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

Reserved on: 25 March 2025
Pronounced on: 27 March 2025

\+ W.P.(C) 3545/2025, CM APPLs. 16579/2025 & 16580/2025

UNION OF INDIA & ORS. .....Petitioners

Through: Mr. Jivesh Kumar Tiwari, Sr. PC for UOI with Ms. Samiksha with Major Anish Murlidhar, (Army)

versus

EX SUB GAWAS ANIL MADSO .....Respondent
Through: Mr. U.S. Maurya, Adv.

W.P.(C) 3667/2025, CM APPLs. 17099/2025 & 17100/2025

UNION OF INDIA & ORS. .....Petitioners

Through: Mr. K.C. Dubey, Sr. PC with Mr. R.K. Dagar and Mr. Rupesh Kumar, Advs. for UOI with Major Anish Murlidhar, (Army)

versus

EX NK AMIN CHAND .....Respondent
Through: Mr. U.S. Maurya, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

% 27.03.2025

C. HARI SHANKAR, J.

WP (C) 3545/2025 [*UOI v Ex Sub Gawas Anil Madso*]

1. President John F. Kennedy's stirring words during his inaugural address represent, to this day, the grand summation of everything that patriotism, and love for one's nation, means and represents:

> "Ask not what your country can do for you; ask for what you can do for your country."

2. There are those of us who eulogize and revere these words, but stop there. Then there are those who make it part of their lives, and are willing to sacrifice their all for their country – who, while we sip our hot cappuccinos by the fireplace, are braving icy winds at the border, willing to lay down their lives at a moment's notice. Can anything, that the nation, and we as its citizens, give to these true sons of the motherland, ever be too much?

3. And yet, the human body is made of skin, bone, and sinew, and it is not always that the body can keep pace with the spirit. Defending the country, and its countrymen, rarely provides, to the body of the defender, a feeling of comfort, and the conditions in which our defenders defend us are often harsh and inhospitable. The stresses and strains of military life, physical, mental and spiritual, are such as those others of us who continue to lead our daily humdrum lives can at

times imagine and visualize, but never experience. In such daunting conditions of existence, the body, and at times the spirit, often gives way.

4. The possibility of disease and disability, therefore, comes as a package deal with the desire, and determination, to serve the country. The bravest of soldiers is prone, given the conditions in which he serves the nation, to fall prey to bodily ailments which, at times, may be disabling in nature, rendering him unable to continue in military service. In such circumstances, the least that the nation can do, by way of recompense for the selfless service that the soldier has lent it, is to provide comfort and solace during the years that remain.

5. It is to this laudable end that provisions have been engrafted, in our laws, providing for financial benefits to such soldiers, or military personnel, who encounter disease or disability which is attributable to, or aggravated by, military service. Among these financial benefits is disability pension, and it is the entitlement of such officers, and soldiers, to disability pension, as available in law, that the petitioners have sought, in this petition, and several others which come before us on a daily basis, to call into question.

6. We proceed, now, to the case before us.

7. This writ petition, at the instance of the Union of India, assails order dated 16 July 2024, passed by the Armed Forces Tribunal[1] in

[1] "the AFT", hereinafter

OA 310/2019. By the impugned judgment, the AFT has held the respondent to be entitled to disability pension @ 20%, rounded off to 50% for life in terms of the judgment of the Supreme Court in ***UOI v Ram Avtar***[2]**.** The arrears have, however, been restricted to three years prior to the date of filing of the OA by the respondent before the AFT.

8. When this petition came up for preliminary hearing before us on 21 March 2025, we informed learned Senior Panel Counsel for the petitioners that there appear to be several judgments of the Supreme Court covering the issue in controversy in favour of the respondent, among others, ***Dharamvir Singh v UOI***[3]**,** ***UOI v Rajbir Singh***[4]**,** and ***Sukhvinder Singh v UOI***[5]**.**

9. Mr. Jivesh Kumar Tiwari, learned Senior Panel Counsel appearing for the petitioners submitted that a Coordinate Bench of this Court has reserved judgment in a batch of writ petitions in which similar issues were involved. We are, however, inundated with cases like this, with 3 to 4 matters being listed before us on a daily basis, against orders passed by the AFT, in most cases following the judgments of the Supreme Court in ***Dharamvir Singh*** and ***Sukhvinder Singh.*** There is also no interdiction on us in deciding these writ petitions.

