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

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Date of Decision : 27.01.2026+ **W.P.(C) 1098/2026****UNION OF INDIA AND ORS**

.....Petitioners

Through: Mr Ashish K Dixit, CGSC and Mr
Umar Hashmi, Ms Iqra Shiesh and
Ms Namita, Advocates.

versus

OM PRAKASH DUBEY

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****MANMEET PRITAM SINGH ARORA, J. (ORAL)****CM APPL. 5348/2026 (exemption)**

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 1098/2026 & CM APPL. 5347/2026(Stay)

3. This is a petition filed under Article 226 of the Constitution of India against the order dated 10.01.2024 passed by the Armed Forces Tribunal Principal Bench, New Delhi ['Tribunal'] in Original Application ('O.A.') No. 1146/2019 titled as **Ex JWO Om Prakash Dubey v. Union of India & Ors.**, wherein the respondent has been granted the benefit of the disability element of pension for Primary Hypertension assessed at 30%, rounded off to 50% for life from the date of his discharge from the service.



4. The facts giving rise to the present writ petition are that the respondent was enrolled in Indian Air Force on 15.07.1996 and was discharged from the service on 31.07.2016 under clause 'on fulfilling the conditions of enrolment'. At the time of discharge, the Release Medical Board ['RMB'] assessed his disability i.e., Primary Hypertension at 30% for life. The RMB opined that since the onset of the diseases was at the time when the respondent was serving at a peace station, the aforesaid disability was neither attributable to nor aggravated ['NANA'] by the military service.

5. The respondent's claim of disability pension was rejected by the Petitioner vide letter dated 30.11.2015 being the disability was found NANA by the service. The respondent filed his first appeal, that was rejected by the Appellate Committee on First Appeal ['ACFA'] vide letter dated 26.02.2020.

6. Thereafter, the respondent filed O.A. No. 1146/2019 before the Tribunal for grant of disability element of pension. The Tribunal vide impugned order held that the respondent is entitled for disability element of pension for Primary Hypertension assessed at 30% for life, rounded off to 50% for life.

7. 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.

8. By impugned order dated 10.01.2024, the Tribunal allowed the respondent's claim. The Tribunal referred to the judgments of the Supreme



Court in **Dharamvir Singh v. Union of India and Ors.**¹, **Union of India v. Ram Avtar**² and other judgments for granting the relief as claimed by the respondent herein.

9. The only submission made by the learned counsel for the petitioners is that the reliance placed by the Tribunal on the judgment of **Dharamvir 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 [‘Entitlement Rules, 1982’] whereas the case of the respondent needs to be considered under the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 [‘Entitlement Rules, 2008’].

10. The petitioners contend that the Tribunal has overlooked Entitlement Rules, 2008 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 31.07.2016 and therefore, the respondent would be governed by Entitlement Rules, 2008. He states that the impugned order incorrectly applies the presumption under the repealed Entitlement Rules, 1982 ignoring the amended regime under Entitlement Rules, 2008. He states that Entitlement Rules, 2008 have done away with the general presumption to be drawn in order to ascertain the principle of ‘attributable to or aggravated by military service’.

11. 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

¹ 2013 (7) SCC 361

² 2014 SCC OnLine SC 1761



facts of this case, the respondent would be entitled to disability pension even under the Entitlement Rules, 2008.

12. 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 06.01.2026, 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**³ 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 Entitlement Rules, 2008 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 Entitlement Rules, 2008 however, contemplate that in the event the Medical Board concludes that the disease, though contracted during the tenure of military service, was NANA 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 to deny the claim of disability pension. The judgments hold that the burden to prove the disentitlement of pension therefore remains on the military department even under the Entitlement Rules, 2008; and emphasise on the significance of the Medical Board giving specific reasons for denial of this beneficial provision to the officer. The

³ 2025: DHC: 2021-DB

⁴ 2025: DHC: 5082-DB



judgments hold that even under the Entitlement Rules, 2008 the onus to prove a causal connection between the disability and military service is not on the officer but on the administration.

13. 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 on the aspect of furnishing of reasons: -

“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

⁵ 2025 SCC OnLine 895



*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)

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

15. The Tribunal has held that the respondent is entitled to disability element of pension in respect of his disability i.e., Primary Hypertension at 30% for life, rounded off to 50% for life from the date of discharge i.e., 31.07.2016. The petitioners have 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 the military



service. The opinion rendered by the RMB is extracted as under: -

PART-IV				
OPINION OF THE MEDICAL BOARD				
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
PRIMARY HYPERTENSION, ICD NO 110.0	N	N	Y	As onset of disability is while serving in Peace station hence not connected with military service.
Note: A disability "Not connected with service" should be neither Attributable nor Aggravated by service. (This is in accordance with instructions contained in 'Guide to Medical Officers (MI Pension)-2002')				

16. The respondent was enrolled in the Indian Air Force on 15.07.1996 and the disease was discovered in the month of April 2013 (after almost 17 years of service), while he was serving at peace station in Hashimara, West Bengal and therefore, the disease has indisputably arisen during his military service. The respondent admittedly did not suffer any disability before joining the armed forces. The respondent was discharged from service on 31.07.2016.

17. The petitioners contend that 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 Benche of this Court in **Col. Balbir Singh (Retd.)** (supra)⁶ while granting disability pension to Officer suffering from Primary Hypertension, and has been held to be an invalid ground for denying attributability to the military service.

No other ground except peace station has been cited in the RMB

⁶ At paragraph nos. 66 to 74



report. In fact, the RMB categorically records that respondent did not suffer any disability before joining the armed forces as recorded in the RMB in response to the second question; and it also records that the disability is not attributable to the officer's own negligence or misconduct, both at internal page 5 of the RMB⁷. In these facts, if no other causal connection for the disease has been found to exist by the Medical Board, the plea of disability pension cannot be rejected by the Military establishment, and the officer would be entitled to disability pension. (**Re: Dropadi Tripathi v. Union of India**⁸).

18. In view of the aforesaid findings, the petitioners' challenge to the grant of disability element of pension to the respondent, is without any merits. The respondent has been rightly held to be entitled to the disability pension under the 2008 Entitlement Rules.

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

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JANUARY 27, 2026

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⁷ Page 82 of the paper-book

⁸ 2025: DHC: 8709-DB at paragraph nos. 13 and 14.