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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 13.01.2026

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W.P.(C) 3791/2025 CM APPL. 17676/2025

UNION OF INDIA AND ORS

....Petitioners

Through: Mr. Nishant Gautam, CGSC, Mr.
Vardhman Kaushik, Ms. Kavya
Shukla, Advs.

versus

EX SGT SHUBHENDU KUMAR

....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J. (ORAL)

1. This petition under Article 226 of the Constitution of India lays the challenge to the order dated 11.05.2023 ('impugned order') passed by the Armed Forces Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in O.A. 801/2022 titled **Shubhendu Kumar Ex. SGT v. Union of India and Others**, wherein the respondent has been granted the benefit of the disability element of pension at 20% for life rounded off to 50% for life from the date of retirement i.e. 15.04.2019.

2. The facts to be noted are that the respondent was enrolled into the Indian Air Force on 19.03.1997 and was discharged from the services on



15.04.2019. The Release Medical Board ('RMB', for short) proceedings were held on 12.04.2019, wherein the Medical Board assessed respondent's disability of Diabetes Mellitus Type II at 20% for life and Dyslipidemia at 1-5% for life. It was further assessed that the aforesaid disabilities were neither attributable nor aggravated ('NANA') by military service. The respondent's claim for disability pension was rejected by the petitioner vide letter dated 09.10.2019 on the basis of the said report. Therefore, the respondent approached the Tribunal by way of filing Original Application (O.A.) 801/2022 praying for grant of disability element of pension.

The respondent claimed before the Tribunal that he has served in the Indian Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

3. By impugned order dated 11.05.2023, the Tribunal allowed the respondent's claim and held that the respondent is entitled to disability element of pension in respect of disability of Diabetes Mellitus Type II at 20% rounded off to 50% for life from the date of his retirement i.e., 15.04.2019. The Tribunal referred to the judgments of the Supreme Court in **Dharamvir Singh v. Union of India and Ors.**¹, and **Union of India v. Ram Avtar**² for granting the relief as claimed by the respondent herein. It is pertinent to note that however, the Tribunal rejected the respondent's claim for Dyslipidemia at 1-5% for life.

4. The only submission made by the learned counsel for the petitioners is that the reliance placed by the Tribunal on the judgment of **Dharamvir**

¹ 2013 (7) SCC 361

² 2014 SCC OnLine SC 1761



Singh v. Union of India and Ors. (supra) is totally misplaced as in the said case) the Supreme Court was concerned with the Entitlement Rules for Casualty Pensionary Awards, 1982 ('1982 Entitlement Rules', for short), whereas the case of the respondent needs to be considered under the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 ('2008 Entitlement Rules', for short).

The petitioners contend that the Tribunal has overlooked 2008 Entitlement Rules, which govern attributability and aggravation and no longer permit a blanket presumption in favour of the claimant. He states in the facts of this case, respondent was discharged on 15.04.2019 and therefore, the respondent would be governed by 2008 Entitlement Rules. He states that the impugned order incorrectly applies the presumption under the repealed 1982 Entitlement Rules, ignoring the amended regime under 2008 Entitlement Rules. He states that 2008 Entitlement Rules have done away with the general presumption to be drawn in order to ascertain the principle of '*attributable to or aggravated by military service*'.

5. Having perused the opinion of the RMB, we are unable to agree with the submission made by the learned counsel for the petitioners that the Tribunal committed any error in granting relief to this respondent. In the facts of this case, the respondent would be entitled to disability pension even under the 2008 Entitlement Rules.