10. In ***UOI v HFO Satyvir Singh***[6] and ***UOI v Ex SGT Rudra***

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[2] **2014 SCC OnLine SC 1761**
[3] **(2013) 7 SCC 316**
[4] **(2015) 12 SCC 264**
[5] **(2014) 14 SCC 364**
[6] **WP(C) 3257/2025**

Pratap Singh[7], which had come up before us on 19 March 2025, learned Counsel for the Union of India in the said cases had, keeping this aspect of the matter in mind, agreed to comply with the order passed by the AFT, subject to the respondent furnishing an undertaking that the disbursal of disability pension to the respondent would be subject to the outcome of the writ petition. We, accordingly, passed the following order on 19 March 2025:

> "**W.P.(C) 3257/2025**
> **W.P.(C) 3359/2025**
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> 3. *Prima facie,* the dispute in these cases stands covered by the judgments of the Supreme Court in ***Dharamvir Singh v UOI, UOI v Rajbir Singh*** and ***Sukhvinder Singh v UOI***, applying which the decision of the Armed Forces Tribunal to grant Disability Pension to the respondents cannot be faulted.
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> 4. However, as learned Counsel for the petitioners submit that a Coordinate Bench of this Court has reserved judgment in a batch of writ petitions involving identical issues, issue notice to show cause as to why rule *nisi* be not issued. Notice is accepted by Mr. Praveen Kumar, learned counsel for the respondent in WP (C) 3257/2025.
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> 5. Issue notice in WP (C) 3359/2025.
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> 6. Counter affidavit, if any, be filed within four weeks with advance copy to learned Counsel for the petitioners, who may file rejoinder thereto, if any, within four weeks thereof.
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> 7. Re-notify on 7 August 2025.
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> **CM APPL. 15303/2025 in W.P.(C) 3257/2025**
> **CM APPL. 15859/2025 in W.P.(C) 3359/2025**
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> 8. As the dispute appears to be covered by the aforesaid judgments of the Supreme Court, we are not inclined to grant any stay of operation of the impugned judgment passed by the Tribunal.

[7] **WP(C) 3359/2025**

9. Accordingly, the petitioners are directed to comply with the impugned judgment passed by the Tribunal within a period of four weeks from today subject to the outcome of these writ petitions.

10. Subject to the petitioners making payment to the respondents in accordance with the impugned judgment passed by the Tribunal within a period of four weeks from today, the applications are disposed of.

11. Needless to say, the compliance would be subject to the outcome of the writ petitions.

12. The respondents are also directed to file affidavits with this Court undertaking to repay the amount paid to them by the petitioners in case the petitioners succeed in these writ petitions.

13. *Dasti*."

11. We suggested to Mr. Tiwari that an identical order could be passed in the present case as well. However, Mr. Tiwari, instructed by Major Anish Murlidhar, was not agreeable to this course of action and submitted that we may instant proceed to hear the matter on merits, on the aspect of issuance of notice and grant of interim relief. As against this, learned Counsel for the respondent submitted that the writ petition was completely devoid of merit, as the issue stands covered in the respondent's favour by a veritable plethora of judgments of the Supreme Court.

12. We, therefore, have heard learned Counsel for both sides in the matter and proceed to pass judgment.

The legal position

13. Before adverting to the facts of the present case, we deem it

appropriate to set out the legal position, starting from the decision in ***Dharamvir Singh***.

14. In all these cases, the factual conspectus is more or less the same. The concerned Officer, or Javan, who claims to have suffered disability or fallen prey to some illness or disease attributable to the military service rendered by him, seeks disability pension. In some cases, the officer has been invalided or discharged from service on the ground of illness or disability. In others, the officer has sought disability pension after leaving the service. In all these cases, the issue in controversy is identical. We, however, restrict ourselves, with the facts of the present writ petition, with which we are concerned.

15. We now proceed, chronologically, through some of the decisions, starting with ***Dharamvir Singh,*** which have examined the aspect.

16. ***Dharamvir Singh***

16.1 The Supreme Court, in ***Dharamvir Singh,*** framed the following two questions as arising for consideration before it:

> "2.1. Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance?
>
> 2.2. Whether the appellant is entitled for disability pension?"

16.2 The manner in which the Supreme Court has itself chosen to

word the first issue arising before it for consideration is, to us, of considerable significance. We may explain this as under:

(i) As worded, the first issue merely refers to the situation which obtained at the time of entrance of the officer into military service. It does not refer to anything that happened thereafter, or during the course of military service of the officer. It poses the query of whether, if there is no note recorded, at the time of entrance of the officer in military service, of his suffering from any disease or disability, the officer can be presumed to be in sound physical and mental condition. As such, the poser is with respect to the effect of the absence of any note, recorded at the time of entrance of the officer into military service, of his suffering from any ailment or disability. Would it mean that the officer is fit?

(ii) The corollary, however, is obvious, even if unwritten. If the first issue is answered in the affirmative; in other words, if the omission of any note, in the record of the officer at the time of his entering military service, would imply that the officer is in sound physical and mental health at the time, then it is obvious that if, at a later point of time during his military service, he is found to be suffering from some disease or disability, that disease or disability *must* have arisen *during* the course of his military service.

(iii) The only issue that would remain to be considered, then, would be whether the disease, or disability, *is attributable to*

military service. This issue would, then, dovetail into the second issue framed by the Supreme Court, as, if the disease or disability is attributable to military service, the officer would, *ipso facto*, be entitled to disability pension.

16.3 It is also important to note that the issue of whether the concerned officer is invalided out of service, or discharged, or retires, is not a factor which has been included in the issue, as framed. The issue absolutely addresses the question of whether a disease or disability, from which the officer is found to be suffering during military service, and of which there is no note recorded at the time when he enters service.

