**IN THE HIGH COURT AT CALCUTTA**
**CIVIL APPELLATE JURISDICTION**
**APPELLATE SIDE**

**Present:-**
**The Hon'ble Justice Madhuresh Prasad**
**And**
**The Hon'ble Justice Supratim Bhattacharya**

***W.P.C.T. 322 of 2024***

**Union of India and Others**
**Versus**
**Sourav Biswas**

For the Petitioners : Mr. Vipul Kundalia,
Ms. Anamika Pandey,
Mr. Anindya Kanan,
Mr. Dhirodatto Chaudhuri,
Mr. Ghanshyam Pandey

For the Respondent : Ms. Manika Roy,
Ms. Ankita Chowdhury,
Mr. Atanu Sur

Judgment on : March 24, 2025.

**Madhuresh Prasad, J.:**

1. The present writ petitioners were the respondents before the Armed Forces Tribunal, Kolkata Bench, wherein the present respondent was the applicant.

2. The Armed Forces Tribunal (hereinafter referred to as 'Tribunal'), Kolkata Regional Bench has set aside the order rejecting the applicant's claim for disability element. The Tribunal has held the applicant entitled to grant of disability element of disability pension at 20% by rounding it off to 50% for life from the day next to the date of his discharge from service i.e. 28.02.2021 after being

rounded off as per ratio of judgment of the Supreme Court in Civil Appeal No. 418 of 2012 in the case of ***Union of India vs. Ram Avtar*** decided on 10.12.2014.

3. As a consequence, the Tribunal has directed that the due and admissible arrears be calculated and released to the applicant within a period of 3 months from the date of receipt of certified copy of the order failing which the due amount has been directed to be paid with interest @8% per annum from the date of the order passed by the Tribunal till realisation of the entire amount.

4. The learned Counsel for the Union of India has assailed the Tribunal's findings and directions mainly on the grounds:

- That the petitioner has claimed the disability element of disability pension based on an injury which was sustained in peace time and not during combat.
- The injury was sustained at his home while shifting luggage. The injury was thus neither attributable to nor aggravated by military service.
- The Release Medical Board has also opined that the injury was not attributable or aggravated by military service.
- Opinion of the Medical Board being opinion of an expert body is entitled to be given due weight, value and credence.
- The Tribunal has relied on decision of the Apex Court in the case of ***Dharamvir Singh vs. Union of India and Others*** reported in ***(2013) 7 SCC 316*** which is not

applicable to the facts and circumstances of the present case.

- The learned Counsel submits that the Apex Court in ***Dharamvir Singh*** (supra) held that since at the time of petitioner's entry in military service he was not suffering from such a disease, therefore, it can only be said that the injury/ disability has been acquired while in military service. The decision in the case of ***Dharamvir Singh (Supra)***, however, does not apply to the present case wherein the consideration regarding claim of disability pension was required to be decided under the ***Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008*** (hereinafter referred to as the "2008 Rules") whereas judgment of the Apex Court being relied upon was rendered in respect of a claim under the earlier Entitlement Rules for casualty Pensionary Awards to Armed Forces Personnel, 1982 (hereinafter referred to as "1982 Rules"). There is a substantial change in the parameter for considering the claim regarding admissibility to disability element of disability pension between the 1982 Rules and 2008 Rules. The case of ***Dharamvir Singh (supra)*** covers "disease". The judgment does not apply to a claim like the present one wherein the claim is based on "injury". The judgment of the Apex Court in the case of ***Dharamvir***

***Singh (Supra)***, therefore, would not be applicable for considering the petitioner's claim and decision of the Tribunal based thereon, is unsustainable.

5. The petitioners have taken a stand that the applicant while serving the 113 Inventory Infantry Battalion (TA) Rajput was placed in low medical category for the disability Spondylolisthesis L4-L5, with effect from 09.11.2020. The disability was acquired in peace area.

6. The respondent/ applicant himself had given a pre-mature discharge application on 21.09.2020. The respondent thereafter appeared before recategorization Medical Board on 09.11.2020 and 15.02.2021, wherein his low medical category was opined to be permanent. The Directorate General of the Territorial Army at the Integrated Head Quarters of Ministry of Defence, New Delhi under its communication dated 26.11.2020 granted sanction for the applicant's premature discharge with effect from 28.02.2021. Such discharge was on the applicant's own request before completion of his complete tenure of service.

