



W.P.No.5 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

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THE HON'BLE MR. JUSTICE S. M. SUBRAMANIAM

AND

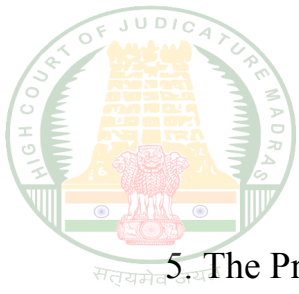
THE HON'BLE MR. JUSTICE K. RAJASEKAR

Writ Petition No.5 of 2025

and

Writ Miscellaneous Petition No.6 of 2025

1. Union of India,
Rep by the Secretary,
Govt. of India,
Ministry of Defence, (Airforce),
5A, South Block, New Delhi 110 011.
2. The Chief of Army Staff,
Air Head Quarters (Vayu Bhavan),
Rafi Marg,
New Delhi – 110 006.
3. The Principal Controller of Defence Accounts (Pensions),
Air Force Cell,
Draupati Ghat,
Allahabad – 211 014.
4. The Principal Director,
Directorate of Air Veterans,
Subroto Park,
New Delhi – 110 010.



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5. The Principal Director,
Air Force Group Insurance Society,
AFGIS Bhawan,
Subroto Park,
New Delhi – 110 010.

... Petitioners

Vs.

Ex – SGT731879T PK Mohandas

... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the order made in O.A.77 of 2022 dated 25.01.2024 on the file of the Armed Forces Tribunal (Regional Bench) Chennai and quash the same.

For Petitioners : Mr.S.Janarthanam
Senior Panel Counsel

For Respondent : Mr.D.Solomon Pandian

ORDER

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

The order of the Armed Forces Tribunal dated 25.01.2024 in O.A.No.77 of 2022 with M.A.No.130 of 2022 is under challenge in the present writ proceedings instituted by the Union of India, Ministry of Defence (Air force).

2. The respondent was enrolled in the Indian Air force on 02.07.1988 and discharged on 12.10.2004 in Low Medical Category after rendering 16 years 3

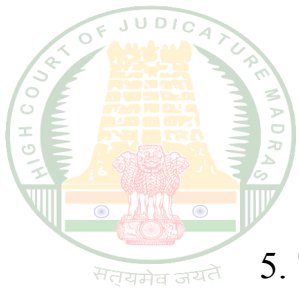


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months and 10 days of service. Admittedly, the respondent is in receipt of service pension.

3. The learned counsel for the respondent would mainly contend that the Primary Hypertension as assessed by the Medical Board has not been properly considered by the medical board in pursuance to the guidelines issued to the medical officers for Military Pensions, 2002. The parameters to be assessed are improperly made and therefore, the Armed Forces Tribunal has rightly considered based on the principles laid down by the Hon'ble Supreme Court of India in *Dharamvir Singh vs. Union of India and Others* reported in (2013) 7 SCC 316.

4. The respondent claimed disability element of pension. Medical Board assessed the disabilities (i) Schizo-Affective Psychosis @ 20%, ID (ii) Primary Hypertension @ 30% and ID (iii) Duodenal Ulcer @ 06-10% (Compositely @ 50%) for life and recommended all IDs as neither attributable to nor aggravated by Air Force Service.

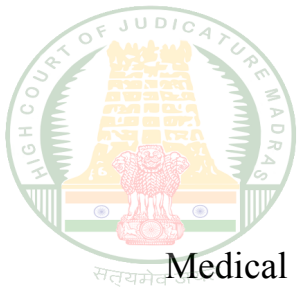


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5. The learned Senior Panel Counsel for the writ petitioners would oppose by stating that the petitioners have proceeded based on the medical opinion of the medical board. The opinion of the medical board was of the year 2004, which was granted at the time of discharge of the respondent. The medical board has clearly stated that the disability was not connected with service would be neither attributable nor aggravated by service. Therefore, the respondent is not eligible for disability pension.

6. This Court has considered the submissions made between the parties.

7. 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 disease 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



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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 disease 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.

8. Thus, the spirit of the Judgment is unambiguous. The Judgment says that if the disease 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 disease was on account of Air Force Service or was aggravated by the same.

9. 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 Medical Board. Even the Armed Forces 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



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cases. Each case is to be considered on case-to-case basis and the facts should be ascertained, whether such disability is attributable to Air Force 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 Air Force Service.

10. 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 Medical Board.

11. 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 Medical Board, and the High Court cannot substitute its opinion on the medical reports.

12. The opinion of the medical board is extracted hereunder:

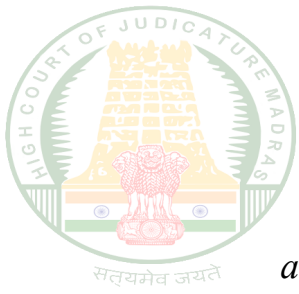
<i>1. Casual Relationship of the Disability with Service conditions or otherwise</i>				
<i>Disability</i>	<i>Attributable to service (Y/N)</i>	<i>Aggravated by service (Y/N)</i>	<i>Not connected with service (Y/N)</i>	<i>Reason/cause/specific condition and period in service</i>
<i>(a) Schizo-Affective Psychosis</i>	No	No	Yes	-do-
<i>(b) Primary Hypertension</i>	No	No	Yes	-do-
<i>(c) Duodenal Ulcer</i>	No	No	Yes	-do-
<i>(d)</i>				
<i>(e)</i>				

Note- A disability Not connected with service would be neither Attributable nor Aggravated by service.

13. 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,



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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 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.”

14. Perusal of the medical record and report further reveals that the case of the employee who stood discharged was examined and his discharge was based on several other factors. 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 respondent was considered on different angles, medically.



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15. Thus, this Court do not find any justification for grant of disability pension to the 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.77 of 2022 with M.A.No.130 of 2022, dated 25.01.2024 is set aside. The writ petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

(S.M.S., J.) (K.R.S., J.)
17.03.2025

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Index: Yes

Speaking Order: Yes/No

Neutral Citation Case : Yes/No



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