16.4 We may now turn to the facts of ***Dharamvir Singh***.

16.5 After having rendered about nine years of service, Dharamvir Singh was boarded out of service w.e.f.[8] 1 April 1994 on the ground of 20% permanent disability, as he was found suffering from epilepsy. The matter was referred to the Medical Board of the Army, which opined that the disability was not related to the military service rendered by Dharamvir Singh. Resultantly, no disability pension was granted to him.

16.6 Dharamvir Singh, therefore, petitioned the High Court of Himachal Pradesh. A learned Single Judge observed that as there was nothing to show that Dharamvir Singh was suffering from epilepsy at

[8] with effect from

the time of his recruitment to the Army, the disease would be deemed to be attributable to or aggravated by his military service. Accordingly, in terms of Regulation 173[9] of the Army Pension Regulations 1961, Dharamvir Singh was held to be eligible for disability pension.

16.7 The Union of India[10] challenged the decision before the Division Bench of the High Court of Himachal Pradesh, contending that the Re-Survey Medical Board, which had again assessed Dharamvir's case, had not found his condition to be attributable to or aggravated by military service.

16.8 The Division Bench, following a judgment of the Supreme Court in ***UOI v Keshar Singh***[11], dismissed the writ petition and allowed the LPA of the UOI. Keshar Singh also suffered from epilepsy. The Supreme Court noted that the Medical Board in ***Keshar Singh*** had given a clear finding that the seizures from which Keshar Singh had suffered was not attributable to or aggravated by the military service rendered by him. Following the judgment in ***Keshar Singh***, the Division Bench held that the disability from which Dharamvir Singh suffered was constitutional and was, therefore, neither attributed to nor aggravated by military service.

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[9] "**173. Primary conditions for the grant of disability pension**.—
Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.
The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

[10] UOI, hereinafter
[11] **(2007) 12 SCC 675**

16.9 Against this decision, Dharamvir Singh appealed to the Supreme Court.

16.10 The following paragraphs from the judgment in ***Dharamvir Singh*** set out the legal position:

> "15. For the said reason, we will rely on the Pension Regulations for the Army, 1961 and Appendix II "Entitlement Rules for Casualty Pensionary Awards, 1982" published by the Government of India, we will also discuss Rules 14(a), 14(b), 14(c) and 14(d) as quoted and relied on by the respondents.
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> 16. Regulation 173 of the Pension Regulations for the Army, 1961 relates to the primary conditions for the grant of disability pension and reads as follows:
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> *****
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> 17. From a bare perusal of the Regulation aforesaid, it is clear that disability pension in normal course is to be granted to an individual: (i) who is invalided out of service on account of a disability which is attributable to or aggravated by military service, and (ii) who is assessed at 20% or over disability unless otherwise it is specifically provided.
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> 18. A disability "attributable to or aggravated by military service" is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982[12], as shown in Appendix II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:
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> > "5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:
> >
> > ***Prior to and during service***
> >
> > (a) A member is presumed to have been in sound physical and mental condition upon entering service except

[12] "the 1982 Entitlement Rules" hereinafter

as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service."

From Rule 5 we find that a general presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

19. *"Onus of proof" is not on the claimant as is apparent from Rule 9,* which reads as follows:

"9. Onus of proof. – The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."

From a bare perusal of Rule 9 it is clear that a member, who is declared disabled from service, is not required to prove his entitlement of pension and such pensionary benefits are to be given more liberally to the claimants.

20 With respect to disability due to diseases Rule 14 shall be applicable which as per the Government of India publication reads as follows:

"14. Diseases. – In respect of diseases, the following rule will be observed –

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for

reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service."

20.1 *As per clause (b) of Rule 14 a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service.*

20.2 As per clause (c) of Rule 14 if a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

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22**.** *If the amended version of Rule 14 as cited by the respondents is accepted to be the Rule applicable in the present case, even then the onus of proof shall lie on the respondent employers in terms of Rule 9 and not the claimant and in case of any reasonable doubt the benefit will go more liberally to the claimants.*

23. The Rules to be followed by the Medical Board in disposal of special cases have been shown under Chapter VIII of the General Rules of Guide to Medical Officers (Military Pensions), 2002[13]. Rule 423 deals with "Attributability to service" relevant portion of which reads as follows:

"423. (a) For the purpose of determining whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions. *It is however, essential to establish whether the disability or death bore a causal*

[13] "the 2002 Guide" hereinafter

connection with the service conditions. All evidence 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 favour, 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 cases occurring in field service/active service areas*.

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(c) *The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service*. *A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces.* However, if medical opinion holds, *for reasons to be stated* that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d) The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officers, insofar as it relates to the

> actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority."

24. Therefore, *as per Rule 423* the following procedures are to be followed by the Medical Board:

24.1. Evidence both direct and circumstantial to be taken into account by the Board and *benefit of reasonable doubt, if any would go to the individual*;

24.2. *A disease which has led to an individual's discharge or death will ordinarily be treated to have been arisen in service, if no note of it was made at the time of the individual's acceptance for service in the Armed Forces*.

