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

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Date of Decision : 09.01.2026

+ **W.P.(C) 254/2026, CM APPL. 1178/2026(Stay) & CM APPL. 1179/2026(Exemption)**

UNION OF INDIA THROUGH SECRETARY
MINISTRY OF DEFENCE & ORS.

.....Petitioners

Through: Mr Arnav Kumar, CGSC and Mr
Keshav Mittal, Advocate.

versus

GP CAPT DILISH MALIK RETD19371

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioners challenging the Order dated 17.08.2023 ('Impugned Order') passed by the Armed Forces Tribunal, Principal Bench, New Delhi ('Tribunal') in Original Application No. 2339 of 2019 ('OA', for short). The Tribunal has held that the respondent is entitled to disability element of pension due to Primary Hypertension at 30% for life and Diabetes Mellitus at 20% for life, compositely at 44% for life, rounded off to 50% with effect from the date of discharge .

2. The petitioners are seeking the following prayers in the present petition:-

“a. Issue a Writ or direction in the nature of Certiorari,



setting aside the Order dated 17.08.2023 passed by the Ld. Armed Forces Tribunal, Principal Bench, New Delhi in Original Application No. 2339 of 2019 titled “Gp Capt Dilish Malik (Retd) Versus Union of India and Others”; and / or”

3. The facts as noted from the impugned order are that the respondent underwent primary medical examination and was declared ‘fit’ in medical category ‘A4G1’ before commissioning in Indian Air Force vide AFMSF-2A dated 16.06.1987, on 29.01.1988. On 28.03.2018, the Release Medical Board (‘RMB’, for short) of the respondent was held wherein, it was held that the respondent is suffering from; (a) Primary Hypertension (Old) I-10.0, Z-09.0 assessed at 30% and (b) Asymptomatic Transaminitis (Old) R94.5, Z-09 at 1-5% and (c) Diabetes Mellitus (Old) Type-II E11.0, Z-09.0 assessed at 20% (composite for all the disabilities assessed @ 50% for life). The RMB gave an opinion that the disability/disabilities are neither attributable nor aggravated by the Air Force service. On 31.08.2018, the respondent was released from the service on attaining the age of superannuation with permanent low medical category [A4G2 (P)].

4. Thereafter, on 19.11.2018, the claim of the respondent for disability pension was also rejected by the Air Force vide letter No. Air HQ/99797/4050/Dis/O/DAV-1 (B), with an option to appeal before the Appellate Committee. The respondent filed the First Appeal for grant of disability pension on 12.10.2019. The same was rejected vide letter No. Air HQ/ 99797/4050/Dis/O/DAV-1(B) dated 21.11.2019 in terms of Regulation 37 of Pension Regulations for the Air Force 1961 (Part-1). The respondent filed the OA before the Tribunal, challenging the decision.



5. The Tribunal, in view of the judgment of the Supreme Court in the case of *UoI & Ors. v. Ram Avatar, Civil Appeal No. 418/2012, decided on 10.12.2014*, has held as under:-

“19. Thus, the OA 2339/2019 is allowed and the applicant is held entitled to the grant of the disability element of pension qua the disability Primary Hypertension @ 30% for life and Diabetes Mellitus @ 20% for life, assessed by the RMB dated 28.03.2018 compositely@ 44% for life, which in terms of the verdict of the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as UOI & Ors. Vs. Ramavtar, is rounded off to 50% for life from the date of discharge of the applicant.

20. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum till the date of payment.”

6. Mr. Arnav Kumar, the learned CGSC appearing for the petitioners submits that the impugned order is *per incuriam* as the provisions contained in the Entitlement Rules, 2008 were not reconciled by the Tribunal, wherein the general presumption to be drawn in order to ascertain the principle of attributable to or aggravated by military service has been done away with. He also contends that the Tribunal has overlooked the opinion of the RMB, wherein, it is held that the respondent's disability is neither attributable to nor aggravated by military service.

