

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

WPCT 90 OF 2025

**Union of India & Ors.
VS
Capt. Shantanu Biswas (Retd) 19878TGp**

Appearance:-

For the Petitioners : Mr. Ajay Chaubey, Adv.
Ms. Anamika Pandey, Adv.

For the Respondent : Mr. Aniruddha Datta Adv.

Heard on : 02.12.2025

Delivered on : 02.12.2025

Judgment (oral)

Per, Sujoy Paul, ACJ:-

1. This petition filed under Article 226/227 of the Constitution of India takes exception to the order of the Armed Forces Tribunal (Tribunal), Kolkata Bench passed in OA No.33 of 2021 on 5th August, 2024. OA filed by the original applicant (respondent herein) was disposed of as per the directions contained in the said order.

2. The admitted facts between the parties are that the OA was filed with following relief:

- “i) The applicant’s disability, namely “CAD SCA, DVD, LAD, LCX, POST PCI (OLD)”, BE DECLARED AGGRAVATED BY Air Force Service;
- ii) The respondents concerned be directed to hold an appropriate Medical Board to reassess the composite percentage of disability of the applicant by including COMPRESSION FRACTURE OF SPINE caused due to ejection from aircraft along with his pre-recorded disabilities, within a specific period of time;
- iii) The respondents concerned be directed to issue a corrigendum PPO granting disability element of disability pension to the applicant at the newly assessed composite rate after granting the benefit of board banding;
- iv) The respondents concerned be directed to issue the aforesaid corrigendum PPO and the entitled arrears thereof to the applicant within a specific time frame, failing which interest @ 9% p.a. simple interest be payable on the arrears from the date of order till the date of actual payment.
- v) Such other and further Order/Orders as the Hon’ble Tribunal may deem fit and proper for upholding of justice.”

3. The Tribunal after completion of pleadings and after hearing the parties passed the impugned order which became subject-matter of challenge in this petition.

Contention of the Petitioner :

4. Learned counsel for the petitioners submits that the order of Tribunal is bad in law *firstly* for the reason that it is based on the judgment of Supreme Court passed in the case of **Dharamvir Singh vs. Union of India & Ors.** reported in **2013 (7) SCC 316**. By taking this Court to paragraph nos.31 and 32 of the said judgment, it is strenuously contended that the said judgment was based on Rules 5 and 9 of Entitlement Rules for

Casualty Pensionary Award 1982. In those rules, there was a “presumption” and benefit of presumption was extended in favour of claimant therein whereas in the rules applicable to Air Force, no such “presumption” exists and, therefore, burden was on the claimant.

5. *Secondly*, the learned Tribunal in the impugned order directed that so far as CAD related ailment is concerned, he is entitled for benefit of rounding it off to 75% from 50% composite. By taking this Court to the medical reports, learned counsel for the department submits that the history of the claimant shows that he was a chain-smoker and suffered fracture of both fibulae and compression fracture of spine DV1 & LV1. Reliance is placed on the heading “History” in medical report dated 11th February, 2020. It is further elaborated by contending that detailed justification is given regarding “Not Attributable to and not Aggravated by Service” (in short called as ‘NANA’). By placing heavy reliance on “Detailed Justification for NANA Cases” mentioned in Appendix ‘A’ dated 11th February, 2020, it is urged that the department has taken enough care to provide detailed justification for the present case which falls within the ambit of ‘NANA’.
6. *Thirdly*, it is argued that the petitioners have no objection so far as the first portion of the directions contained in paragraph 26 of impugned order is concerned whereby the Tribunal directed to hold a re-survey medical board to examine the applicant for the purpose of assessment of disability, if any, he incurred upon on account of the injuries he received in the month of March 2001 while getting himself ejected from aircraft. It is contended that to the extent re-examination was directed to be done by

survey medical board, the petitioners have no objection. The petitioner/Dept. is aggrieved by finding of last portion of this para wherein the Tribunal opined “also as in our opinion, the same is not only attributable to but aggravated also by the Air Force Service”. It is urged that after having sent the matter for re-examination to re-survey medical board, it was not open to the Tribunal to give such a finding. The outcome of the finding of the board will decide whether the claimant satisfies the requirement.

