

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

Present:

The Hon'ble Justice Madhuresh Prasad

AND

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T 95 of 2025

Union of India & Others

Vs.

No. 15124220K Ex Hav (Musician) Sitanshu Pani

For the petitioner : Mr. Ajay Chaubey,
Ms. Amrita Pandey,
Ms. Anamika Pandey

For the Respondent : Mr. Aniruddha Datta

Heard on : 18.06.2025

Judgment on : 18.06.2025

MADHURESH PRASAD, J.:

1. The petitioner was serving in the Army and was released upon completion of his terms of engagement on attaining the age of retirement from service on 30.06.2019.

2. Prior to his release as such he was subjected to a Medical Board. The Medical Board took cognizance of the fact that he was suffering with primary hyper tension. It also took note of the fact that onset of the disease was while in service. The Release Medical Board further acknowledges the fact that the disability on account of this primary hyper tension is to the extent of 30 per cent based on a composite assessment of all disabilities. The petitioner, however, was not found entitled to any disability element for which he approached the Armed Forces Tribunal, Kolkata Bench (hereinafter referred to as "AFT"). The Original Application was registered as O.A. No. 65 of 2020 and has been finally decided by an order dated 05.08.2024. The Tribunal has found rejection of the petitioner's claim for grant of disability element of disability pension by order dated 07.10.2019 to be legally and factually untenable. The order dated 07.10.2019 was set aside by the Tribunal. The applicant has been held entitled to grant of disability element of disability pension for life for 30 per cent which has been rounded off to 50 per cent from the day next to the date of his discharge from service that is 01.07.2019. The Tribunal has directed that the benefits admissible as such be calculated and released to the petitioner within three months from the date of receipt of the certified copy of the order, failing

which the admissible sum was to carry an interest at the rate of 8 per cent per annum till realization of the entire amount.

3. The order of the AFT dated 05.08.2024 is the subject matter of the present writ proceedings filed by the Union of India, respondent before the AFT.
4. The learned counsel representing the Union of India submits that the order of the AFT is unsustainable factually as well as legally. The Tribunal has allowed the claim of the petitioner to disability benefits based on decision of the Apex Court in the case of ***Dharamvir Singh –Vs.- Union of India*** reported in **(2013) 7 SCC 316**.
5. It is submitted that the judgment relied upon was rendered while considering a claim arising out of the *Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel of 1982* (hereinafter referred to as “1982 Entitlement Rules”). The petitioner’s claim is not covered by these Rules. The petitioner’s claim is governed by the *Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008* (hereinafter referred to as “2008 Entitlement Rules”). The very premise on which the order has been passed by the AFT is, therefore, not applicable to the facts of the present case.
6. The learned counsel has submitted that the petitioner suffered with a disease (primary hyper tension). The onset of the disease

was while petitioner was posted in a peace station, in November, 2003. The Release Medical Board has found the same to be not attributable or aggravated by Military Service. The factual basis for grant of any disability benefit, therefore, was absent in the case of the petitioner and the claim was rightly rejected by the authorities. The Tribunal ought not to have interfered with the decision of the authorities.

7. The learned counsel has placed reliance on a decision of the Division Bench of the Madras High Court in W.P. No. 2817 of 2024. The judgment is dated 04.02.2025. It is submitted that the Division Bench therein was considering the same disease (primary hyper tension). The Division Bench has found that the opinion of the Release Medical Board was proper that the disability was neither attributable nor aggravated by Military Service. In view of the medical assessment the Division Bench held that the observations of the Supreme Court in the case of ***Dharamvir Singh (supra)*** would be of no assistance to the applicant claiming such benefit. Referring to this finding it is submitted that the judgment squarely covers the claim of the petitioner and, therefore, this Court should hold the petitioner not entitled to any such benefit. The findings of the Tribunal being founded on decision of ***Dharamvir Singh (supra)***, therefore, are unsustainable.

8. The learned counsel has also placed reliance on some provisions contained in a compilation issued by the authorities to guide the Medical Boards to ensure uniform consideration of the claims with respect to pensionary benefits for various diseases. Extract of the provision relied upon by the learned counsel reads as follows:

“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 submitted that the petitioner’s condition was rightly not considered as being attributed or aggravated by the Military Service. It is further submitted that there was an opinion of the Medical Board contemporaneous to the onset of the disease in 2003 holding the condition (primary hyper tension) not to be directly attributable to the service or aggravated thereby. Thus, there was no scope for claim of such benefit by the petitioner and

the order of the Tribunal directing for grant of such benefit is unsustainable.