6. In another petition i.e., W.P.(C) 88/2026 titled **Union of India v. 781466 Ex. SGT Krishna Kumar Dwivedi**, decided by this Bench on 06.01.2025, our attention was drawn to the authoritative judgments of the coordinate Benches of this Court passed in **W.P.(C) 3545/2025** titled **Union**



of India v. Ex. Sub Gawas Anil Madso³ and W.P.(C) 140/2024 titled **Union of India vs. Col. Balbir Singh (Retd.) and other connected matters**⁴, which have conclusively held that even under 2008 Entitlement Rules, an officer who suffers from a disease at the time of his release and applies for disability pension within 15 years from release of service, is ordinarily entitled to disability pension and he does not have any onus to prove the said entitlement. The 2008 Entitlement Rules, however, contemplate that in the event the Medical Board concludes that the disease though contracted during the tenure of military service, was not attributable to or aggravated by military service, it would have to give cogent reasons and identify the cause, other than military service, to which the ailment or disability can be attributed. The judgments hold that a bald statement in the report of the Medical Board opining ‘onset in peace station’ would not be sufficient, for the military department for denying the claim of disability pension. The burden to prove the disentitlement therefore remains on the military department even under 2008 Entitlement Rules; and the aforesaid judgments emphasize on the significance of the Medical Board giving specific reasons for denial of this beneficial provision. The judgments hold that the onus to prove a causal connection between the disability and military service is not on the officer but on the administration.

7. For reference, we also note that the Supreme Court in its recent opinion in the case of **Bijender Singh vs. Union of India and Others**⁵, wherein at paragraphs 45.1, 46 and 47, has held as under:

³ 2025: DHC: 2021-DB

⁴ 2025: DHC: 5082-DB

⁵ 2025 SCC OnLine SC 895



“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.”

(Emphasis Supplied)

8. In this background of law settled vis-à-vis 2008 Entitlement Rules we have examined the facts of this case.

The Tribunal has held that the respondent is entitled to disability element of pension in respect of his disability of Diabetes Mellitus Type II assessed at 20% rounded off to 50% for life. The petitioner does not dispute the disability of the respondent, which is borne out from the medical record. The petitioner has only raised the issue of non-entitlement of the disability element of the pension on the ground that the Medical Board has held that the diseases are not attributable to or aggravated by military service.

9. The respondent was enrolled in the Indian Air Force on 19.03.1997 and the disease was discovered in April, 2017 (after 20 years of service) when he was serving at peace station in Sulur and therefore the disease has indisputably arisen during his military service. The respondent admittedly did not suffer any disability before joining the armed forces. Respondent was discharged from service on 15.04.2019 as the RMB recommended his release on account of his low medical category.



10. The petitioner has first contended, the onset of the disease was at a peace station and there was therefore no stress of the military service. This reason has been specifically rejected by the coordinate Benches in both **Ex. Sub Gawas Anil Madso**⁶ (supra) and **Col. Balbir Singh (Retd.)**⁷ (supra).

11. The petitioner has next contended that the disease was attributable to respondent's dietary indiscipline and sedentary lifestyle and therefore not attributable to military service. The respondent was enrolled in the Force in the trade of weapon fitter. We however find that the Medical Board has not recorded the nature of service which was being performed by the respondent during his long service from 1997 to April, 2017 (when the disease was diagnosed) and opined whether the sedentary lifestyle was not a consequence of the nature of duties, which were being discharged by the respondent. We are unable to accept that merely recording sedentary lifestyle would be sufficient to deny the petitioner who had served for 22 years and was invalidated from service due to low medical category can be denied the disability pension for the reasons recorded by the Medical Board.

12. In view of the aforesaid findings, the petitioners' challenge to the grant of disability element of pension to the respondent, is without any merits. As held above, the report of the Medical Board fails to give any cogent reasons for opining that the disease is not attributable to the military service and the respondent has therefore, been rightly held entitled to disability element of pension as per 2008 Entitlement Rules.

13. The interim stay granted vide order dated 04.08.2025 is hereby vacated.

⁶ At paragraph 82 to 84

⁷ At paragraph 67 to 74



2026:DHC:293-DB



14. We therefore find no merit in this petition; the petition is dismissed.
No costs.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JANUARY 13, 2026/MG

Signature Not Verified

Signed By: MAHIMA
SHARMA
Signing Date: 20.01.2026
11:06

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