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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-21615-2025

Date of Decision : 30.07.2025

UNION OF INDIA AND OTHERS

.....Petitioners

VERSUS

EX. SUB SURAJ MAL AND ANOTHER

...Respondents

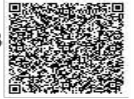
**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Ms. Neha Jaggi, Advocate, for the petitioners

KULDEEP TIWARI, J.

1. Through the instant petition, filed by the Union of India, under Articles 226/227 of the Constitution of India, challenge is thrown to order dated 27.10.2023, (Annexure P-1), as passed by the learned Armed Forces Tribunal, Regional Bench, Chandigarh, (hereinafter referred to as the AFT), whereby a *mandamus* was passed against the petitioners to grant disability pension @ 50% as against 30% for life from the day, next to the date of his discharge from service i.e. 1.11.2021, after being rounded off.

2. The first respondent had preferred an original application under Section 14 of the Armed Forces Tribunal Act, 2007, for grant of disability pension @ 50%, as against 30% disability, with effect from 1.11.2021, for life, along with interest.

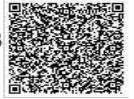


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3. Before this Court deals with the legality of the impugned order, it is imperative to have a glimpse of the facts, *qua* which there is no wrangle amongst the parties. The first respondent, got enrolled with the Army on dated 5.10.1991, after he was found fit in all respects, and was discharged from service on dated 31.10.2021, upon completion of normal tenure in Low Medical Category P-2 (Permanent). During the course of service, he was found to be suffering from the disease “CORONARY ARTERY DISEASE”, and the degree of disablement was assessed at 30% for life. However, the Release Medical Board (hereinafter referred to as 'RMB'), declared the disease neither attributable to, nor aggravated by military service. The claim of the first respondent, for disability pension was rejected by the petitioners, and the same was challenged, by filing an inter-departmental appeal. However, he remained unsuccessful, which thereafter, propelled him to file the original application before AFT, Chandigarh. The learned Tribunal while placing reliance upon ***Dharamvir Singh vs. Union of India (2013) 7 SCC 316***, held that the first respondent is eligible for disability pension. Further, while applying the ratio of the judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No. 2144/2012, titled Union of India vs Ram Avtar, decided on 10.12.2024***, granted the asked for benefit, by rounding off @ 50%, as against 30% disability for life from the day of his discharge i.e. 1.11.2021.

4. Learned counsel for the petitioners while drawing the attention of this Court towards RMB report, with much force, submits that the

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disease of the first respondent, is neither attributable to, nor aggravated by military service, therefore, he is not entitled for disability pension. She further relies upon Regulation 173 of the Pension Regulations for the Army, 1961, which was subsequently revised as Regulation 53(a) of Pension Regulations for the Army, 2008, to submit that the entitlement for pension, is based upon, if the person is found suffering from disability, attributable to, or aggravated by the military service. She further apprises this Court that as per Medical Board, the first respondent is a case of known smoker, and therefore, his disability could also be a cause of the same. She further submits that the First Appellate Committee, has specifically observed while declining the claim that he was a chronic smoker, and even consumed alcohol, therefore, in that eventuality, the disability is attributable to the misconduct on his part and as such, cannot claim the benefit of disability pension.

5. This Court has examined the submissions in detail, as made by the learned counsel for the petitioners, and is of the considered view that the submissions so made, carry no force, and are not sufficient to set aside the impugned order passed by the learned Tribunal, for the hereinafter extracted reasons:-

“(i) It is not under dispute that the first respondent was found suffering from the disease during his service tenure. He was

discharged on dated 31.10.2021, whereas, he was found suffering from disability on 17.4.2017. The only reason for non suiting him for grant of disability pension is that the disease is neither attributable to, nor aggravated by military service. The RMB has assessed the disability as under:-

“1. Please endorse disease/disabilities in chronological order of occurrence:

