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WP No. 23487 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-03-2025

CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

WP No. 23487 of 2024

and

WMP.Nos.25674 & 25678 of 2024

1. The Union of India,
Rep. by the Secretary,
Ministry of Defence, Govt. of India, South
Block, New Delhi 110 011.
- 2.The Chief of the Army Staff,
Integrated Headquarters Of MoD (Army),
South Block, DHQ PO,
New Delhi 110 011.
- 3.The Officer-in-Charge,
ASC Records (South),
Bangalore - 560 007.
- 4.The Principal Controller of Defence Accounts
(Pensions),
Draupadi Ghat, Allahabad
(U.P) PIN - 211 014.

Petitioner(s)



Vs

1. Rank-EX-Lnk (TS) A Muthu,

No-14601210A,

S/o.Late B. Arumugam, A/a-53 Years, No.16

Ward No.18, Mariyamman Kovil Street,

Vill+PO-Karai,

Tehsil-Walaja District,

Vellore 632 404.

2.The Registrar,

Armed Forces Tribunal, Rudra Road,

St. Thomas Mount, Chennai-600 016.

Respondent(s)

PRAYER

Writ Petition filed under Article 226 of the Constitution of India, seeking for an issuance of writ of certiorari, to call for the records dated 19.04.2022 passed in OA No.69 of 2021 on the file of the 2nd respondent and thereby quash the same.

For Petitioner(s): Mr.V.Balasubramanian
Senior Panel Counsel

For Respondent(s): Mr.A.Q.Choudhury for R1
R2 - Tribunal

ORDER

(Order of the Court was made by S.M.Subramaniam J.)

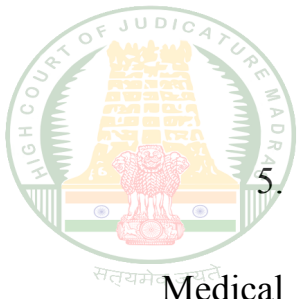
Under assail is the order dated 19.04.2022 passed in O.A.No.69 of 2021 on the file of the Armed Forces Tribunal, Regional Bench, Chennai.



2. The Union of India represented by the Secretary, Ministry of Defence is the writ petitioner before this Court.

3. The first respondent ex-service man instituted Original Application before the Armed Forces Tribunal (hereinafter referred as AFT) challenging the validity of the order dated 19.11.2020. The Tribunal allowed the disability claim of the first respondent relying on the Judgment of the Hon'ble Apex Court in ***Dharamvir Singh vs. Union of India and Others*** reported in ***(2013) 7 SCC 316***.

4. The facts in nut shell not seriously disputed between the parties would reveal that the first respondent was enrolled in Indian Army on 29.11.1986 and discharged on 31.10.2004 after rendering 17 years 11 months and 2 days of qualifying service. The first respondent was granted service pension. The first respondent was re-enrolled in Defence Security Cops (herein after referred as DSC) on 30.10.2009 and released on 31.10.2019.

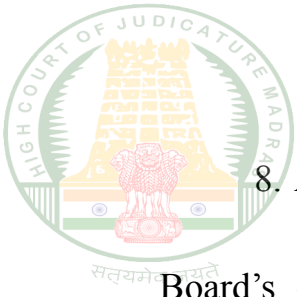


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5. The first respondent claimed disability element of pension. Release Medical Board assessed the disabilities (i) Stroke-Right Hemiparesis Left Thalamic Infarct (ii) Primary Hypertension and (iii) Type-2 Diabetes Mellitus and the Board assessed the disability @ 20%, 30% and 20% for life respectively and opined the IDs as neither attributable to nor aggravated by military service.

6. The Release Medical Board opined that IDs as neither attributable to nor aggravated by military service. Therefore, the petitioners have declined to consider the claim of the first respondent for grant of disability pension. Thus, the Original Application came to be instituted.

7. The learned Counsel for the petitioners would mainly contend that the Release Medical Board considered the nature of disability and opined that the IDs as neither attributable to nor aggravated by military service. However, the Tribunal granted disability pension relying on the Judgment of the Hon'ble Apex Court in *Dharamvir Singh's* case cited supra, which would not have any direct application with reference to the facts and rules applicable as far as the petitioner is concerned.