7. According to him, the Tribunal has failed to appreciate that there cannot be universal or perpetual yardstick for adopting presumption or deemed attributability in all cases where disease was not detected at the time of entry into service but has arisen during service which is diagnosed by



medical authority at the time of release or retirement as held by the Supreme Court in the cases of *UOI & Ors v. Ex Sep R Munusamy 2022 SCC OnLine SC 892* and *Ex CFN Narsingh Yadav v. Union of India, (2019) 9 SCC 667*.

8. Mr. Kumar submits that the basic criterion to award disability pension in terms of Rule 6 of the Entitlement Rules, 2008, is that there should be a causal connection between the disability/death and the military service. In the case of the respondent, the RMB and Competent Medical Authorities and Administrative Authorities, have held that the disabilities of the respondent are neither attributable to nor aggravated by the military service.

9. He submits that the Rule 10 of Entitlement Rules, 2008, carves out two conditions which are to be simultaneously satisfied for a disability to be attributable to military service; (a) that the disease has arisen during the period of military service; (b) that the disease has been caused by the conditions of employment in the military service. He also submits that, Rule 11 of Entitlement Rules, 2008, provides that a disability will be conceded to have been aggravated by military service if the onset of the disability is hastened or the subsequent course is worsened by specific conditions of military service.

10. According to him, a disability shall be conceded to be aggravated by service if its onset is hastened or subsequent course is worsened by specific condition of the military service, such as, posted in extreme climatic condition, environmental factors, etc. The disability of the respondent cannot be held to be aggravated by military service. He by relying on the



judgment of the Supreme Court in the case of *Secretary, Ministry of Defence and Others v. A.V. Damodaran (Dead) through LR and Others, (2009) 9 SCC 140.*, contends that the Release/ Invalidating Board draws a conclusion as to whether the disability has a causal connection with military service or not and on the basis of the same, the Release / Invalidating Board recommends whether the disability is attributable to or aggravated by military service.

11. He submits that the reliance placed by the Tribunal in *Dharamvir Singh v. Union of India & Ors., 2013 (7) SCC 316*, is misplaced inasmuch as the rule position under entitlement rules 1982 have been superseded by Entitlement Rules, 2008. Therefore, post 2008, cases are governed by Entitlement Rules 2008 and not Entitlement Rules, 1982. He also submits that the Tribunal has erred in not appreciating the settled principle of law that the opinion of the RMB should not be disputed unless there is strong medical evidence to the contrary.

12. He submits that the Supreme Court in the case of *Union of India and Another v. Talwinder Singh, reported as (2012) 5 SCC 480.*, has held that the court should not interfere with the order based on opinion of experts on the subject. It would be safe for the courts to leave the decision to experts who are more familiar with the problems they face than the courts generally can be. He submits that the Tribunal has gone beyond the provision to interpret the policy which was never in challenge and has transgressed into the realm of policy making, and relies on the judgment of the Supreme Court in *Dhanraj v. Vikram Singh, 2023 SCC OnLine SC 724*.



13. He submits that the Rule 15 of Guide to Medical Office (Military Pension), 2008 also provides for reassessment with regard to percentage of disability and provides as opportunity to individual to request for review. He also submits that, as per Pension Regulations for the Indian Air Force, 1961 (Part-I), the disability pension can be granted only when the individual who is invalided out/ discharged/ retired from service while fulfilling the following conditions:

- a. disability must be attributable to or aggravated by service, and;
- b. degree of disablement should be assessed at 20% or more.

14. He submits that the Tribunal has not considered the fact that, not only medical board but also Administrative Authority i.e. Appellate Committee on First Appeal ('ACFA', for short) also examined the case and has given detailed reasons as to why disability element cannot be granted to the respondent. The ACFA, by giving detailed reasons in addition to the reasons given by medical authorities, has discharged its obligation. He also submits that, the petitioners have approached the Court in view of the law laid down by the Supreme Court in judgment dated 21.03.2023 in titled as ***Union of India & Ors. v. Parashotam Dass, Civil Appeal No.447/2023.***

15. Having heard the learned counsel for the petitioners and perused the record, at the outset, we may state here that the three authorities had assessed the disability of Primary Hypertension and Diabetes Mellitus at 30% and 20%, respectively. The RMB gave an opinion that the disabilities are neither attributable to nor aggravated by the Air Force service.