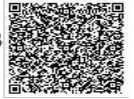
<i>Disability</i>	<i>Attributable to Service (Y/N)</i>	<i>Aggravated by Service (Y/N)</i>	<i>Detailed Justification</i>
<i>(a) CORRONARY ARTERY DISEASE</i>	<i>N</i>	<i>N</i>	<i>No due to no physical stress and strain of mil service as per 14 days charter of duties dt. 12 Apr 2017 (copy encl) (Ref para 47 chpt VI GMO 2005). Also a known smoker.”</i>

The other relevant observations made by the RMB are extracted hereinafter:-

“(a) Was the disability attributable to the individuals own negligence. If yes, in what way: No

(b) If not attributable, was it aggravated by negligence or misconduct if so, in what way and to what percentage of the total disablement: No

(ii) From the above, it is crystal clear that the Medical Board itself has declared that the disability is not attributable to the first respondent's own negligence or misconduct. Undisputedly, the first respondent was commissioned in the Indian Army on 5.10.1991, and at the time of his commission, he was placed on the highest possible medical category i.e.



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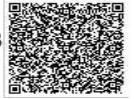
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(SHAPE-1), and he was discharged on completion of his normal tenure. His medical condition was in the Lower Medical Category P-2 (Permanent) and found to be suffering from Coronary Artery Disease. At this junction, it is relevant to refer to the origins of Regulation 53(a) (*supra*), relied upon by the learned counsel for the petitioners. The same is extracted hereinafter:-

"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."

(iii) Rule 10 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 (hereinafter referred to as Rules of 2008), deals with attributability. Clause (b) thereof, specifies the diseases for the purposes of low medical category of the disease. Sub clause (iii) of Rule 10(b) is extracted hereinafter:-

"(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



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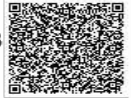
clinical picture and current scientific medical application.”

(iv) The conjoining reading of the above provisions clearly goes to show that even under Rule 10 (b), where the cause of disease is not known, the presumption of entitlement is in favour of the claimant, unless it is not rebutted and the attributability should be considered on the basis of clinical picture, and current scientific medical application. It is not under dispute that RMB, has not attributed such low medical condition to any misconduct or act of the first respondent. At this juncture, we may also refer to Rule 5 and Rule 7 of the Rules of 2008, which reads as under:-

“Rule 5- Medical Test at entry stage: The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military 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.”

(v) This Court has earlier considered the above extracted Regulations in **CWP-20287-2025, Union of India and others vs IC-41068W Maj Gen. Anil Chaudhary (Retd) and**



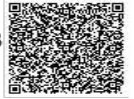
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another, decided on 28.7.2025, and specifically held that when the Army personnel at the time of entering into the service was in sound medical condition, and the origin of the disease is during the service, and the cause of the disease is not ascertained, the presumption of sub clause (iii) Rule 10(b) would clearly cast a presumption of entitlement in favour of the claimant. The relevant extract reads as under:-

“In a case of the present kind, where the army personnel at the time of entering into the service, was in sound medical condition and the origin of the disease is during the service and the cause of disease is not ascertained, the presumption of sub rule (iii) Rule 10(b) would clearly cast a presumption of entitlement in favour of the claimant.”

(vi) The petitioners also placed reliance upon Regulation 423(a) of Regulations for the Medical Services in the Armed Forces, 2010, for disposal of special cases for determination of the disease attributable to service, to submit that the disease to be attributable to military service, the entire medical evidence direct, as well as circumstantial must lead to the conclusion that it was effected by the service. This Court has examined the Regulation 423(a) (*supra*), and is of the considered view that this will not come to rescue the petitioners, rather it helps to establish the claim of the first



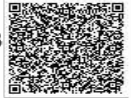
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respondent. As per Regulation 423(a), all the evidence, direct or circumstantial, will be taken into account, and the benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted has a reasonable doubt for the purpose of these instructions should be of a degree of cogency which though not reaching certainty, nevertheless carries a high degree of probability. Regulation 423(a) (*supra*), is extracted hereinunder:-

“423(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions.

