

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Acting Chief Justice SUJOY PAUL
&
The Hon'ble Justice PARTHA SARATHI SEN

WP.CT 331 OF 2024

UNION OF INDIA AND ORS.
-Vs-
SUB NARESH PRASAD (RETD)

For the Petitioners: Mr. Vipul Kundalia, Sr. Adv.,
Ms. Anamika Pandey, Adv.,
Mr. Anindya Kanan, Adv.

For the Respondent: Mr. Dhiraj Kumar, Adv.,
Mr. Sattik Rout, Adv.

Hearing concluded on: 09.12.2025
Judgment on: 18.12.2025

PARTHA SARATHI SEN, J. : -

1. In the instant writ petition as filed under Article 226/227 of the Constitution of India the judgment and order dated 22.07.2024 as passed in OA no. 31 of 2023 with MA no. 16 of 2023 by the Armed Forces Tribunal, Kolkata Bench (hereinafter referred to as the 'said Tribunal' in short) is impugned.

2. By the impugned judgment, the said Tribunal found that the original applicant before him is entitled to get disability pension at the rate of 44% by rounding it off to 50% for life with effect from 01.03.2021 and accordingly directed disbursement of due and admissible arrears within a specified time.
3. The respondent of the said original application that is the Union of India felt aggrieved and thus, preferred the instant writ petition.
4. At the time of hearing Mr. Kanan duly led by Mr. Kundalia, learned Senior Advocate at the very outset submits before this Court that for effective adjudication of the instant writ petition the following rules, regulations and guidelines are to be looked into which are as under:
 - (i) Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008.
 - (ii) Pension Regulations for the Army, Part-I (2008).
 - (iii) Pension Regulations for the Army, Part-II (2008)
 - (iv) Guide to Medical Officers (Military Pensions), 2002.
 - (v) Amendment to Chapter-VI and Chapter-VII, Guide to Medical Officers (Military Pensions).
5. In course of his submission, Mr. Kanan submits before this Court that he would advance his argument on the following three points namely;
 - (i) The impugned judgment has been passed by the said Tribunal without having jurisdiction to try the *lis* before him,
 - (ii) The impugned judgment was passed considering irrelevant rules and regulations,

(iii) The said Tribunal has passed the impugned order placing reliance upon some reported decisions which are distinguishable from the facts and circumstances of the original application as disposed by it.

6. At the time of hearing, Mr. Kanan at the very outset draws attention of this Court to page no. 3 of the informal paper-books which contains the list of dates. It is submitted by Mr. Kanan that from the said list of dates it would reveal that the respondent/ original applicant was enrolled in the Army (Corps of Signals) on 26.02.1991 and he was discharged from army service on 28.02.2021 on completion of service under Army Rule 13(3) Item no. I(i)(a).
7. It is thus submitted that since the respondent/original applicant was discharged from army service on completion of service in the year 2021, the pensionary benefits of the respondent/original applicant would be governed as per the "Pension Regulations for the Army Part I" (2008) which came into force with effect from 01.07.2008.
8. It is further submitted by Mr. Kanan that from the materials placed before this Court it would reveal that before his discharge, the respondent/ original applicant appeared before the Release Medical Board (RMB in short) wherein the said RMB found that the respondent / original applicant was suffering from the diseases "stroke intract right middle cerebrals artery with left hemi paresis" and "Diabetes Mellitus Type II". It is further submitted by Mr. Kanan that the RMB assessed the disabilities to the tune of 13% and 20% respectively and came to a finding that the said two diseases are 'Neither Attributable Nor Aggravated' (NANA in short) by military services and the said decision was

conveyed to the respondent/original applicant on 29.09.2021 wherein he was advised to file an appeal in the event the respondent/ original applicant is not satisfied with the rejection of his claim.

9. It is further submitted by Mr. Kanan that on 15.12.2021 the said first appeal was rejected and thus, the respondent/ original applicant filed the said OA before the said Tribunal. It is further submitted by Mr. Kanan that Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 (hereinafter referred to as the Entitlement Rules of 2008) brought into effect on and from 18.01.2009 superseding the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Tribunal, 1982 as amended from time to time. It is further argued by Mr. Kanan that since the writ petitioner was discharged from service on 28.02.2021, the RMB considered the claim of the respondent/original applicant for grant of disability pension in terms of provisions of Entitlement Rules of 2008.

10. At this juncture, attention of ours is drawn to Section 21 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the said Act in short). It is submitted that it is the mandate of the legislature that the said Tribunal will not ordinarily admit an application unless it is satisfied that the applicant had availed the remedies available to him under the Army Act, 1950. It is further submitted by Mr. Kanan that from the materials as placed before this Court it would reveal that challenging the order of the first appellate authority as conveyed to the respondent/original applicant vide letter dated 29.09.2021, the respondent/original applicant had chosen not to prefer the

second appeal and thus, the said Tribunal is not justified in entertaining the said original applicant in view of the mandate of Section 21 of the said Act.