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8. As per the rule which came into force in the year 2008, the Medical Board's opinion became final, unless the employee could able to produce incriminating evidence rebutting the medical board's opinion. In the present case, the release medical board's opinion was not disputed. Therefore, the Tribunal has committed an error in granting disability pension.

9. In 2008 rules, the presumption factor was deleted and the ***Dharamvir Singh's*** case was decided based on the presumption factor and based on the old rule of the year 1961. Therefore, the said Judgment ought not to have been relied upon by the Arms Tribunal for granting the relief of disability pension in favour of the first respondent. When the rule underwent change and new rule came into force, the Judgment delivered based on the old rule need not be relied upon. Thus, the present writ petition is to be considered.

10. Mr.A.Q.Choudhury, learned counsel appearing on behalf of the first respondent would strenuously oppose by stating that the legal principles settled in ***Dharamvir Singh's*** case is in force. Therefore, the Tribunal has rightly



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approached the issues relying on the legal principles. The burden of proof is on the side of the officials. Therefore, it is to be presumed that the disability occurred due to the services rendered in hard and critical areas. When such a presumption is available to an employee in Indian Army, the same need not be denied merely on technical grounds as the service personal in Indian Army are deputed to critical places, high altitude places, for performing hard duties, and considering these factors the element of disability pension has been introduced. The life style of these personal in Indian Army are also taken into consideration for grant of disability pension. On some occasions it may not be possible to find out the reason for disabilities and that exactly is the reason that the presumptive factors are adopted in favour of the employees and the said benefits need not be denied. Thus, the ***Dharamvir Singh's*** case is holding the field and followed by the Tribunal. Therefore, the present writ petition is to be rejected.

11. This Court considered the rival submissions made between the parties to the *lis* on hand.



12. Pension Regulations for the Army 1961 Section III provides

Disability Pensionary Awards. Regulation 48 (a) reads as under:

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*“*Disability Pension When Admissible*

48(a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20 percent or more.

(b) The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.”

13. Appendix II to Regulation 48(b) provides entitlement rules for casualty Pensionary Awards. Clause 5 rules as under:

“4.Invalidating from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than “A” and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the



completion of their engagement will be deemed to have been invalidated out of service.

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5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

PRIOR TO AND DURING SERVICE

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

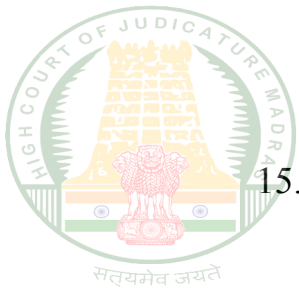
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8. Attributability / aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.

ONUS OF PROOF

9. The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."

14. Pertinently, new pension regulations for the Army came into effect from 1st July 2008. Further, the new pension regulations have not been adjudicated in ***Dharamvir Singh's*** case. The applicable provision for disability pension under the current Pension Regulation for the army are necessarily to be considered by this Court.



15. Regulation 37 reads as under:

“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.”

16. Regulation 53 of the New Regulation reads 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 aggravated 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.



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(b) The disability element for 100% disability shall be at the rate laid down in Regulation 98(b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 98(c) shall not be applicable for computing disability element.”

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.”

17. In ***Dharamvir Singh’s*** case, the fact reveals that the ex-service man, was covered under the old pension regulations. Therefore, his case was considered based on the old pension regulation of the year 1961. Subsequent to ***Dharamvir Singh’s*** case, the legal principles are considered by the Hon’ble Supreme Court of India, in the case of ***Ex CFN Narsingh Yadav vs. Union of India and Others*** reported in ***(2019) 9 SCC 667*** wherein following observations are made:

“18. Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and



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strain leading to Psychosis and psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member.

19. Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to Psychosis and psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.

20. In the present case, clause 14(d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to



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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.”

18. In the case of ***Union of India vs. Ex Sep R.Munusamy*** reported in

2022 Live Law (SC) 619 the Apex Court made the following observation:

“16.The Tribunal does not sit in appeal over the expert opinion of a Medical Board holding that the disability suffered by a soldier was not attributable to or aggravated by military service. There was no reason for the Tribunal not to accept the opinion of the Release Medical Board held on 30th January 1997 and no reasons have been disclosed. In the absence of any finding of infirmity in the decision making process adopted by the Release Medical Board, there could be no reason to direct the constitution of a Resurvey Medical Board, and in any case, not after two decades from the date of discharge.

.....