24.3. *If the medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service and the disease will not be deemed to have been arisen during military service the Board is required to state the reason for the same.*

25. Chapter II of the Guide to Medical Officers (Military Pensions), 2002 relates to "Entitlement: General Principles". In the opening Para 1, it is made clear that the Medical Board should examine cases in the light of the etiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority would be able to appreciate fully in determining the question of entitlement according to the Rules. Medical officers should comment on the evidence both for and against the concession of entitlement; the aforesaid paragraph reads as follows:

> "1. Although the certificate of a properly constituted medical authority vis-à-vis the invaliding disability, or death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre- and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances,

matters of military law and discipline. Accordingly, Medical Boards should examine cases in the light of the etiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority, a lay body, would be able to appreciate fully in determining the question of entitlement according to the Rules. In expressing their opinion Medical Officers should comment on the evidence both for and against the concession of entitlement. In this connection, it is as well to remember that a bare medical opinion without reasons in support will be of no value to the Pension Sanctioning Authority."

26. Para 6 suggests the procedure to be followed by service authorities if there is no note, or adequate note, in the service records on which the claim is based.

27. *Para 7 talks of evidentiary value attached to the record of a member's condition at the commencement of service e.g. pre-enrolment history of an injury, or disease like epilepsy, mental disorder, etc*. Further, guidelines have been laid down at Paras 8 and 9, as quoted below:

> "7. *Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.*

The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8 *The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect*.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility *and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons;* the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9 On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health

has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

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29. A conjoint reading of various provisions, reproduced above, makes it clear that:

29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. *A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service* [Rule 5 *read with Rule 14(b)*].

29.3. *The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in

military service [Rule 14(c)].

29.5. *If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)]*.

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and

29.7. *It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 — "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)*.

30. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

31. *In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of the appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service*. In fact, non-application of mind of Medical Board is apparent from clause (d) of Para 2 of the opinion of the Medical Board, which is as follows:

> "(d) In the case of a disability under (c) the Board should state what exactly in their opinion is the cause thereof.
>
> *yes*
>
> ***Disability is not related to military service***"
>
> (emphasis supplied)

32. Para 1 of Chapter II — "Entitlement: General Principles"

specifically stipulates that certificate of a constituted medical authority vis-à-vis invalidating disability, or death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre- and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and dispute. For the said reasons the Medical Board was required to examine the cases in the light of etiology of the particular disease and after considering all the relevant particulars of a case, it was required to record its conclusion with reasons in support, in clear terms and language which the Pension Sanctioning Authority would be able to appreciate.

33. In spite of the aforesaid provisions, *the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board.* As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. *In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.*

34. As per Rule 423(*a*) of the General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is 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 service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under Para 4 post-traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing, etc. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions."

16.11 Thus, from the judgment in ***Dharamvir Singh***, the following principles emanate:

(i) Whether disability is attributable to or aggravated by military service is to be determined under the 1982 Entitlement Rules. (paras 17-18 and 29.1)

(ii) Under Rule 5, there is a general presumption that the officer was in sound mental and physical condition upon entering service except as regards disabilities recorded at that time. (paras 17-18 and 29.2)

(iii) In such a case, if the officer is discharged on medical ground, it is to be presumed that deterioration in health is due to service. (para 18)

(iv) The onus of proof is not on the claimant. (paras 19 and 29.3)

(v) A liberal approach is to be adopted. (paras 19 and 29.3)

(vi) Disability due to diseases is covered by Rule 14. (para 20)

(vii) Under Rule 14(b), a disease leading to discharge from service would ordinarily be deemed to have arisen in service if

no note was made of it at time of acceptance for military service. (paras 20.1, 23, 24.2, 27 and 29.5)

(viii) However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance in service, the disease will not be deemed to have arisen during service. (paras 23, 24.3, 29.5)

(ix) In cases in which (a) inaccuracy or incompleteness of service record at the time of acceptance for service was due to non-disclosure of essential facts by the member, such as pre-enrolment medical history, (b) owing to latency or obscurity of symptoms, a disability escaped attention at enrolment, or (c) there is direct evidence of contraction of a disability otherwise than by service, then, though the disease cannot be considered as being attributable to service, the question of aggravation by subsequent service conditions would be need to be examined. (para 27)

(x) Certain diseases which ordinarily escape detection on enrolment are

(a) congenital abnormalities which are latent and discoverable only on full investigation such as spina bifida and sacralization,

(b) certain familial and hereditary diseases such as haemophilia, congenital syphilis and haemoglobinopathy,

(c) certain cardiac and vascular diseases such as coronorary atherosclerosis and rheumatic fever,

(d) diseases which are undetectable on physical examination at enrolment unless the member gives adequate history, such as gastric ulcers, epilepsy, mental disorders and HIV infections,

(e) relapsing forms of mental disorders with intervals of normality and

(f) diseases which have periodic attacks such as asthma and epilepsy. (para 27)

(xi) Under Rule 14(c), even if disease is accepted as having arisen while in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that conditions were due to circumstances of military duty. (paras 20.2, 29.4)