11. It is submitted further on behalf of the writ petitioner that the original applicant as filed by the respondent/ original applicant before the said Tribunal is prematured one which the said Tribunal failed to visualize.

12. In his next fold of submission Mr. Kanan contended that though in their affidavit-in-opposition, the present writ petitioner being the respondent/original applicant had specifically pleaded regarding the applicability of the Entitlement Rules of 2008 however, the said Tribunal for the reason best known to it proceeded to dispose of the said original application in terms of the provisions of Superseded Entitlement Rules, 1982 and thus, a serious miscarriage of justice occurred and for the said reason the instant writ petition may be allowed by setting aside the order impugned.

13. In course of his submission Mr. Kanan draws attention of this Court to Clauses 6, 7, 10 and 11 of the Entitlement Rules of 2008 which deals with the subject of causal connection, onus of proof, attributability and aggravation. It is submitted by Mr. Kanan that on conjoint perusal of the said Clauses and the report of the RMB, it would reveal that in order to be eligible for disability pension a causal connection between the disability and military service has to be established by appropriate authorities and that two conditions are to be satisfied as attributable to military service namely; that the disease has arisen during the period of military service and that the disease has been caused by the conditions of employment in military service.

14. It is submitted by Mr. Kanan that the report of the RMB though indicates that the disease of the original applicant/ respondent had arisen during the period of military services but nothing was found to substantiate that the disease has been caused by the conditions of military service.
15. Drawing further attention to the report of the RMB as available at page nos. 195 to 218 of the paper-book, it is submitted that the said RMB report was prepared in terms of Guide to Medical Officers (Military Pensions), 2002 (hereinafter referred to as the 'said Guide' in short). It is submitted that from the report of the RMB which consists of experts in various branches of medical field, it would reveal that the disease of the respondent/original applicant was not on account of infection and/or trauma and/or exceptional stress and strain of military service as per 14 days' charter of duties prior to onset of disease in certain cardiac and neurological conditions and thus, in absence of any contrary material, there cannot be any occasion to come to a finding that the disability of the respondent/original applicant is attributable to military service.
16. Drawing attention to Clause 14(e) of the "said Guide" it is further submitted by Mr. Kanan that on comparative study of the Clause 14(e) of the 'said Guide' as well as the report of the RMB it would reveal further that the report of the RMB is in consonance with Clause 14(e) of the 'said Guide'. It is further argued by Mr. Kanan that from page no. 199 of the paper-book, it would reveal that on and from 15.04.2016 to 26.05.2019 and from 27.05.2019 till the date of his discharge, the respondent/original applicant was posted in

‘peace area’ whereas the respondent/original applicant suffered stroke on 16.10.2020 which is why the RMB found no causal connection between his disability and military service.

17. Drawing attention to paragraph nos. 9, 10 and 11 of the impugned judgment it is submitted by Mr. Kanan that the said Tribunal while passing the impugned order relied upon the reported decision of ***Dharamvir Singh Vs. Union Of India & Ors.*** reported in ***(2013) 7 SCC 316*** which has been followed in the case of ***Union of India and Ors. Vs. Rajbir Singh*** reported in ***(2015) 12 SCC 264***.

18. It is submitted that the reported decision of ***Dharamvir Singh (Supra)*** and ***Rajbir Singh (Supra)*** are distinguishable from the facts and circumstances as involved in the present writ petition since in the said two reported decisions the Hon’ble Supreme Court had occasioned to consider the entitlement of the disability pension of the original applicant in the perspective of Entitlement Rules of 1982.

19. In course of his submission Mr. Kanan further contended that before the said Tribunal the writ petitioners specifically pleaded the applicability of Entitlement Rules, 2008 for deciding the eligibility of the original applicant to get disability pension in paragraph no. 8 of the said affidavit-in-opposition which has been overlooked by the said Tribunal. It is further argued by Mr. Kanan that the impugned judgment is also silent as to which rule would be applicable in deciding the claim of the original applicant and the said Tribunal mechanically applied the proposition of law as decided in the case of

Dharamvir Singh (Supra) and **Rajbir Singh (Supra)** without applying its mind to the prevailing rules that is Entitlement Rules of 2008.

20. In course of his argument Mr. Kanan placed his reliance upon the judgment as passed in the case of **Union of India Represented by Its Secretary, Ministry of Defense and Ors. Vs. Bhaskaran N.** reported in **(2024) SCC Online Ker 7023**. It is submitted that in paragraph no. 18 of the reported decision of **Bhaskaran (Supra)** the Hon'ble High Court of Kerala made a comparative chart of the relevant clauses of Entitlement Rules, 2008 as well as Entitlement Rules of 1982 in order to distinguish the variance in the aforementioned two Rules.