10. The learned counsel for the respondent (applicant before the Tribunal) has drawn attention of the Court towards the contemporaneous Medical Board conducted at the time of onset of the disease while the petitioner was posted in Golkonda station. The Medical Board has recorded as follows:

17. Was the disability contracted in service? (Y/N)	Yes
18. Was it contracted in circumstances over which he had no control? (Y/N)	Yes
19. Is the disability attributable to Service? (Y/N) If so, please explain?	No
20. If not directly attributable to service, was it aggravated by service? (Y/N) No (No H/O expos.... Stress eg HAA/CI ops in last 6 years) If so, please explain?	
<i>Note : 1. Injury Report (for injury cases)/ 14 days Charter of Duties (for IHD) cases/any other relevant Document required, is to be attached and endorsement made in column 19/20</i> <i>2. Columns 17-20 should be completed only if they are not completed in initial/earlier board</i>	

11. He submits that this conclusion of the Medical Board of 2003 regarding the disease being not attributable or aggravated to Military Service is founded on a wrong factual premise which is apparent from the details of posting recorded in the Release Medical Board dated 05.02.2019 by the respondents wherein they have recorded that the petitioner was posted in the field area in between 01.02.1996 to 13.08.2001. Thereafter, from 14.08.2001 till the date of his release he was posted in the centre

at Hyderabad which was a peace station. Going by the details recorded in the Release Medical Board it is clear that till two years prior to the 2003 Medical Board, that is till 31.08.2001 the petitioner was posted in a field area. The Medical Board of 2003, however, has wrongly recorded that he was not in a field posting for the last six years. The conclusion based on such factual error cannot be sustained so as to form the basis to disentitle the petitioner from such benefit which is otherwise due to him in terms of the 2008 Entitlement Rules.

12. Learned counsel has referred to the provisions in the 2008 Entitlement Rules which it is not in dispute is applicable to the petitioner's claim. He has relied upon Clause 4, 7 and 10 thereof. Since these Rules are the sheet anchor of the petitioner we consider it apposite to reproduce the same 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.

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. Attributability:

(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, and,

(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.

(iii) 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.

(iv) 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.”

13. Upon going through these relevant provisions we find that Rule 7 contains the circumstances wherein the claimant may be called upon to prove the conditions of entitlement, i.e. when the claim is preferred after 15 years of discharge, retirement, entitlement or release by which time the service document of the claimant are destroyed. It is under such situation that Rule 7 casts the onus of proof of entitlement on the applicant. Such situation does not arise in the present case. It is not the respondent's case that documents relating to the petitioner's claim have been destroyed. Therefore, the onus to prove the entitlement does not lie on the petitioner.
14. Insofar as attributability of the diseases is concerned Rule 10 specified the conditions to be satisfied. Rule 10 (iii) clearly stipulates that if nothing at all is known about the cause and the presumption of entitlement in favour of the claimant not rebutted, the attributability should be conceded on the basis of a

clinical picture and current scientific medical application. This provision has to be read in harmony with Rule 10(b)(i) according to which two conditions are to be satisfied simultaneously for accepting a disease as being attributable to military service, namely that such disease has arisen during the period of military service, and has been caused by conditions of employment in military service, in other words, attributable to military service.

15. We thus proceeded to consider the matter based on the above noted facts and circumstances.
16. We have already recorded that the Medical Board conducted on 15.12.2003 at the time of onset of the petitioner's condition (primary hyper tension) has found the condition not attributable to service on the basis of a wrong factual premise that he was not posted in a field posting for the last 6 years, whereas the petitioner served in a field area till about two years prior to the Medical Board dated 15.12.2003. The findings of the Medical Board dated 15.12.2003, are, therefore, based on a wrong factual premise evident from their own document, i.e. the Release Medical Board; and unsustainable.
17. We find that the Medical Board dated 15.12.2003 has not assigned any cause of the petitioner's disease of Primary Hypertension. From this Medical Board it is obvious that nothing is known about the cause of the disease. We are, therefore, of the

considered opinion that the petitioner's claim is covered by the Rule 10(b)(iii) of the 2008 Entitlement Rules. Under this provision, the cause of petitioner's disease being not known, a presumption of entitlement arises in favour of the petitioner. Such entitlement has not been rebutted by the authorities on the basis of any material/reason whatsoever. In such circumstances Rule 10(b)(iii) mandates attributability to be conceded on the basis of clinical picture and current scientific medical application. Having regard to the unrebutted presumption regarding attributability of the petitioner's disease, we have no hesitation in holding that rejection of his claim for disability element of disability pension is factually and legally unsustainable.

18. Insofar as the decision in the case of ***Dharamvir Singh (supra)*** is concerned, even if we accede to the submission of the learned counsel for the Union of India that the same is not applicable, then taking into consideration the facts and applicable provisions of 2008 Entitlement Rules recorded hereinabove, it cannot be said that the disease (Primary Hypertension) was not attributable to military service. It also cannot be said that the disability was less than 20 per cent, since there is clear finding that the disability was 30 per cent.

19. In the circumstances the petitioner is entitled to disability benefit in addition to retiring pension in terms of Rule 37 of the Pension Regulation for the Army Part-I which reads as follows:

“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, may be 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.”

20. We, therefore, find no reason to interfere with the order dated 05.08.2024 passed by the Tribunal in O.A. No. 65 of 2020 and modify the order only to the extent the period prescribed for complying with the directions, which we extend by a further period of three months from the date of receipt/production of a copy of this order before the respondent/s.
21. The writ petition is dismissed.

22. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MADHURESH PRASAD, J.)

(SUPRATIM BHATTACHARYA, J.)

B.K.N.
A.R. (Court)