16. We may reproduce the RMB opinion in the following manner:-



STATEMENT OF CASE

1. Chronological list of disabilities
2. Clinical details: attach clinical summary here giving the salient facts of
 - (a) Personal and relevant family history
 - (b) Special report
 - (c) Treatment
 - (d) Present condition in detail

Attached

Disabilities	Date of Origin	Rank of Indl	Place and unit where serving at the time
(i) Primary Hypertension (Old) I10.0, Z09	Jun 2002	Wg Cdr	Gorakhpur/ 16 Sqn, AF
(ii) Asymptomatic Transaminitis (Old) R94.5, Z09	06 Jun 14	GP CAPT	New Delhi/ DAI
(iii) Diabetes Mellitus Type II (Old) E11.0, Z09	Nov 15	GP CAPT	Bareilly/ 15 Wg AF

Note: insert the clinical summary sheet between page 4 & 5, without and folds No of part of the attachment should not protrude out of form.

1. Causal Relationship of the Disability with Service conditions or otherwise				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reason/cause/specific condition and period in service
(i) Primary Hypertension (Old) I10.0, Z09	No	No	Yes	A life style related metabolic disorder. Onset: Jun 2002 while posted at peace station Gorakhpur/16 Sqn AF. There was no delay in treatment (admitted at 12 AFI Gorakhpur on onset 02 Jun 02). There is also no close time association with stress strain of Field / HAA / CI ops of service. Hence disability is neither attributable to service nor aggravated by military service as per Para 43 of Chapter VI of Guide to Medical Officers (Military Pensions) Version 2008.

(iii) Diabetes Mellitus Type II (Old) E11.0, Z09	No	No	Yes	A life style related metabolic disorder. Onset: Nov 15 while posted at peace station Bareilly/15 Wing, AF. There was no delay in treatment (detected during review/recal for Dis (i) & (ii) at MH Bareilly & treated for the same at a time on OPD basis). There is no close time association with stress / strain of Field / HAA / CI ops of service. Hence disability is neither attributable to service nor aggravated by military service as per Para 26 of Chapter VI of Guide to Medical Officers (Military Pensions) Version 2008.
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17. The Appellate Committee has also rejected the letter of the respondent herein by stating as under:-

Signature Not Verified

Signed By: PRADEEP SHARMA
Signing Date: 21.01.2026
10:05:09



DISABILITY PENSION:
GP CAPT. (TS) DILISH MALIK (RETD) (19371) MED
DOR – 31 AUG 2018

1. Having examined your case in accordance with the existing medical and administrative provisions for grant of disability element of pension, it is intimated that Individual Disabilities (IDs) viz., (i) **Primary Hypertension** (ii) **Asymptomatic Transaminitis** and (iii) **Diabetes Mellitus Type-II** from which you were found to be suffering at the time of Release Medical Board (RMB), are neither attributable to nor aggravated by Air Force Service. Hence, you are not entitled to disability element of pension as per the existing provisions in this regard.

2. In case you are not satisfied with the above decision, you may prefer an appeal to the Appellate Committee for First Appeal (ACFA) within six months from the date of receipt of this letter. The appeal may please be addressed to the Air Cmde AV, Dte of Air Veterans, Air HQrs, SMC Building (First Floor), Subroto Park, New Delhi – 110010.

18. Suffice to state, even the representation made by the respondent to the Appellate Authority was rejected. Similarly, even the review thereafter was rejected.

19. It may be stated here that the disability of Asymptomatic Transaminitis (old) was not pressed before the Tribunal. So, the disabilities has to be seen in the context of Primary Hypertension and Diabetes Mellitus-II. Suffice to state that, in *Union of India & Others v. 1481129 P Ex Hav Ram Kumar, 2026, DHC, 197-DB*, this Court has held under:-

“9. In W.P.(C) 88/2026 titled Union of India v. 781466 Ex. SGT Krishna Kumar Dwivedi, decided by this Bench on 06.01.2026, 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 Madso, 2025: DHC: 2021-DB and W.P.(C) 140/2024 titled Union of India vs. Col. Balbir Singh (Retd.) and other connected matters, 2025: DHC: 5082-DB, 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 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 casual connection between the disability and military service is not on the officer but on the administration.

