

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2819/2025

CM No. 6513/2025

Date of pronouncement: 16.09.2026

Date of uploading: 17.09.2026

1. Union of India through its Appellant(s)/Petitioner(s)
Secretary to Government of India,
Ministry of Defence, South Block,
New Delhi-110011.
2. Additional Director General
Personnel Services, Adjutant
General's Branch, Integrated HQ
of Ministry of Defence (Army),
DHQ PO, New Delhi-110001.
3. Principal Controller of Defence
Accounts (Pension), Draupadi
Ghat, Allahabad, Uttar Pradesh-
211014.
4. The Officer Incharge Records the
JAK RIF, Jabalpur (MP), PIN-
908774 c/o 56 APO

Through: Mr. Vikas Sharma, Sr. Panel Counsel

vs

NO 13740622W EX NK Om Parkash
Sharma, S/o Sain Singh, R/o Prem Nagar, PO
Miran Sahib, District Jammu.

..... Respondent(s)

Through: Mr. B.S. Sarmal, Advocate
Mr. Amit Singh, Advocate

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

ORDER (ORAL)

16.09.2026

Sanjeev Kumar 'J'

1. The matter is though listed for reference to mediation, but having regard to
the nature of controversy involved and with the consent of the parties, is
taken up for consideration on merits.

2. Impugned in this petition, filed by the Union of India under Article 226 of the Constitution of India is an order and judgment dated 13.02.2023 passed by the Armed Forces Tribunal, Srinagar Bench at Jammu [**“the Tribunal”**] in O.A. No. 58/2022 titled *“Ex Nk Om Prakash Sharma Vs. Union of India and Ors.”* whereby, the tribunal has allowed the OA filed by the respondent and held him entitled to disability element of pension.
3. Briefly stated the facts leading to the filing of this petition as can be culled out from the impugned judgment that the respondent was enrolled in Indian Army on 30.09.1977 and discharged on 31.07.1994 in Low Medical Category upon completion of his term of engagement. The discharge was under Rule 13(3) Item III (iv) (a) of the Army Rules, 1954. The Release Medical Board assessed the disabilities of the respondent in the following manner:- (i) CHOLECYSTITIS with CHOLELITHIASIS (OPTD)-524 @ 20% for two years as aggravated by military service and (ii) BILATERAL SENSORI NEURAL DIAFNESS-389.0, V-67 @ 14-19% for two years as neither attributable to nor aggravated by the military service.
4. The respondent was assessed for composite disabilities @ 30% for two years. The disability claim of the respondent was, however, rejected by the Principal Controller of Defence Account (Pensions) on the ground that the disability suffered by the respondent during military service was neither attributable to nor aggravated by military service and was rather constitutional in nature.
5. Feeling aggrieved, the respondent preferred an appeal before the Appellate Authority of the Indian Army on 12.01.1996, but the same, too, was rejected by the Appellate Authority on 06.02.1998. Another appeal

preferred by the respondent on 13.12.2021 also came to be rejected vide order dated 26.02.2022. Faced with the rejection of his appeals, the respondents filed OA No. 58/2022 before the Tribunal seeking, *inter-alia*, a direction to the petitioners herein, to release in his favour, the disability element of the pension. The Tribunal having considered the rival contentions and perused the material on record came to the conclusion that the disability suffered by the respondent was attributable to and aggravated by the military service and, therefore, the PCDA pension authority had no authority to deny the disability element of the pension. More particularly, when one of the two disabilities i.e. OPTD had been opined to be aggravated by military service by the Release Medical Board.

6. The impugned judgment is called in question by the petitioners on the same grounds, as were urged by the petitioners before the Tribunal.
7. Having heard learned counsel for the parties at length and perused the material on record, we are of the considered opinion that the judgment passed by the Tribunal suffers from no legal infirmity and, therefore, cannot be interfered with in these proceedings under Article 226 of the Constitution of India. Indisputably, the respondent was discharged from the service upon completion of his tenure and was found suffering from disability i.e. OPTD assessed at 20% for two years as aggravated by military service and, therefore, could not have been denied the disability element of the pension.
8. Regulation 173 read with regulation 179 of Pension Regulations of the Army 1961 (Part-I) makes the legal position abundantly clear that in terms of Regulation 179 an individual retired/discharged on completion of tenure, if found suffering from the disability either attributable to or

aggravated by the military service, shall be deemed to have been invalidated out of service for the purpose of Regulation 173. That being the position, if the disability assessed by the Medical Board is at 20% or more and the same is found either attributable to or aggravated by the military service, the individual cannot be denied the benefit of disability element of the pension even if he is discharged upon completion of his tenure.

9. For the reasons we have given above, coupled with the reasons given by the Tribunal in the judgment impugned, we do not find it a fit case for interference. It has been brought to our notice that after the passing of the impugned judgment by the Tribunal, the respondent has been examined by the Review/Resurvey Medical Board and the composite disability, he is found suffering from, has been assessed at 20% for life.
10. In that view of the matter, there remains nothing more for adjudication. This petition is, therefore, found devoid of any merit and the same is, accordingly, **dismissed**. The petitioner-authorities to comply with the judgment of the Tribunal forthwith.
11. Needless to say that 20% disability has to be rounded off to 50% for the purpose of payment of disability element strictly in terms of the judgment passed by the Hon'ble Supreme Court in the case of "*Union of India and others Vs. SGT Girish Kumar and others*", 2026 INSC 149.

(Shahzad Azeem)
Judge

(Sanjeev Kumar)
Judge

Jammu
16.09.2026
Mihul

Whether the order is reportable?
Whether the order is speaking?

Yes/No
Yes/No