7. It is not in dispute that the normal tenure of the applicant was up to 31.01.2030. It is also not in dispute that the applicant had completed pensionable service from the Territorial Army.

8. In this background the learned Counsel for the petitioner Union of India submits that for the first time the petitioner was diagnosed with Spondylolisthesis L4-L5 in November 2020. The condition was discovered in a peace area and the same is having no nexus to the

petitioner's performance of military duties. The condition was diagnosed by the Command Hospital (Eastern Command) on 09.11.2020 and reviewed on 15.02.2021 when the condition was found to be permanent. The resultant lowering of his medical category, therefore, is not attributed to or aggravated by military service.

9. He has been discharged from the army service upon his own request on compassionate grounds for availing the benefit of pension. Having obtained the benefits of pension by seeking pre-mature discharge voluntarily, the applicant cannot be permitted to claim disability element of disability pension.

10. The claim was adjudicated by the Officer-in-Charge records of the regiment, who has rejected his claim on 22.03.2021. The communication in this regard allowed the applicant an opportunity to prefer an appeal to the Appellate Committee. The applicant preferred the appeal and the First Appellate Committee carefully examined the appeal in light of the relevant rules and concurred with the view of the Officer-in-Charge records that it could not be established that injury occurred while on duty. The First Appellate Committee has also found no casual connection could be established between the injury and military service. The decision of the First Appellate Committee is dated 28.02.2022. The same afforded the applicant as an opportunity to prefer a second appeal to the Second Appellate Committee on pension, which remedy the applicant availed.

11. The Second Appeal of the applicant was also rejected. Rejection of the Second Appeal under communication dated 12.10.2022 is in the following terms:

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| ***Disability (s)*** | ***Reason (s)*** |
|---|---|
| ***Spondylolisthesis L4-L5*** | ***The veteran sustained the injury on 22 Mar 2017. As per the injury report and the court of injury, the injury sustained by the veteran in not attributable to military service. Hence, the injury Spondylolisthesis L4-L5 is not attributable to military service under provisions of Rule 6 and 9 of ER 2008.*** |

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12. The decisions were taken by the authority/s as per the Rules and after due consideration the decisions are not alleged to be *mala fide.* The procedure for considering the petitioner's claim for disability element of disability pension has been followed by the authorities. Therefore, there was no scope for any judicial review. The learned Counsel representing the Union of India has submitted that there was no scope for Tribunal to review the decision of the competent authority taken as per the procedure regarding the nature of the injury sustained.

13. The petitioner has also relied upon decision of the Apex Court in the case of ***Union of India and Others vs. Jujhar Singh*** reported in ***(2011) 7 SCC 735*** to submit that the immediate cause of the injury was shifting of household articles by the applicant at his residential accommodation. Therefore, it cannot be said that the

injury was sustained due to military service or aggravated by it. Reference is also made to decision of the Apex Court in ***Secretary, Ministry of Defence and Others vs. A.V. Damodaran (Dead) Through Lrs. And Others*** reported in ***(2009) 9 SCC 140*** to submit that the medical board is an expert body. Once, the board has considered the aspect and found the injury not being attributed by military service or aggravated by it, there was no scope for allowing disability element of disability pension. In this connection he has also referred to and relied upon decision in the case of ***No. 14666828M Ex CFN Narsingh Yadav vs. Union of India and Others*** reported in ***(2019) 9 SCC 667***.

14. Another submission made by the learned Counsel is that there is a substantial change in the parameters regarding the onus of establishing that an injury is attributable to or aggravated by military service. The submission is based on the fact that the provisions contained in the 1982 Rules were much more liberal and in favour of the personnel. Rule 13 of the 1982 Rules contained a deeming clause regarding an injury to have resulted from military service, other than those sustained due to serious negligence/ misconduct. Rule 10 of the 2008 Rules, on the other hand, contemplates that the injuries sustained while on duty are to be treated as attributable to military service, provided a nexus between injury and military service is established. In view of such change in the parameters, and there being no finding given by a Release Medical Board regarding the injury being attributable to military

service, there was no scope for the Tribunal to arrive at a conclusion regarding the same. In support of this submission the learned Senior Counsel has referred to a decision of a Division Bench of the High Court of Kerala at Ernakulam in the case of ***Union of India Represented by its Secretary Ministry of Defence and Others vs. Bhaskaran N.*** reported in ***(2024) SCC Online KER 7023***.