21. It is submitted that from paragraph 11 of the impugned judgment it would reveal that the said Tribunal was persuaded upon a presumption as available under Clause 5 of Entitlement Rules of 1982 overlooking that such presumption is however not available in Clause 5 of the Entitlement Rules of 2008.

22. In course of his submission Mr. Kanan also places his reliance upon the judgments as passed in the cases of of **No. 14666828M Ex CFN Narsingh Yadav Vs. Union of India** reported in **(2019) 9 SCC 667**, **Union of India and Ors. Vs. Lt. Gen. Rajendra Singh Kadyan and Anr.** reported in **(2000) 6 SCC 698** and **Union of India and Ors. Vs. Ex. Sep. R. Munusamy** reported in **(2022) SCC Online SC 892**.

23. It is further submitted by Mr. Kanan that in the reported decision of **Narsingh Yadav (Supra)** and **R. Munusamy (Supra)** the Hon'ble Apex Court

declined to grant disability pension to the original applicant after considering the distinguishing features of the judgments in the case of ***Dharamvir Singh (Supra)*** and ***Rajbir Singh (Supra)***.

24. It is thus submitted by Mr. Kanan that it is a fit case of allowing the instant writ petition by setting aside the order impugned.

25. Per contra Mr. Dhiraj Kumar learned Advocate appearing on behalf of the respondent/original applicant supports the impugned judgment. Placing his reliance upon the judgments of ***Union of India & Ors. Vs. No. 15124220K Ex Hav (Musician) Sitanshu Pani*** as passed by a co-ordinate Bench in ***WP.CT 95/ 2025*** on 18.06.2025, ***Union of India & Ors. Vs. Ex NB/SUB, Ram Pravesh Singh Yadav*** as passed in ***W.P.(C) 4659/ 2025*** by High Court of Delhi on 15.04.2025, ***Union of India & Ors. Vs. Gurnam Singh Retd. Subedar & Anr.*** as passed ***CWP-3491-2025*** by High Court of Punjab & Haryana on 07.02.2025, ***Union of India & Ors. Vs. MCPOAF-I HON LT Avtar Singh*** as passed on 17.02.2025 in ***W.P.(C) 1973/2025*** and ***Maj Saurabh Saharan Vs. Union of India and Ors.*** as passed in ***W.P.(C) 1755/2013*** by High Court at Delhi on 17.02.2025, it is submitted that in the aforementioned five judgments, different High Courts even a coordinate Bench of this Court correctly applied the proposition of law as decided in the case of ***Dharamvir Singh (Supra)*** .

26. It is further argued on behalf of the respondent/original applicant that the said Tribunal rightly applied the presumption of Clause 5 of Entitlement

Rules, 2008 and thus, there cannot be any justification to interfere with the order impugned.

27. We have carefully gone through the entire materials as placed before us.

We have given our due consideration over the submissions of the learned Advocates for the contending parties.

28. Indisputably the writ petitioner was discharged from his service on 22.01.2021 on completion of service, when Entitlement Rules of 2008 was very much in vogue since the Entitlement Rules of 1982 was superseded then and that on perusal of the Clause 1 of Entitlement Rules of 2008 it reveals further that the Entitlement Rules of 2008 are to be read in conjunction with the 'said Guide'. In view of such this Court has got no hesitation to hold that in order to ascertain as to whether the respondent/original applicant is entitled to disability pension or not the Entitlement Rules of 2008 vis-à-vis the provisions of the 'said Guide' are to be looked into.

29. For effective adjudication of the instant writ petition we at the very outset propose to look to some of the relevant clauses of the Entitlement Rules of 2008 which are as under:

"6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities."

"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.”*

“11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g, Fields, Operations, High Altitudes etc.”

30. In our considered view Clause 14 of the ‘said Guide’ is equally relevant which reads thus:

“14. To have a correct appreciation of the case and to bring out the above mentioned facts, the following suggestions are made:-

a).....

b).....

c).....

d).....

e) Information in AFMSF-81/AFMSF-10 should be complete. These forms usually contain little or no information regarding stress and strain, exposure to adverse climatic conditions, high altitude area, service afloat on high seas and dietetic compulsions in respect of disease where these factors are known to play some part. In cases of cardio-vascular catastrophe, the details of duties performed by the individual day by day and hour by hour during the previous 14 days should be mentioned in the appropriate column by the OC Unit. Expressions like normal stress and strain of service should not find a place in these documents. Perhaps, these defects can be removed to some extent with better liaison between OC Unit/OC hospital.”

