considered aggravated if it occurs while serving in Field Areas, HAA,CIOP areas or prolonged afloat service, when such disease is reported after long and frequent spells of service in such areas. During last seven tenures of his posting w.e.f.

15.08.2008 till his discharge, the respondent has remained posted in Field for 6 tenures, but the RMB formulated its opinion only on the basis of posting in peace area from 17.04.2011 to 31.08.2014 and not the earlier tenures of his service. Since the medical opinion failed to consider these factors, the respondent is entitled to the benefit of the doubt regarding any ambiguity. Simply because the disease was detected when the respondent was serving in peace area i.e. Bangalore and the disability was diagnosed during evaluation on induction to 17 Mile Sikkim (HAA), does not mean that the stress and strain of military service could not have contributed to the onset or aggravation of the disease.

13. We are unable to concur with the conclusion recorded by the Release Medical Board that the disability suffered by the respondent is neither attributable to nor aggravated by military service.

14. We also find ourselves unable to agree with the submission advanced by learned counsel for the petitioners that owing to the respondent's young age at the time of enrolment, the disease could not be detected then and must therefore be treated as pre-existing. This contention is not borne out from any material placed on record and appears to be based on conjectures rather than medical evidence.

15. Upon examining the record, we find that the learned AFT, after taking note of the judgment of the Hon'ble Supreme Court of India in cases titled **Dharamvir Singh Vs. Union of India and others** reported in **(2013) 7 SCC 316**, and **Union of India Vs. Ram Avtar, 2014 SCC Online SC 1761** has rightly concluded that the disease/disability from

which the respondent was subsequently found to be suffering from did not exist at the time of his enrolment into military service and that there is nothing on record to indicate that the Medical Board had opined that such disease could not have been detected at the time of his enrolment.

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

(Rajnish Oswal)
Judge

(Arun Palli)
Chief Justice

Jammu
24.12.2025
Madan Verma-Secy

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