15. The learned Counsel for the sole respondent, who was the applicant before the Tribunal, on the other hand, submits that the order passed by the Tribunal is a detailed order which manifests consideration of the case set out by the parties. The relevant judgments in this regard have also been considered. The Tribunal has thus proceeded to grant the relief. The order of the Tribunal, therefore, does not require any interference.

16. The facts which emerge from the records is that the respondent who was the applicant before the Tribunal was enrolled in the Indian Territorial Army on 10.01.2001. While he was working as a Subedar Clerk (Sub Clk) of 113 Infantry Battalion (TA) Rajput at the Bengdubi Military Station he participated in the Battle Physical Efficiency Test (BPET) being conducted from 01.02.2017 to 31.03.2017. During this BPET he sustained lower back injury when he jumped in a 9 ft. ditch. He reported the matter to his PT instructor and also to the officials and went on sick report at 158 Base Hospital. He was advised an x-ray and thereafter medicine was prescribed. The petitioner thus continued to complete BPET and Physical Proficiency Test (PPT).

17. The petitioner continued physiotherapy and hot compress and pain relievers, but the pain was persistent. On 23.02.2019 he again went on sick report at the same hospital. Once again an x-ray of his low back was carried out. He was given medicine and was advised physiotherapy which advice he followed.

18. The petitioner's unit then moved from Bengdubi Military Station to Kolkata on 03.04.2019 where he reported to the Command Hospital (Eastern Command), on 19.10.2019 for his treatment. Again an x-ray was done at the Command Hospital and the petitioner was given pain relievers. He was advised to continue with his physiotherapy and hot compress.

19. On 14.08.2020 when the petitioner was packing for shifting his household items at Sahapur Military Government Married Accommodation the pain intensified. He again went to the Command Hospital (Eastern Command) on 22.08.2020 and informed the matter to the Commanding Officer. Again an x-ray image was taken and the applicant was referred to neuro surgery. An MRI was thereafter done on 05.09.2020.

20. When he experienced severe lower back pain, the petitioner again visited the Command Hospital on 23.10.2020. The Command Hospital, this time initiated the injury report and diagnosed the petitioner to be suffering with Spondylolisthesis L4-L5 and placed the petitioner on P3 (T-24) medical category.

21. The injury repeatedly manifested in the form of pain and was treated from time to time by physiotherapy and pain relievers etc. It

is only when the symptoms became aggravated during his service period that finally an MRI was done much later, in October 2020 which led to final diagnosis of the injury sustained on 22.03.2017, as Spondylolisthesis L4-L5.

22. Under the circumstances the respondent claimed before the Tribunal that he was placed in a low medical category on account of injuries sustained during BPET at Bengdubi Military Station on 22.03.2017. According to the applicant, the injury was thus attributable to and aggravated by military service and the petitioner was entitled to disability element of disability pension for life from the day next to the date of his discharge from service i.e. 28.02.2021.

23. We find that after the applicant sustained injury in the course of BPET on 22.03.2017, he immediately visited the medical facilities within the Force, and thereafter on 23.02.2019, 19.10.2019 and 22.08.2020, complaining of discomfort and lower back pain. On all the three occasions an x-ray was done, and the petitioner was advised pain relievers, physiotherapy and hot compress. It is only on 05.09.2020 that an MRI was finally done. Finally, when the pain intensified and recurred on 23.10.2020 the injury report was initiated and thereafter on 09.11.2022 Spondylolisthesis L4-L5 was diagnosed. The medical documents as regards these visits to the medical facilities within the Force reveals that the genesis of the final diagnosis lies in the injuries sustained in BPET on 22.02.2017.

24. Such fact has been taken note of by the Medical Officer at 158 Battalion Head Quarters in the request for special investigation dated 23.02.2019 wherein he has recorded in ***"brief clinical notes"*** that the applicant was suffering with acute lumbago since 10 days after BPET and that the condition was ***"on and off"... "since two years"***. Even in the Medical Case Sheet prepared at the Command Hospital (Eastern Command Kolkata) on 22.08.2020, prior to the final diagnosis the doctor has recorded that the low back pain was since 3 years and intensified since last 1 week. Regarding on set of the low back pain the doctor has recorded ***"after trauma (BPET)"***. In this Medical Case Sheet dated 22.08.2020 the doctor has recorded Spondylolisthesis as a ***"co-morbidities"***. The final diagnosis of Spondylolisthesis L4-L5, however, has been done on 09.11.2020.

