

Form J(2).
Item No.12
Court No. 1

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Present:
THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

WP.CT No.58 of 2026

**UNION OF INDIA AND OTHERS
Vs.
EX. CFN. UMA SANKAR BHADURI (NO.14513419)**

Appearance:

For the Petitioners : Mr. Ajay Chaubey, Adv.
Mr. Ajit Kr. Chaubey
Ms. Sarda Sha, Adv.
Ms. Ahona Guha Mazumdar, Adv.
Ms. Ritika Pipalwa, Adv.
Mr. Narool Islam, Adv.

For the Respondent : Mr. Sudipto Sarkar, Sr. Adv.
Mr. Siddhartha Mitra, Sr. Adv.
Mr. Deepan Kr. Sarkar, Adv.
Mr. Samriddha Sen, Adv.
Mr. Soumitra Datta, Adv.
Ms. Swati Banerjee, Adv.

Heard on : 7th April, 2026.

Delivered on : 7th April, 2026.

Judgment (Oral)

Per, SUJOY PAUL, CJ.:

1. This petition filed under Article 226/227 of the Constitution assails the order dated 25th July, 2024, passed by Armed Forces

Tribunal (Kolkata Bench) in O.A. No.10/2018 with MA No.7/2018 whereby the claim of disability pension of the applicant therein was allowed with certain directions.

Factual Matrix

2. Draped in brevity, the admitted facts between the parties are that the respondent/applicant was enrolled on 3rd August, 1973 in Military Service. On 5th March, 1981, he was invalidated out of service on medical grounds after rendering about 8 years of service. From 6th October, 1981, he claimed disability pension. On 8th February, 1982, Principal Controller of Defence Accounts, Allahabad, rejected respondent's claim for disability pension holding that the disease was neither attributable nor aggravated (NANA) by Military service. Said rejection order was communicated to the respondent on 27th February, 1982. The respondent thereafter preferred First Appeal, Second Appeal and after exhausting the departmental remedies filed the instant O.A. before the Tribunal. After completion of pleadings, the Tribunal heard and decided the matter in favour of the respondent.

Contention of Petitioner-Department

3. Shri Chaubey, learned counsel for the petitioner submits that the reply/affidavit-in-opposition filed before the Tribunal makes it clear that the department took a categorical stand that applicant

did not fulfil the condition for grant of disability pension because the governing provision is Para-173 of **Pension Regulation for the Army 1961** (Part-I) (Pension Regulations).

4. Shri Chaubey further submits that the Tribunal passed the impugned order without considering the claim of respondent on the anvil of the said Regulations which were holding the field. The Tribunal mechanically applied the judgment of Supreme Court in the case of ***Dharamvir Singh vs. Union of India and Others, (2013) 7 SCC 316***. By taking this court to relevant paras of said judgment reproduced by Tribunal, it is canvassed that the said judgment is based on the '**Entitlement Rules for Casualty Pensionary Awards, 1982** (1982 Rules)'. In Rule 5 and 9 of the said Rules there was a 'presumption' clause which makes it clear that if at the time of entry in the Armed Forces, no ailment/disability is found, it will be presumed that later occurred disability is presumed to have arisen during the course of and arising out of Army service. In this backdrop and pursuant to 1982 Rules the judgment of ***Dharamvir Singh (supra)*** was rendered. By taking this court to Rule 3 of 1982 Rules, Shri Chaubey submits that these Rules are not applicable to such persons who suffered disablement/death between 1.1.1948 to 31.12.1981. The Tribunal should have examined the

case of applicant therein on the parameters of the Rules applicable to him.

5. Shri Chaubey further submits that the judgment of ***Dharamvir Singh (supra)*** is distinguishable and unless it is established that the Regulations of 1961 were also having similar/*pari materia* clause, *qua* 1982 Rules the said judgment cannot be pressed into service.