(xii) Onus of proof is on the respondent in terms of Rule 9 and in case of any reasonable doubt, benefit of doubt goes to claimant. (para 22)

(xiii) If the evidence is evenly balanced so as to render impracticable a determinate conclusion one way or the other, the benefit of doubt would be given more liberally to the individual, in cases occurring in field/active service areas. (paras 23 and 24.1)

(xiv) If the disease arose during service and conditions and circumstances of military duty determined and contributed to its onset, it will be regarded as attributable to service. (para 23)

(xv) If service conditions did not determine or contribute to the onset of the disease but influenced its subsequent course, the disease will be deemed to have been aggravated by military service. (para 23)

(xvi) The Medical Board would decide on the actual cause of disability or death and the circumstances in which it originated. (para 23)

(xvii) On the other hand, the pension sanctioning authority would decide as to whether the cause and attendant circumstances could be accepted as attributable to/aggravated by service for the purpose of pensionary benefits. (para 23)

(xviii) The Medical Board will specify reasons for its opinion. Reasons should take into account the etiology of the disease and all relevant circumstances. (para 23)

(xix) The Medical Board has to follow the guidelines in Chapter II of the Guide to Medical Officers (Military Pensions) Rules, 2002 – "Entitlement: General Principles". However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to

acceptance in service, the disease will not be deemed to have arisen during service. (para 29.7)

(xx) Where there is no record of the officer earlier suffering from the disease or being under treatment thereof, and there is no note of disease at the time of the officer's acceptance for service, it is obligatory on the Medical Board to call for records and examine them before coming to an opinion that the disease could not have been detected prior to acceptance in service. If records are not called for or examined, or no reasons are recorded for the conclusion that the disease is not attributable to military service, it is a case of non-application of mind, and the benefit would go to the officer. (para 31)

17. It is also relevant to note the rules / executive instructions on which decision in ***Dharamvir Singh*** was rendered. They are

(i) from the 1982 Entitlement Rules,

(a) Rule 5, which presumed that every member of the service was in sound physical and mental condition, except as regards disabilities noted at the time of his entrance into service, and that, therefore, any subsequent deterioration in the condition of his health was attributable to military service,

(b) Rule 9, which insulated the claimant officer from having to prove his entitlement, and also gave him the benefit of any reasonable doubt, especially in field cases,

(c) Rule 14(a), which provided that, even if the onset of the disease was not attributable to the military service, it would have to be examined whether military service contributed towards any subsequent aggravation in the course of the disease,

(d) Rule 14(b) which, like Rule 5, provided that, in the case of diseases, the disease which led to the officers discharge or death was arisen in service, if no note of the existence of the disease was made at the time of entrance of the officer into service, *subject to* reasoned medical opinion to the effect that the disease could not have been detected on medical examination prior to acceptance of the officer for service, in which event the presumption that the disease had arisen in service would not arise, and

(e) Rule 14(c), which required, even in the case of a presumption that the disease had arisen in service, further evidence that the conditions of military service determined or contributed to the onset of the disease,

(ii) <u>from the 2002 Rules</u>,

(i) Rule 423(a), which provided that, for the purpose of determining whether the cause of a disability or death resulting from disease was or was not attributable to service, it was immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions,

(ii) however, it was essential to establish a causal

connection between the disability or death and the service conditions of the officer,

(iii) benefit of reasonable doubt would be given to the officer,

(iv) if the evidence was strongly against the officer, with only a remote possibility in his favour, the case was proved against the officer with reasonable doubt, and

(v) if the evidence was evenly balanced, the benefit of doubt would enure to the benefit of the officer, in cases of field/active service,

(vi) a disease would ordinarily be deemed to have arisen in service if no note of its existence was made at the time of acceptance of the officer, and

(vii) this was, however, subject to reasoned medical opinion to the effect that the disease could not have been detected on medical examination prior to acceptance of the officer for service, in which event the presumption that the disease had arisen in service would not arise,

(iii) from the 2002 Military Pensions Guide,

(a) para 1 of Chapter II which required, in arriving at the decision to admit or refuse entitlement, consideration of various circumstances, such as service conditions, pre- and post-service history, the etiology of the disease, verification of the wound or injury, corroboration of statements, collecting and weighing the value of evidence and, in some instances, matters of military law and discipline, and further required the Medial officers to

comment on the evidence for and against entitlement with clear and understandable reasons in support, an unreasoned medical opinion being of no value whatsoever,

(b) para 7 of Chapter II, which specifically addresses the evidentiary value of the record of the officer at the time of his acceptance into service, and requires the record to be accepted as correct, *unless,* in a particular case, the record has been found to be inaccurate, leading to a different conclusion and, therefore, again clarifying that, if the disease leading to the officer's invalidation from service was not noted at the time of commencement of service, the disease would be deemed to have arisen during the period of military service, and also proceeds to identify certain diseases which ordinarily escape detection on enrolment, and

(c) para 8, which requires, while assessing the entitlement of the officer, taking into consideration all documentary evidence relating to his condition at the time of entering service and during service, as well as questioning the officer regarding the circumstances which led to the advent of the disease, its duration, family history, pre-service history, and the like, so that all evidence in support of, or against, the officers claim, is elucidated, and further requires Medical Boards to ensure that opinion is on attributability and aggravation, or otherwise, are supported by cogent reasons.