25. The medical documents, therefore, leave no room for doubt or any scope to deny the fact that the diagnosis was founded in the injury sustained by the applicant during BPET on 22.03.2017. The statement of the case recorded on 09.11.2020 by the Medical Board also records 22.03.2017 as being the ***"date of origin"*** of the disability Spondylolisthesis L4-L5.

26. The doctors have repeatedly referred to the injury sustained on 22.03.2017 as being the basis/ origin for the applicant's repeated visits to the medical centres. Surprisingly, the diagnosis by the Medical Board on 09.11.2020 that Spondylolisthesis L4-L5 was not attributable to military service is at stark variance with the

consistent findings of the doctor/s at the hospitals on 23.02.2019, and at the Command Hospital (Eastern Command Kolkata) on 22.08.2020, wherein the doctor has consistently considered the genesis of petitioner's lumbago to be after the BPET. In fact, prior to the Medical Board dated 09.11.2020, the Medical Case Sheet prepared in the Command Hospital (Eastern Command) on 22.08.2020 clearly records the condition (low back pain) to be persisting since three years and after trauma (BPET). The medical records maintained in the hospitals, copies of which are part of the records (Tribunal) clearly manifest that after injury was sustained in BPET on 22.03.2017 and the pain persisted for more than three years.

27. It is only after an MRI was done much later that the effect of the injury was diagnosed as Spondylolisthesis L4-L5.

28. In view of all these consistent finding over a period of three years, the opinion of the Medical Board dated 09.11.2020 that the condition is not attributable to military service is without considering the above noted material on record.

29. The Medical Board while recording the statement of the case has recorded on February 2021 that the date of origin of the condition is 22.03.2017, i.e. the date of injury suffered during BPET. Since the origin has consistently been attributed to the injury sustained during BPET it cannot be said that the injury is not attributable to or aggravated by Military Service. The Medical Board, however, has proceeded to record a finding that the condition is not

attributable to or aggravated by Military Service. Such finding is thus a perverse finding and, therefore, is clearly unsustainable.

30. At this juncture we consider it appropriate to take into consideration the settled legal position insofar as the scope of judicial review being exercised by the Tribunal as well as this Court. It is well settled that while exercising judicial review neither the Tribunal nor this Court is expected to act as an appellate forum. The modern trend does point to judicial restrain insofar as interference in decision of experts, as canvased by the learned Counsel for the petitioner in this case. Having observed so we reiterate the contours for exercise of judicial review as has been stated repeatedly by the Apex Court. The exercise of judicial review is thus available when the decision-making process is vitiated on account of *mala fide,* in violation of the principles of natural justice or if the decision is without taking into consideration the material available before the authority. If the decision is without reference to any material on record, or is so arbitrary and irrational that no responsible authority could have arrived at such a conclusion then on grounds of such order being perverse the Tribunal or this Court exercising writ jurisdiction may interfere with the decision of the administrative authority.

31. In the present case we have found that the consistent opinion of experts available on record, being the opinion of doctors at the various medical facilities where the petitioner was examined, is that the genesis of Spondylolisthesis L4-L5 is the injuries sustained by

the petitioner on 22.03.2017 during BPET. The Medical Board, however, on 09.11.2020 has ignored this consistent finding of the doctors over a period of 3 years and proceeded to record the diagnosis to be neither attributable, nor aggravated by military service. The conclusion of the Medical Board is *dehors* the material on record. It is also without any basis to support the conclusion that it was not attributable to military service. The finding was thus not only arbitrary but also irrational to the extent that no responsible authority acting in accordance with law could have arrived such a conclusion, and therefore perverse. The conclusion of the Medical Board, therefore, is clearly unsustainable.

32. Since the Medical Board was required to take into consideration the consistent opinion of doctors given over 3-year period prior to Medical Board, and the same has not been done by the Medical Board, it is an appropriate case where this Court would take judicial notice of the consistent opinion of the doctors, noted above. Once judicial notice is taken of the consistent opinion of the doctors at Bengdubi and later on at Kolkata, the irresistible conclusion that emerges is that the diagnosis of Spondylolisthesis L4-L5 is based on the injuries sustained during BPET on 22.03.2017. As a consequence, it follows that the disease arises from an injury attributable to and aggravated by military service. We say aggravated also because in spite of the applicant's repeatedly visiting the doctors, on every occasion he was given pain relievers and advised hot compress. He thus continued to perform his duties. It is

only when an MRI has been done, nearly 3 years after the injury was sustained that the condition was diagnosed to be Spondylolisthesis L4-L5.