7. *Fourthly*, it is submitted that the relief of the original applicant was limited to hold an appropriate medical board and then issue corrigendum pension payment order depending upon the outcome of the medical board. The Tribunal granted more relief than what has been prayed for. For this reason also, the impugned order deserves to be interfered with.

Contention of the learned counsel for the Respondent/applicant

8. Learned counsel for the respondent submits that the respondent was Group Captain and suffered injuries while ejecting from aircraft in the month of March 2001. The Medical Board which considered the claim of the applicant formed an opinion on 17th February, 2020 that “disease is not attributable to and not aggravated by service as per approved Charter of Duties dated 25th October, 2008”. It is argued that this finding is given in relation to disability namely (i) “CAD SCA, DVD, LAD, LCX, POST PCI (OLD)”. Criticising this finding, the learned counsel for the respondent submits that this finding is based on his 14 days Charter of duties prior to occurrence of IHD. Reliance is placed on the communication dated 25th

October, 2008. It is submitted that other relevant materials have escaped notice of the medical board and the finding is solely based on Charter of Duties dated 25th October, 2008. Even assuming that “Presumption Clause” no more exists in view of the new rules, namely, **“Entitlement Rules for Casualty Pensionary Awards to armed Force Personnel, 2008”** (Rules of 2008), the burden is solely on the department to show that the disease is NANA. Reliance is placed on Rule 6 and 7 of Rules of 2008 which talk about ‘Casual Connection’ and ‘Onus of Proof’.

9. Learned counsel for the respondent places heavy reliance on a recent Division of judgment of Delhi High Court in the case of **Union of India through The Secretary Ministry of Defence & Ors. vs. IC 41489Y Maj Gen Rajesh Chaba (Retd)** reported in **W.P.(C) 5783 of 2024** and other connected matters decided by a common judgment dated 1.7.2025. By placing reliance on the finding given in connected WP(C) 12575/2024 it is submitted that the opinion of medical board reproduced therein shows that the finding of medical board in that case was also based on a similar Charter of Duties for 14 days. The High Court opined that no cogent reasons have been provided in the Release Medical Board’s (RMB) opinion as to how disability could be held as ‘Not Attributable to or nor Aggravated by Military Service. It is submitted that in the light of this judgment, since the Department has failed to discharge burden, the Tribunal has not committed any error whatsoever in giving findings which are not vulnerable.
10. No other point is pressed by the learned counsel for the parties.

11. We have heard the parties at length and perused the records.

Analysis & Conclusion

12. The first submission of petitioners is relating to non-availability of “presumption clause” in the rules which were applicable in the case of **Dharamvir Singh** (*supra*).
13. We find substance in the argument of learned counsel for the respondent that even for the sake of argument if we accept that the statutory ‘presumption’ was inapplicable in the present case in view of new rules which came into being, still the element of “Casual Connection” and “Burden of Proof” mentioned in R.6 & 8 of Rules of 2008 needs to be taken care of by the department.
14. A microscopic reading of the opinion of medical board shows that in relation to “CAD SCA, DVD, LAD, LCX, POST PCI (OLD)” it was opined that disease is NANA because of Charter of Duties dated 25th October, 2008. The said charter was rightly pointed out to establish that it covers only 14 days service rendered prior to occurrence of IHD.
15. The Delhi High Court in the case of **Maj Gen Rajesh Chaba** (*supra*) considered a similar situation where for the purpose of declaring an officer as NANA, the foundation was laid solely on 14 days Charter of Duties. The Delhi High Court after reproducing the relevant opinion of Medical Board in para 53 of the judgment opined as under.

“54. The O.A. filed by the respondent herein was allowed by the learned Tribunal in respect of the disability of CAD-DVD-P/PCI LCX-RCA and the petitioners were directed to grant the disability element of pension for the said disability to the respondent at 30% for life,

which was rounded off to 50% for life, as the O.A. was pressed in respect of the said disability alone.

55. The RMB, while observing that the respondent's disabilities of CAD-DVD-P/PCI LCX-RCA is neither attributable to nor aggravated by the military service, has merely recorded that the onset of the disabilities occurred at a Peace Station on 28.09.2016. However, no cogent reason has been provided in the RMB's opinion to show how the disability could be held as not attributable to or aggravated by the military service. A mere reference to the fact that the onset of the disease took place while the respondent was at a Peace Station cannot, it itself, be treated as a relevant factor to determine that the disability claimed is NANA."