18. ***Sukhvinder Singh***

18.1 Sukhvinder Singh, the petitioner before this Court in this case, claimed to have been on the ear by the Instructor at the Training Centre where he was undergoing training before being appointed as a combatant soldier in the Army. He was examined in the Military Hospital, and was diagnosed as suffering from substandard hearing in the right ear with perforation. Following this, Sukhvinder Singh was presented before the Medical Board which recommended his invalidation out of service with 6 to 10% disability on account of hearing impairment. Sukhvinder claimed disability pension. The claim was rejected on 2 grounds; the 1st being that the extent of disability was less than 20%, which was the minimum for entitlement to disability pension, and the 2nd that the disability suffered by Sukhvinder was not attributable to military service. Aggrieved thereby, Sukhvinder approached this Court.

18.2 This Court, in para 8 of judgment, expressed its undisguised unhappiness "if the authorities are perceived as being impervious or unsympathetic towards members of the Armed Forces who have suffered disabilities, without receiving any form of recompense or source of sustenance, since these are inextricably germane to their source of livelihood".

18.3 Following this observation, this Court proceeded to address the 2 objections raised by the UOI to contest Sukhvinder's claim to

disability pension.

18.4 Regarding the contention that Sukhvinder was not entitled to disability pension as the degree of his disability was less than 20%, this Court rejected the contention as self-contradictory. We are not particularly concerned with this aspect of the decision.

18.5 Apropos the 2nd contention of the UOI, that the disability suffered by Sukhvinder was not attributable to military service, the Supreme Court held thus, in paras 9 and 11 of its judgment:

> 9. The next submission on behalf of the respondents is that the injury/disability sustained by the appellant is neither attributable nor aggravated by military service, thereby disentitling him for grant of disability pension. We must draw an adverse presumption against the respondents, inasmuch as no impairment in the appellant's hearing had been detected at the time when he was enrolled on 15-3-2001, pursuant to a complete physical check-up. In fact, an adverse presumption is postulated in Appendix II (supra). In our opinion, the version of the appellant that injury was sustained by him as a result of his having been slapped by his Instructor, or for that matter by any other combatant, has credibility. We had already adverted to the confidential medical report dated 5-8-2001 which specifically contains a mention of the appellant having been assaulted. In the circumstances, we cannot but conclude that the injury was "either attributable or aggravated by military service". Having undergone a thorough medical examination only one year prior to the incident, had the injury or disability been congenital or been in existence at the time of recruitment, it would have been duly discovered. Therefore, on both counts viz. disability to the extent of less than 20%, as well as it having been occurred in the course of military service, the findings have to be in favour of the appellant.
>
> *****
>
> 11. We are of the persuasion, therefore, that *firstly*, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the

> contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the armed forces; any other conclusion would tantamount to granting a premium to the Recruitment Medical Board for their own negligence. *Secondly*, the morale of the armed forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. *Thirdly*, there appear to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. *Fourthly*, wherever a member of the armed forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. *Fifthly*, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

18.6 In arriving at the above conclusions, the Court took into account, among other things, Rule 5 of the Entitlement Rules and Regulations 9, 173 and 173-A[14] of the 1961 Army Pension Regulations.

Rajbir Singh

19. This judgment decided 27 Civil Appeals, all instituted by the UOI challenging orders passed by the learned AFT allowing claims of the Respondents to disability pension. The Respondents suffered from various diseases/disabilities, rendered by the Supreme Court thus, in para 4 of the report:

Case No.	*Name of the respondent*	*Nature of disease/disability*	*Percentage of disability*

[14] **173-A. Individuals discharged on account of their being permanently in low medical category**.—
Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative employment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the Entitlement Rules laid down in Appendix II to these Regulations.