All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case



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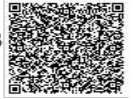
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occurring in Field Service/Active Service areas.”

(vii) The issue as to whether, the Disability Pension could be denied to Armed Force personnel has been considered by the Hon'ble Supreme Court in ***Dharamvir Singh vs UOI and others'* (2013) 7 SCC 316**. In a recent judgment of Hon'ble Supreme Court in ***Bijender Singh vs UOI and others (Civil Appeal No. 4458 of 2024) decided on 23.4.2025***, the Hon'ble Supreme Court summed up the law, which is extracted hereinafter:-

“45. We have already noticed the analysis of Rules 5, 9 and 14 of the Rules in *Rajbir Singh (supra)*. After advertent to the decision of this Court in *Dharamvir Singh (supra)*, this Court opined as under:

14. The legal position as stated in Dharamvir Singh case is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the



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disability which he suffered was neither attributable to nor aggravated by military service.

15. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons



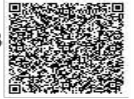
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supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension.

45.1. *Thus, this Court held that essence of the Rules is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into the service if there is no note or record to the contrary made at the time of such entry. In the event of subsequent discharge from service on medical ground, any deterioration in health would be presumed to be due to military service. The burden would be on the employer to rebut the presumption that the disability suffered by the member was neither attributable to nor aggravated by military service. If the Medical Board is of the opinion that the disease suffered by the member could not have been detected at the time of entry into service, the Medical Board has to give reasons for saying so. This Court highlighted that the provision for payment of disability pension is a beneficial one which ought to be interpreted liberally. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that upon proper physical and other tests, the member was found fit to serve in the army would give rise to a presumption that he was disease free at the time of his entry into service. For the employer to say that such a disease was neither attributable to nor aggravated by military service, the least that is required to be done is to furnish reasons for taking such a view.*

46. *Referring back to the impugned order dated 26.02.2016, we find that the Tribunal simply went by the remarks of the Invaliding Medical Board and Re-Survey Medical Boards to hold that since the disability of the appellant was less than 20%, he would not be entitled to the disability element of the disability pension. Tribunal did not examine the issue as to whether the disability was attributable to or aggravated by military service. In the instant case neither has it been mentioned by the Invaliding*



Medical Board nor by the Re-Survey Medical Boards that the disease for which the appellant was invalided out of service could not be detected at the time of entry into military service. As a matter of fact, the Invaliding Medical Board was quite categorical that no disability of the appellant existed before entering service. As would be evident from the aforesaid decisions of this Court, the law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the member suffered from any particular disease, the presumption would be that the member got afflicted by the said disease because of military service. Therefore the burden of proving that the disease is not attributable to or aggravated by military service rest entirely on the employer. Further, any disease or disability for which a member of the armed forces is invalided out of service would have to be assumed to be above 20% and attract grant of 50% disability pension.

47. *Thus having regard to the discussions made above, we are of the considered view that the impugned orders of the Tribunal are wholly unsustainable in law. That being the position, impugned orders dated 22.01.2018 and 26.02.2016 are hereby set aside. Consequently, respondents are directed to grant the disability element of disability pension to the appellant at the rate of 50% with effect from 01.01.1996 onwards for life. The arrears shall carry interest at the rate of 6% per annum till payment. The above directions shall be carried out by the respondents within three months from today."*

6. In view of the aforementioned settled principles of law, and the hereinabove observations, this Court finds no perversity or illegality requiring any interference in the impugned order passed by the AFT. Further the first respondent has been rightly held entitled to the disability pension @ 50%, as against the 30% for life with effect from 1.11.2021, i.e. one day after his discharge from service after being rounding off in terms



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of judgment of Hon'ble Supreme Court in **Ram Avtar's** case (supra).

7. Finding no merit, the instant petition, is accordingly, **dismissed**.

8. All pending application(s), if any, also stand **disposed** of accordingly.

(ASHWANI KUMAR MISHRA)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 30, 2025

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No