The Contention of the Respondent/Applicant

6. Learned senior counsel at the outset took a preliminary objection regarding maintainability of this petition. By taking this court to Article 136(2) and 227(4) of the Constitution of India, it is urged that neither appeal before the Supreme Court nor the petition before this court under Article 227 is maintainable. More so, when neither Tribunal is a party-respondent before this court nor any other officer is impleaded as respondent. The writ petition cannot be filed against an individual/private party. To buttress this contention he placed reliance on the recent judgment of Supreme Court in ***Union of India and Others vs. Parashotam Dass*** reported in **(2025) 5 SCC 786**.
7. On merits, he supported the impugned order and urged that the Medical Board's opinion is defective. The Tribunal has considered

the rival contentions and given plausible reasons which does not warrant any interference by this court.

8. The parties confined their arguments to the extent indicated above.

9. We have heard the parties at length and perused the record.

FINDINGS

10. A plain reading of judgment of Supreme Court in the case of **Parashotam Dass (supra)** makes it clear that the order/judgment of Armed Forces Tribunal can be called in question and the judicial review is permissible before the High Court. Although test for examining the correctness of order passed by Army Tribunal in such matters may be stricter or stringent, by no stretch of imagination it can be said that as per this judgment, the order of Armed Forces Tribunal cannot be subject matter of judicial review before the High Court. In **Parashotam Dass (supra)** it was poignantly held as under:

“24. We have given thought to the matter, keeping in mind the last aspect emphasised by the learned Additional Solicitor General, dealing with the importance of the Armed Forces Tribunal, and its jurisdiction being distinct from other tribunals. We are conscious of the importance of the role performed by the Armed Forces and the discipline level required by these services. Thus, often many jurisprudential principles of other tribunals cannot be imported into the decisions of the Armed Forces Tribunal. The Armed Forces have their own rules and procedures, and if there is proper exercise of jurisdiction in accordance with the norms of the Armed Forces, the High Court or this Court have been circumspect in interfering with the

same, keeping in mind the significance of the role performed by the Armed Forces.

25. While we agree with the aforesaid principle, **we are unable to appreciate the observations in Shri Kant Sharma, which sought to put an embargo on the exercise of jurisdiction under Article 226 of the Constitution, diluting a very significant provision of the Constitution which also forms the part of basic structure. The principles of basic structure have withstood the test of time and are emphasised in many judicial pronouncements as an ultimate test. This is not something that can be doubted. That being the position, the self-restraint of the High Court under Article 226 of the Constitution is distinct from putting an embargo on the High Court in exercising this jurisdiction under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal.**

26. On the legislature introducing the concept of "Tribunalisation" (one may say that this concept has seen many question marks vis-à-vis different tribunals, though it has also produced some successes), the same was tested in L. Chandra Kumar case before a Bench of seven Judges of this Court. Thus, while upholding the principles of "Tribunalisation" under Article 323-A or Article 323-B, the Bench was unequivocally of the view that decisions of tribunals would be subject to the jurisdiction of the High Court under Article 226 of the Constitution, and would not be restricted by the 42nd Constitutional Amendment which introduced the aforesaid two Articles. In our view, this should have put the matter to rest, and no Bench of less than seven Judges could have doubted the proposition. The need for the observations in the five-Judge Bench in Rojer Mathew case qua the Armed Forces Tribunal really arose because of the observations made in Shri Kant Sharma . **Thus, it is, reiterated and clarified that the power of the High Court under Article 226 of the Constitution is not inhibited, and superintendence and control under Article 227 of the Constitution are somewhat distinct from the powers of judicial review under Article 226 of the Constitution.**

28. **We can say with some experience of handling these matters in exercise of jurisdiction under Article 226, prior to the creation of the Armed Forces Tribunal, that there used to be a large number of pension matters. Persons who had served in the Armed Forces were**

left at bay at the stage of pension. This jurisdiction is also vested with the Armed Forces Tribunal. It would be difficult to say that there would be a larger public interest involved in a pension matter, but then, for that person concerned, it is of great importance. To deny the High Court to correct any error which the Armed Forces Tribunal may fall into, even in exercising jurisdiction under Article 226, would be against the constitutional scheme. The first independent judicial scrutiny is only by the Armed Forces Tribunal. To say that in some matters, a judicial scrutiny would amount to a second appeal, would not be the correct way to look at it. What should be kept in mind is that in administrative jurisprudence, at least two independent judicial scrutinies should not be denied, in our view. A High Court Judge has immense experience. In any exercise of jurisdiction under Article 226, the High Courts are quite conscious of the scope and nature of jurisdiction, which in turn would depend on the nature of the matter.