24. Even though, the Tribunal accepted that there might be cases, where an ailment/disease could be wholly unrelated to military service and the denial of disability pension could be justified on that ground, the Tribunal overlooked the mandate of Rule 14(c) of the Entitlement Rules. From the Report of the



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Resurvey Medical Board, as extracted in the impugned judgment and order, it does not appear that the Review Medical Board gave any opinion as contemplated in Rule 14(b) or 14(c) of the Entitlement Rules. There were no materials before the Tribunal, on the basis of which the Tribunal could have been satisfied that, the conditions of service of the Respondent contributed to his disability and/or ailment. The Review Medical Board only assessed the extent of the disability of the Respondent and the approximate duration of the disability, but not the cause thereof.

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.

26. In this case, since the discharge was on administrative grounds and not medical grounds, there was no occasion for the Release Medical Board or for that matter, the Resurvey Medical Board to give any opinion as to cause and nature of the ailment



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of the Respondent of “Right Partial Seizure with Secondary Generalisation 345” as diagnosed, whether such disability/ailment could reasonably have gone undetected at the time of appointment of the Respondent, in terms of Rule 14(b) of the Entitlement Rules. The Appellants did not get the opportunity to show that the ailment was not caused or aggravated by military service in terms of Rule 14(b) and 14(c) of the Entitlement Rules referred to above. The claim of the Respondent for disability pension should not have been entertained and that too, 20 years after his discharge.

19. In the context of the above Judgments, the facts of each case and the legal principles are to be considered. Let us now consider the principles laid down in ***Dharamvir Singh’s*** case cited supra. The issue considered by the Hon'ble Apex Court was, whether the disability which, each one of the respondents suffered was attributable to or aggravated by military service. In this context, the Hon'ble Supreme Court made an observation that the deterioration of health is normally presumed due to military service unless medical records available on record or otherwise. It is presumed that at the time of appointment, the Army man was fit and appointed. Therefore, deterioration of health is to be attached to the military service rendered and therefore, the disability pension should be consequential.



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20. Pertinently, in ***Dharamvir Singh's*** case, the Hon'ble Supreme Court held that from Rule 14(b) Old Pension Regulation of the Entitlement Rules, it is clear that if the medical opinion was to hold that the decease suffered by the members of the armed forces would not have been detected prior to service, the medical board must state the reasons for saying so. Admittedly, the disability pension is a beneficial provision and to be interpreted liberally, so as to benefit those who have been sent home with disability, even before they completed their tenure in the armed forces. However, the eligibility criteria is to be fixed based on the rules and the medical records. The disability pension, even as per the ***Dharamvir Singh's*** case cannot be automatic, but subject to assessment by the Release Medical Board and the conditions stipulated in the rules. It is further observed by the Hon'ble Apex Court that denial of disability pension can be justified on the ground it must be affirmatively proved that the decease had nothing to do with the service. However, the burden to establish such a disconnect would lie heavily upon the employer or otherwise the rule raised the presumption.



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21. Thus, the spirit of the Judgment is unambiguous. The Judgment says that if the decease had nothing to do with the services, then, the employer has to prove the factum. If the burden of proof is not discharged by the employer, then, the presumption shall go in favour of the employee. A soldier cannot be asked to prove that the decease was on account of military service or was aggravated by the same.

22. The above narration of the principles on ***Dharamvir Singh's*** case would abundantly make it clear that the disability pension is not automatic, but to be considered based on the rule as well as the medical report by the Release Medical Board. Even the Arms Tribunal has to consider the facts with reference to the principles laid down in ***Dharamvir Singh's*** case. The presumptive factor cannot be applied in a routine manner so as to grant disability pension to all the cases. Each case is to be considered on case-to-case basis and the facts should be ascertained, whether such disability is attributable to military service or otherwise. The presumption would not give a conclusive right to get disability pension. Presumption is the principle applicable in the event of department not



discharging its duty to establish that the disability is not attributable to military service.

23. At the outset, this Court is of the considered opinion that disability pension is a welfare provision, which is to be extended to the applicable cases. However, such disability pension cannot be granted automatically merely based on certain presumptions and assumptions. Pension regulation contemplates eligibility for disability element of pension and one of the condition is that the disability is attributable to military service and the burden of proof is also shifted to the employer to establish the medical report of the Release Medical Board.