(Emphasis Supplied)

16. We find support in our view from the above judgment of Delhi High Court wherein it was held that the department has miserably failed to assign cogent reasons in RMB opinion as to why disability could be held as non-attributable to or aggravated by the Military Service. In no uncertain terms, it was held that mere using the terminology of NANA will not serve the purpose unless justifiable reasons in support thereof are given.
17. In the instant case, as noticed above, the learned counsel for the department has placed heavy reliance on the "Detailed Justification for NANA cases (Appendix A) with medical board's opinion dated 11th February, 2020. The relevant portion reads thus:

“(As per Note 1 of Part VII of AFMSF-16)

DETAILED JUSTIFICATION FOR NANA CASES

1. **Why** is the disease not related to service as per job profile and place of posting.

Dis(I) **NO** (Disease is not attributable and not aggravated by service as per approved charge of duties dated 25th October, 2019).

2. If the disease is constitutional/hereditary/due to the process of ageing etc, why was it not detected at the time of recruitment/commission. **N/A**
3. The detailed list of documents that have been verified to come to the conclusion that the disease is NANA:
 - (a) Initial Medical Board (AFMSF-15) including specialist opinion.
 - (b) Release Medical Board (AFMSF-16) including specialist opinion
 - (c) Posting Profile
 - (d) Job Profile
 - (e) Medical Case Sheets
 - (f) Latest AME/PME
 - (g) Injury Report/ C of I proceedings
 - (h) 14 days charter of duties prior to onset of disease in certain cardiac and neurological conditions
 - (i) any others”

(Emphasis Supplied)

18. A microscopic reading of this “Detailed Justification for NANA” shows that details figures only in the heading where the word “Detailed” has been mentioned. Otherwise, the findings are sketchy, ambiguous and does not lead us to anywhere. For example, in item number 1, it is mentioned “not related to service as per job profile and place of posting”. In the manner this question couched, it shows that burden was on the department to show as to why as per job profile disease should not be treated connected with job nomenclature or posting. A bald ‘NO’ is mentioned in response thereof. No reasons whatsoever are assigned to show application of mind which may fall within the ambit of “reasons” or “finding”. Similar discrepancy is there in item no.2 where the question was whether the disease is constitutional/hereditary or due to process of ageing etc. The answer is N/A (not applicable). Thus, this document does not contains any justification for NANA.

19. In the tune of judgment of Delhi High Court in the case of **Maj Gen Rajesh Chaba** (*supra*), we are constrained to hold that after having failed to discharge this burden by RMB, no fault can be found in the order of the Tribunal in para 27 of the impugned order.
20. So far as para 26 is concerned, on which eyebrows are raised, suffice it to say that no objection is raised in relation to the direction for holding survey medical board. The objection is confined in relation to opinion that it is NANA and it is urged that this depends on the finding of RMB and the Tribunal itself should not have given any finding in this regard. In our opinion, the finding so given is innocuous in nature. The Survey Medical Board is required to assess the disability (if any) incurred upon on account of injuries he received in the month of March 2001 while getting himself ejected from aircraft in a time bound manner. Heavy reliance placed by the learned counsel for the department on 'History' in medical report dated 11.02.2020 itself shows that the instance of ejectment was during the course of and arising out of employment is not disputed by the department at any point of time. Thus, the said finding of Tribunal will not cause prejudice to the department in any manner. We are unable to hold that tribunal travelled beyond the relief prayed for.
21. As discussed above, the Id. Tribunal considered the relevant opinions of medical board on the touch stone of governing the principles and came up to a plausible conclusion. Thus, the said findings are in tune with the law laid down by Delhi High Court in the case of **Maj Gen Rajesh Chaba**

(*supra*). In absence of establishing any palpable perversity or manifest illegality, we find no reason to disturb the impugned order of the Tribunal.

22. In the result, this petition fails and is **dismissed**.

23. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(SUJOY PAUL, ACJ.)

I agree.

(PARTHA SARATHI SEN, J.)

RP (AR. CT.)