31. In our considered view, some clauses of Pensions Regulations for the Army Part-I, 2008 are also required to be looked into and those are as under:

“DISABILITY ELEMENT FOR DISABILITY AT THE TIME OF DISCHARGE/ RETIREMENT

53. (a) *An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravate by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.*

(b).....”

“WHEN ADMISSIBLE

81. (a) *Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section.*

Explanation:-

There shall be no condition of minimum qualifying service for earning service element.

(b) The question whether disability is attributable to or aggravated by military service shall be determined under the Entitlement Rules For Casualty Pensionary award, 1982 as laid down in APPNDIX-IV of these Regulations.”

32. Keeping in mind the relevant provisions of the aforementioned rules, regulations and the ‘said Guide’, if we look to the factual aspects of this case, it appears to us that the report of the RMB is found to be in accordance with the Entitlement Rules of 2008 read with the ‘said Guide’. We have noticed that RMB while examining the respondent/original applicant found no causal

connection between the disability of the respondent/original applicant and military service. The RMB also noticed that the disease of the respondent/original applicant had not arisen during the period of military service and/or such disease has not been caused by the conditions of employment of military service.

33. We have also noticed in the report of the RMB due compliance of the provisions of Clause 14(e) of the 'said Guide' inasmuch as in its report the RMB recorded specifically that it has considered not only 14 days' charter of duties prior to onset of disease of *Cardio-Vascular Catastrophe* but also it has to come to a specific finding that at the time of suffering the disability, proof of stress and strain, exposure to adverse climatic condition, high altitude area, service afloat at high seas and dietetic compulsions in respect of diseases where these factors are known to play some part had not occasioned since the respondent/original applicant was posted in 'peace area'. It thus appears to us that the presumption as envisaged in Clause 10(b)(iii) of the Entitlement Rules of 2008 has been duly rebutted by the writ petitioners-authorities which ought not to be doubted in absence of any contrary material and in view of the proposition of law as decided in the reported decision of **Narsingh Yadav (Supra)** wherein the Hon'ble Supreme Court held thus:

"21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material

on record to doubt the correctness of the report of the invaliding Medical Board.”

34. Similar view was taken by the Hon’ble Supreme Court in the case of **R. Munusamy (Supra)**, the relevant portion of the said judgment is quoted hereinbelow in verbatim:

25. What exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed and the connection between the cause/aggravation of the ailment/ disability and the conditions and/or requirements of service. The Tribunal patently erred in law in proceeding on the basis of a misconceived notion that any ailment or disability of a soldier, not noted at the time of recruitment but detected or diagnosed at the time of his discharge or earlier, would entitle the soldier to disability pension on the presumption that the disability was attributable to military service, whether or not the disability led to his discharge, and the onus was on the employer to prove otherwise, which the Appellants in this case had failed to do.

35. In view of the discussion made hereinabove, this Court thus finds that the said Tribunal has committed a serious error of law in disbelieving the report of the RMB and thus, a serious miscarriage of justice occurred which has to be interfered with in a judicial review.

36. We are in agreement with the submission of Mr. Kanan that the said Tribunal while passing the impugned judgment most mechanically placed reliance upon the reported decisions of **Dharamvir Singh (Supra)** and **Rajbir**

Singh (Supra) without considering the fact as to whether Entitlement Rules of 1982 is at all applicable in the facts and circumstances as involved in the *lis* before it.

37. We have already noticed that when the writ petitioner was discharged from his service on 22.01.2021 at that time the Entitlement Rules of 2008 was very much in vogue by superseding the earlier Entitlement Rules of 1982 and thus, for ascertaining the entitlement of the respondent/original applicant regarding his claim for disability pension, the Entitlement Rules of 2008 is very much applicable which the said Tribunal failed to visualize and overlooked.

38. In considered view of ours the reported decisions as cited from the side of the respondent/original applicant are distinguishable from the facts and circumstances of the instant case inasmuch as those cases have been decided based on the provisions of the Entitlement Rules of 1982 as well as in view of the reported decisions of **Dharamvir Singh (Supra)** and **Rajbir Singh (Supra)**.

39. In view of the discussion made hereinabove we find sufficient merit in the instant writ petition.

40. Accordingly, the instant writ petition succeeds and is hereby allowed.

41. Consequently, the impugned order as passed in OA No. 31 of 2023 with MA No. 16 of 2023 as passed on 22.07.2024 by the Armed Forces Tribunal, Kolkata Bench is hereby set aside.

42. Consequently, the respondent/original applicant is found to be not entitled to get disability pension as prayed for.

43. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, A.C.J.)

(PARTHA SARATHI SEN, J.)