24. As observed by the Hon'ble Apex Court in subsequent Judgments, High Court not being an expert body, cannot substitute its opinion especially in medical reports. Even, in the event of submitting an incriminating documents disputing the medical reports, the course left open to the Courts are to refer the matter to the Review Medical Board, and the High Court cannot substitute its opinion on the medical reports.



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25. Referring to the facts of the present case, the first respondent is receiving service pension. The disability element of pension was rejected on the ground that the discharge from service is neither attributable to nor aggravated by military service. In this context, the medical board proceedings are placed before this Court. The opinion of the medical board in the case of the first respondent is extracted hereunder:

<i>1. Causal Relationship of the Disability with Service conditions or otherwise</i>				
<i>Disability</i>	<i>Attributable to service (Y/N)</i>	<i>Aggravated by service (Y/N)</i>	<i>Not connected with service (Y/N)</i>	<i>Reason/cause/specific conditions and period in service</i>
<i>1. Stroke-Right Hemiparesis Left Thalamic Infarct (Old) G43.3.Z09.0</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>Onset of disability occurred while serving in peace area. Hence neither attributable not aggravated by para 14 of Chapter VI of GMO (MP)2008.</i>
<i>2. Primary Hypertension (OLD) E11,Z09.0</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>Onset of disability occurred while serving in peace area. Hence neither attributable not aggravated by</i>



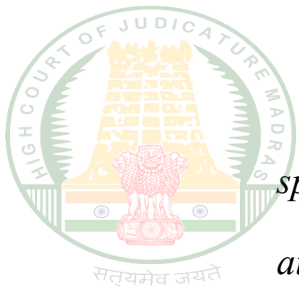
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<i>1. Causal Relationship of the Disability with Service conditions or otherwise</i>				
				<i>para 43 of Chapter VI of GMO (MP) 2008.</i>
<i>3.Type 2 Diabetes Mellitus (Old) E11, Z,09.0</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>Onset of disability occurred while serving in peace area. Hence neither attributable not aggravated by Para 26 of Chapter VI of GMO (MP) - 2008</i>

26. In the case of ***Union of India vs. Ravinder Kumar*** reported in (2015)

12 SCC 291 the Apex Court made the following observation:

*“4. This Court recently decided an identical case in Union of India v. Jujhar Singh and after reconsidering a large number of earlier judgments including **Ministry of Defence v. A.V.Damodaran, Baljit Singh and ESI Corporation v. Francis De Costa**, came to the conclusion that in view of Regulation 179, a discharged person can be granted disability pension only if the disability is attributable to or aggravated by military service and such a finding has been recorded by Service Medical Authorities. In case the Medical Authorities record the*



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specific finding to the effect that disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that Medical Board is specialised authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual. A person claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury/ailment to the person and the normal expected standard of duties and way of life expected from such person.”

27. Perusal of the medical record further reveals that the case of the employee discharged are examined based on several other factors which all are found in the medical report. Even in ***Dharamvir Singh's*** case itself the procedures to be followed has been considered. Requisite information and assessment by the revised medical board in the present case would be sufficient that the case of the first respondent was considered on different angles, medically.



28. Thus, this Court do not find any justification for grant of disability

pension to the first respondent. The Armed Forces Tribunal though relied on

Dharamvir Singh's case cited supra not considered the application of legal

principles in the context of the facts. Thus, the said order cannot be sustained.

Accordingly the order impugned in O.A.No.69 of 2021 dated 19.04.2022 is set

aside. The writ petition stands allowed. There shall be no order as to costs.

Consequently, the connected miscellaneous petitions are closed.

(S.M.SUBRAMANIAM J.) (K.RAJASEKAR J.)

07-03-2025

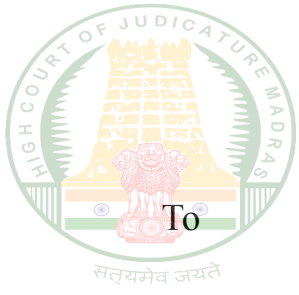
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

1. The Union of India,
Rep. by the Secretary,
Ministry of Defence, Govt. of India, South
Block, New Delhi 110 011.
2. The Chief of the Army Staff,
Integrated Headquarters Of MoD (Army),
South Block, DHQ PO,
New Delhi 110 011.
3. The Officer-in-Charge,
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Bangalore - 560 007.
4. The Principal Controller of Defence Accounts
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