30. How can courts countenance a scenario where even in the aforesaid position, a party is left remediless? It would neither be legal nor appropriate for this Court to say something to the contrary or restrict the aforesaid observation enunciated in the Constitution Bench judgment in *S.N. Mukherjee* case. We would loath to carve out any exceptions, including the ones enumerated by the learned Additional Solicitor General extracted aforesaid as irrespective of the nature of the matter, if there is a denial of a fundamental right under Part III of the Constitution or there is a jurisdictional error or error apparent on the face of the record, the High Court can exercise its jurisdiction. There appears to be a misconception that the High Court would reappreciate the evidence, thereby making it into a second appeal, etc. We believe that the High Courts are quite conscious of the parameters within which the jurisdiction is to be exercised, and those principles, in turn, are also already enunciated by this Court.

32. ***We have, thus, no hesitation in concluding that the judgment in Shri Kant Sharma case does not lay down the correct law and is in conflict with judgments of the Constitution Benches rendered prior and later to it, including in L. Chandra Kumar case, S.N. Mukherjee case, and Rojer Mathew case making it abundantly clear that there is no per se restriction on the exercise of power under***

Article 226 of the Constitution by the High Court. However, in respect of matters of self-discipline, the principles already stand enunciated.

33.3. The Union of India in Civil Appeal No. 5327 of 2015 titled *Union of India v. Thomas Vaidyan M.*, sought reference to a larger Bench as to, whether, a challenge would lie directly to this Court or only before the High Court. **As petitions filed under Article 226 of the Constitution against orders of the Armed Forces Tribunal are held to be maintainable, this matter would also require to be remanded to the High Court to be decided on merits since it is a service matter personal to the litigant and does not involve a point of law of general public importance.**"

(Emphasis Supplied)

11. If the order of Armed Forces Tribunal can be subject-matter of challenge on the permissible grounds of judicial review, in our considered judgment, it can be assailed by both, namely, the department and the aggrieved applicant/employee. The Supreme Court in ***M.S. Kazi vs. Muslim Education Society and Others, (2016) 9 SCC 263*** opined that in a petition under Article 226/227 the Tribunal/judicial body need not be impleaded. The relevant portion reads thus:

"10. Even if the High Court was to require the production of the record before the Tribunal, there was no necessity of impleading the Tribunal as a party to the proceedings. The Tribunal not being required in law to defend its own order, the proceedings under Articles 226 and 227 of the Constitution were maintainable without the Tribunal being impleaded."

(Emphasis Supplied)

12. Thus, merely because Tribunal has not been impleaded, it cannot be said that petition cannot be entertained.

- 13.** In this matter, subject-matter of challenge is an order of the Tribunal. This court is undertaking the judicial review of the decision making process and examining other relevant legal aspects of the impugned order. Thus, in view of **Parashotam Dass (supra)** we are unable to persuade ourselves with the line of argument of Shri Sarkar, learned senior counsel, that the petition is not maintainable, when it is filed at the behest of the department. Thus, preliminary objection is overruled.
- 14.** The stand taken before us by both the parties shows that they have taken a diametrically opposite stand on the aspect of applicability of the provisions. Shri Chaubey by taking this court to the affidavit-in-opposition urged that it was Para-173 of **Pension Regulations** which will be applicable whereas Shri Sarkar, learned Senior Counsel, has taken pains to submit that **1982 Rules** are applicable.
- 15.** A microscopic reading of the impugned order of the Tribunal shows that the Tribunal has not at all discussed the matter on the anvil of applicable Rules. When parties were at loggerheads on the question of applicability of different set of Rules, the minimum expectation from a judicial body was to give finding as to which set of Rules are applicable. The impugned order is totally silent on the said aspect.