33. In this connection, we would also take into consideration the fact that the injury was sustained during BPET on 22.03.2017 at Bengdubi which was not a peace area. The same had been modified as a ***"field"*** area for the period 27.02.2005 to 02.04.2019 which is apparent from the records forming the basis of consideration by the Second Appellate Authority. The petitioner sustained the injury between this period only i.e. on 22.03.2017. Thus, the records manifest beyond any doubt that the injury was sustained in a field area while performing BPET.

34. The plea raised by the petitioners that the injury was sustained during shifting of household articles, therefore, is clearly unsustainable. Insofar as the decision relied upon by learned Counsel for the Union of India, in the case of ***Jujhar Singh (supra)*** and ***Narsingh Yadav (supra),*** in our opinion, the same does not apply to the facts and circumstances of the present case. In the case of ***Jujhar Singh (supra)*** it is an admitted position that the applicant therein met with a scooter accident as a pillion rider when he was on annual leave at his home. In the case of ***Narsingh Yadav (supra)*** the Apex Court has found in paragraph 21 that Courts are not possessed with expertise to dispute the opinion of Medical Board unless there is a strong medical evidence on record. In that case there was no material on record to doubt the correctness of the

report of the invalidating Medical Board. The claimant therein was suffering with Schizophrenia and taking note of this condition the Apex Court in paragraph 16 of the judgment has observed as follows:

> ***"16. Annexure I to Chapter IV of the Guide to Medical Officers (Military Pensions), 2002 — "Entitlement : General Principles" points out that certain diseases which may be undetectable by physical examination on enrolment including the mental disorders; epilepsy and relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including epilepsy and mental disorder, therefore, we are unable to agree that mere fact that schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service."***

35. In the present case, however, as noted above there is overwhelming material in the form of consistent medical opinions during repeated clinical examinations recorded over a period of 3 years wherein repeatedly the doctors have recorded the genesis of the condition to be petitioner's participation in BPET exercise on 22.03.2017. As opposed to this and ignoring these consistent findings a Medical Board on 09.11.2020 has recorded an opinion regarding Spondylolisthesis L4-L5 being not attributable to military service. The present case is not one where disability element of disability pension is claimed merely because this condition was not detected at the time of applicant's enrolment in military service.

36. Insofar as the case of ***A.V. Damodaran (supra)*** relied upon by the learned Counsel for the petitioner it is again a case where the

applicant was suffering with a mental condition namely Schizophrenia, and it is in this context that the Apex Court has held that the effect of Military Service cannot be said to be the basis of this condition. This case is also distinguishable on facts and therefore inapplicable the facts of the present case involving an injury.

37. We find the consistent opinion of the doctors at the medical facilities where the applicant was repeatedly examined over a period of more than 3 years to be manifestly supporting Spondylolisthesis L4-L5 to be as a result of the injury sustained while participating in BPET practise on 22.03.2017, there is no question of placing any reliance on any presumption under the Rule for claiming the disability/injury to be attributable to military service. This fact being manifest from the consistent medical opinion of the doctors, noted above, we are of the opinion that the decision in the case of ***Bhaskaran N. (supra)*** passed by a Division Bench of the High Court of Karnataka at Ernakulam is inapplicable to the facts and circumstances of the present case. In the said case the High Court was considering the issue regarding variation in the onus of proof as regards attributability to military service between the 1982 and 2008 Rules. The said issue is not relevant and does not arise in the present case as concluded above.

38. In view of our consideration above, it is apparent from the consistent opinion of the doctors ever since the applicants sustained injury at BPET on 22.03.2017 up till the review in February 2021

that the genesis of the injury leading to diagnosis of Spondylolisthesis L4-L5 was repeatedly recorded to be as a result of the petitioner's jumping in a 9 ft. ditch during the BPET exercise being conducted on 22.03.2017 at Bengdubi Military Station, which was a field area.

39. We, therefore, find no reason to interfere with the order passed by the Armed Forces Tribunal allowing the benefit/s to the applicant.

40. The writ petition is dismissed.

41. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

**(Madhuresh Prasad, J.)**

I agree.

**(Supratim Bhattacharya, J.)**