10. We for benefit also note that the Supreme Court in its recent opinion in the case of *Bijender Singh vs. Union of India and Others*, 2025 SCC OnLine SC 895, wherein at paragraphs 45.1, 46 and 47, the Supreme Court held as under:

“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.”

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13. At this juncture it would be apposite to refer to the judgment of the coordinate Bench of this Court in *Union of India v. Col. Balbir Singh (Retd.)* (supra), wherein the Court emphasized on the significance of the Release Medical Board recording clear and cogent reasons for denying the entitlement of disability pension to the officer. The relevant paragraphs of the said judgment are as under: -

“50. In this regard, it is further relevant to note the observations of the Supreme Court in the *Rajumon T.M. v. Union of India & Ors.*, 2025 SCC OnLine SC 1064, the relevant portions of which reads as under:

.....

.....

25. We, therefore, hold that if any action is taken by the authority for the discharge of a serviceman and the serviceman is denied disability pension on the basis of a report of the Medical Board wherein no reasons have been disclosed for the opinion so given, such an action of the authority will be unsustainable in law.”

51. In view of the above, it is essential for the Medical Boards to record and specify the reasons for their opinion as to whether the disability is to be treated as attributable to or aggravated by military service, especially when the pensionary benefits of the Force personnel are at stake.

.....

53. Particularly in this milieu, it is of paramount importance that Medical Boards record clear and cogent reasons in support of their



medical opinions. Such reasoning would not only enhance transparency but also assist the Competent Authority in adjudicating these matters with greater precision, ensuring that no prejudice is caused to either party.

.....
56. *It must always be kept in view that the Armed Forces personnel, in defending this great nation from external threats, have to perform their duties in most harsh and inhuman weather and conditions, be it on far-flung corner of land, in terrains and atmosphere where limits of mans survival are tested, or in air or water, where again surviving each day is a challenge, away from the luxury of family life and comforts. It is, therefore, incumbent upon the RMB to furnish cogent and well-reasoned justification for their conclusions that the disease/disability suffered by the personnel cannot be said to be attributable to or aggravated by such service conditions. This onus is not discharged by the RMB by simply relying on when such disability/disease is noticed first.*

.....
77. *Thus, in view of the above, the RMB must not resort to a vague and stereotyped approach but should engage in a comprehensive, logical, and rational analysis of the service and medical records of the personnel, and must record well-reasoned findings while discharging the onus placed upon it.*

(Emphasis Supplied)

20. Having noted the position of law, we examine the facts of this case, the respondent was appointed in the Air Force on 29.01.1988. He retired from service on 31.08.2018 after rendering 30 years 07 months and 03 days of service. The RMB proceedings as noted by the Tribunal for both the disabilities of Primary Hypertension and Diabetes Mellitus primarily states that these are lifestyle related metabolic disorder. The onset was in the years 2002 and 2015 respectively.

21. Therefore, the opinion of the RMB is that the disabilities are neither attributable nor aggravated by the Air Force service. The RMB does not give any reasons except stating that it is a lifestyle disorder. It was required to



give the reasons as to how the disability is not relatable to Air Force service or for that matter, it is relatable to lifestyle disorder.

22. It must be noted that lifestyle varies from individual to individual. Therefore, a mere statement that the disease of lifestyle disorder would not be a sufficient reason to deny the grant of disability pension unless Medical Board has duly examined and recorded particulars relevant to the individual concerned.

23. Hence, in view of the settled position of law, it is clearly applicable to the facts of the case, we are of the view that in the absence of reasons by the RMB, the conclusion drawn by the Tribunal cannot be interfered with. The petition being devoid of merits is dismissed along with pending applications.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

JANUARY 09, 2026/sr