			determined
CA No. 2904 of 2011	Ex-Havaldar Rajbir Singh	Generalised Seizures	20% for 2 years.
CA No. 5163 of 2011	Ex-Recruit Amit Kumar	Manic Episode (F-30)	40% (Permanent).
CA No. 5840 of 2011	Hony. Flt. Lt. P.S. Rohilla	Primary Hypertension	30%
CA No. 7368 of 2011	Ex-Power Satyaveer Singh	Diabetes Mellitus (IDDM) ICD E 10.9.	40% (Permanent).
CA No. 7479 of 2011	Ex-Gnr. Jagjeet Singh	1. Non-Insulin Dependant Diabetes Mellitus (NIDDM). 2. Fracture Lateral Condyl of Tibia with fracture neck of Fibula left.	20% each and composite disability 40% (Permanent).
CA No. 7629 of 2011	Ex-Rect. Charanjit Ram	Mal-descended Testis (R) with Inguinal hernia.	60% (Permanent).
CA No. 5469 of 2011	Jugti Ram (through LR)	Schizophrenic Reaction (300)	80%
CA D No. 16394 of 2013	Havaldar Surjit Singh	Neurotic Depression V-67.	40% for 2 years.
CA No. 2905 of 2011	Ex-Naik Ram Phai	Otsclerosis (Rt.) Ear OPTD	20%
CA No. 10747 of 2011	Sadhu Singh	Schizophrenia	20% for 2 years.
CA No. 11398 of 2011	Rampal Singh	Neurosis (300)	20% for 2 years.
CA No. 183 of 2012	Raj Singh	Neurosis	30%
CA No. 167 of 2012	Ranjit Singh	Other non-organic psychosis (298, V-67)	20% for 2 years.
CA No. 5819 of 2012	Ex-Sub. Ratan Singh	Primary hypertension	30% (Permanent).
CA No. 5260 of 2012	Ex-Sep. Tarlochan Singh	Epilepsy (345)	Less than 20%
CA No. 10105 of 2011	Harbans Singh	1. Epilepsy (345) 2. High hypermetropia right eye with partial amblyopia.	20% each and composite disability 40% for 2 years.
CA No. … of 2015 (@ SLP (C) No. 27220 of 2012)	Balwan Singh	Personality disorder	60%
CA No. … of 2015 (@ SLP (C) No. 32190 of	Sharanjit Singh	Generalised tonic chronic seizure, 345 V-64.	Less than 20%

2010)			
CA No. 5090 of 2011	Abdulla Othyanagath	Schizophrenia	30%
CA No. … of 2015 (@ SLP (C) No. 26401 of 2010)	Squadron Leader Manoj Rana	1. Non-organic psychosis 2. Steatohepatitis	40%
CA No. 2279 of 2011	Labh Singh	Schizophrenia	30% for 2 years.
CA No. 5144 of 2011	Makhan Singh	Neurosis (300-deep)	20%
CA No. 14478 of 2011	Ajit Singh	Idiopathic epilepsy (Grandmal)	20%
CA No. … of 2015 (@ SLP (C) No. 15768 of 2011)	Manohar Lal	Renal calculus (Right)	20%
CA No. 3409 of 2011	Major Man Mohan Krishan	IHD (Angina Pectoris)	Less than 20%
CA No. 1498 of 2011*	Ex. Sgt. Suresh Kumar Sharma	1. Generalised Seizures 2. Inter-vertebral Disc Prolapse 3. PIVD C-7-D, (Multi-Disc Prolapse)	70% (permanent).
CA No. 5414 of 2011	Rakesh Kumar Singla	Bipolar mood disorder	20% for 5 years.

20. The Medical Board rejected the claims of the Respondents before the Supreme Court to disability pension on the ground that the disease/disabilities suffered by them were neither attributable to, nor aggravated by, military service. This was the sole ground of rejection. As such, the Supreme Court noted, in para 5 of the report, that the only question which fell for determination was "whether or not that opinion is in itself sufficient to deny to the Respondents the disability pension claimed by them". The Supreme Court also noted similar results before it on multifarious occasions.

21. The Supreme Court went on, in para 6 of the report, to note that the entitlement of the Respondents to payment of disability pension was regulated by the 1961 Army Pension Regulations. It thereafter reproduced Regulation 173 thereof and proceeded, in para 7 of the report, to observe that only 2 conditions had been specified for grant of disability pension, the 1st being that the disability had to be above 20% and the 2nd being that the disability to be attributable to, or aggravated by, military service. It went on, thereafter, to observe that the issue of whether, or not, the disability was attributable to, or aggravated by, military service, was to be determined on the basis of the 1982 Entitlement Rules, which formed Appendix II to the Army Pension Regulations. Thereafter, it reproduced Rule 5 of the Entitlement Rules. Importantly, it went on, in para 8, to reproduce Rule 9 of the Entitlement Rules as well, observing that Rule 9 was "equally important", as well as Rule 14, which specifically dealt with diseases, where the Supreme Court also made reference to the 2002 Military Pensions Guide. Before referring to the Military Pensions Guide, the Supreme Court called out the principles which emerged from Rules 5, 9 and 14 of the Entitlement Rules thus, in para 10 of the report:

> 10. From a conjoint and harmonious reading of Rules 5, 9 and 14 of the Entitlement Rules (supra) the following guiding principles emerge:
> (*i*) a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance;
> (*ii*) in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;
> (*iii*) the disease which has led to an individual's discharge or

> death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service; and
> (iv) if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated.

22. The Supreme Court, thereafter, referred to, and relied upon, its earlier decision in ***Dharamvir Singh*** and concluded its discussion thus, in Paras 14 to 16 of the report:

> 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 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 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.
>
> 16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants.

UOI v Angad Singh Titaria

23. This, again, was a case in which the issue of whether the deterioration in health of the Respondent Angad Singh Titaria[15] was, or was not, attributable to military service, fed directly for consideration. Angad was enrolled in the Indian Air Force on 13 November 1971. At that time, he was medically and physically examined and found fit as per prescribed standards for appointment.