16. Putting it differently, there is no iota of finding in the impugned order as to which Rule will govern the claim of respondent/applicant. The Tribunal was obliged to examine as to which Rule is applicable and after giving reasons therefor, Tribunal should have decided the matter.

17. This is trite that judgment of Supreme Court should not be read as a statute or Euclid's theorems. The Apex Court in ***Haryana Financial Corpn. V. Jagdamba Oil Mills*** reported in **(2002) 3 SCC 496** ruled as under:

"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as states. In London Graving Dock Co. Ltd. V. Horton [1951 AC 737: (1951) 2 All ER 1 (HL)] (at p. 761) Lord MacDermot observed: (All ER p. 14C-D)

***21.** Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

The Apex Court in ***Bharat Petroleum Corpn. Ltd. V. N.R. Vairamani*** reported in **(2004) 8 SCC 579** held as under:

***"11.** Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus : (*Abdul Kayoom v. CIT* [AIR 1962 SC 680], AIR p. 688, para 19)

“19. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

The Apex Court in **Goan Real Estate & Construction Ltd. V. Union of India** reported in **(2010) 5 SCC 388** opined as under:

“31. It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A Judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context.”

(Emphasis Supplied)

18. The judgment of **Dharamvir Singh (supra)** (as clear from Para 30 and 32 of the said judgment) is delivered on the anvil of the 1982 Rules. In the present case, the first question needs to be answered is which Rule is applicable. Thereafter, question of applicability of relevant judgment would arise which must have been delivered on the basis of a particular set of Rules.

19. The Tribunal, in our considered judgment, has failed to assign reasons as to which Rule is applicable. Reasons are held to be heartbeats of conclusions. The Supreme Court in **Kranti Associates Pvt. Ltd. & Anr. vs. Masood Ahmed Khan & Ors.**

reported in **(2010) 9 SCC 496** emphasised the need of assigning reasons in administrative, quasi-judicial and judicial orders. The relevant para reads thus:

“47. Summarising the above discussion, this Court holds:

- (a)** *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- (b)** *A quasi-judicial authority must record reasons in support of its conclusions.*
- (c)** *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- (d)** *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- (e)** *Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
- (f)** *Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- (g)** *Reasons facilitate the process of judicial review by superior courts.*
- (h)** *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*
- (i)** *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- (j)** *Insistence on reason is a requirement for both judicial accountability and transparency.*
- (k)** *If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*
- (l)** *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.*
- (m)** *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)*
- (n)** *Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.*
- (o)** *In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law,*

requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

- 20.** Ordinarily, this Court would have decided the aspect as to which set of Rules are applicable and should have decided the matter on merits. However, we have noticed that in sizable number of cases, the Tribunal is mechanically following the judgment of the Supreme Court in ***Dharamvir (supra)*** without discussing about applicability of the rules. In order to ensure that such mistakes are not repeated and Tribunal is made aware about this mistake, we deem it proper to remit the matter back to the Tribunal to decide the matter on its own merits. The matter may be viewed from another angle. In view of constitutional Bench Judgment of Supreme Court in ***L. Chandra Kumar vs. Union of India reported in (1997) 3 SCC 261***, the court of first instance is the Tribunal and, therefore, this is obligatory on the part of the Tribunal to decide the matter on merits.
- 21.** In view of foregoing discussions, we are constrained to hold that the impugned order of Tribunal dated 25th July, 2024, passed in O.A. No.10/2018 with MA 7/2018 cannot sustain judicial scrutiny. Resultantly, the said order is **set aside**.
- 22.** O.A. No.10/2018 and M.A. No.7/2018 are restored to its original number and file. The Tribunal is requested to rehear the parties and decide the matter in accordance with law, keeping in

view the observations made hereinabove. It is made clear that this court has not expressed any opinion on the merits of case.

23. Accordingly, WP.CT No.58 of 2026 is **disposed of**.

24. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned counsel for the parties, upon compliance of all formalities.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)

Later

- 1.** After passing the judgment, learned counsel for the respondent-employee prayed for stay of the present judgment.
- 2.** We find no reason to do the same.
- 3.** The prayer is, accordingly, rejected.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)