[15] "Angad" hereinafter

During the period of his service in the Air Force, Angad was admitted to Hospital, where he was diagnosed as suffering from coronary artery disease and, further, after some time, also as suffering from Diabetes Mellitus Type II[16] . He was referred to the Release Medical Board[17], which assessed his disability on account of CAD at 60% and on account of DM-II at 15 to 19%. He was also diagnosed as suffering from composite disability assessed at 60%. However, the RMB opined that the disabilities were constitutional and neither attributable to, nor aggravated by, Angad's service in the Air Force. On that basis, disability pension was denied to him. Having failed in an attempt to challenge the decision in appeal, Angad approached the AFT. The AFT allowed Angad's claim. Aggrieved thereby, the UOI appealed to the Supreme Court.

24. The Supreme Court identified the "moot question" arising for consideration before it as "whether or not the disabilities caused to the Respondent during the course of his employment are attributable to his service entitling him to the benefit of disability pension in accordance with law".

25. The Supreme Court referred to, and relied upon, Rules 4, 5, 9 and 14 of the Entitlement Rules as well as the judgments in ***Dharamvir Singh*** and ***Rajbir Singh***, whereafter it concluded thus:

> 16. Here in the case on hand, the respondent was rendered ineligible for further promotion and thereby invalidated on the ground of his being in medical category A4 G4 (Permanent). In the

[16] "DM-II" hereinafter
[17] "RMB" hereinafter

> absence of any specific note on record as to the respondent suffering from any disease prior to his joining the service, he is presumed to have been in sound physical and mental condition while entering service as per Rule 5(*a*) of the Entitlement Rules. The fact remains that the respondent was denied promotion on medical grounds and the deterioration in his health shall therefore be presumed to have been caused due to service in the light of Rule 5(*b*) of the Entitlement Rules. Moreover, simply recording a conclusion that the disability was not attributable to service, without giving a reason as to why the diseases are not deemed to be attributable to service, clearly shows lack of proper application of mind by the Medical Board. In such circumstances, we cannot uphold the view taken by the Medical Board.
>
> 17. Considering the facts and circumstances of the case in the light of the above discussed Rules and Regulations as well as settled principles of law enshrined by this Court in ***Dharamvir Singh v Union of India*** and reiterated in ***Union of India v Rajbir Singh***, we are of the considered opinion that the Tribunal had not committed any error in awarding disability pension to the respondent for 60% disability from the date of his discharge along with 10% p.a. interest on the arrears. For all the reasons stated above, we do not find any merit in this appeal and the same stands dismissed without any order as to costs.

UOI v Manjeet Singh[18]

26. The respondent Manjeet Singh joined the army on 6 April 1999. On 5 March 2000, he fell unconscious in the course of cross-country practice. He was found to be suffering from Generalised Tonic Clonic Seizure[19] and Neurotic Depression. He was treated at the Hospital and released. He was then posted at Kargil. While at his Transit Camp at Chandigarh, Manjeet again fell ill and was hospitalized. The Review Medical Board categorized him in category BEE permanent for GTCS and CEE temporary for Neurotic Depression. He was again sent for training, but was invalided by the invaliding Medical Board which

[18] **(2015) 12 SCC 275**
[19] GTCS, hereinafter

assessed his degree of disability as 20% qua GTCS and 20% qua Neurotic Depression, making a total 40% of disability. He was invalided on 1 January 2002.

27. Having failed in his attempt at challenging the said decision, Manjeet sought disability pension. The claim was rejected on the ground that his ailments were not attributable to, or aggravated by, Army service. Manjeet approached the High Court.

28. The Single Judge of the High Court allowed Manjeet's claim on the ground that the invaliding Medical Board had not returned any finding that the diseases from which Manjeet was suffering could not be detected on medical examination at the time of his entry into service, and that they had not aggravated during the course of his employment. As the degree of disability was more than 20%, Manjeet was held entitled to disability pension.

29. The judgment of the Single Judge was affirmed by the Division Bench of the High Court. The UOI appealed to the Supreme Court.

30. The Supreme Court held that the "guiding course in this regard" stood outlined in Regulations 173 of the 1961 Army Pension Regulations, Rules 5, 9 and 14 of the Entitlement Rules and Paras 7, 8 and 9 of the 2002 Guide, all of which were held, by the Supreme Court, to be *statutory in nature* and *binding on the UOI*, in para 19.4 of the report, thus:

"19.4. The Regulations, Rules and the General Principles concededly are statutory in nature and thus uncompromisingly binding on the parties."

31. Thereafter, the Supreme Court proceeded to hold thus:

20. A conjoint reading of these provisions, unassailably brings to the fore, a statutory presumption that a member of the service governed thereby is presumed to have been in sound medical condition at the entry, except as to the physical disability as recorded at that point of time and that if he is subsequently discharged from service on the ground of disability, any deterioration in his health has to be construed to be attachable to his service. Not only the member in such an eventuality, could not be called upon to prove the conditions of his entitlements, he would instead be entitled to any reasonable doubt with regard thereto.

20.1. Regulation 173 in clear terms not only mandates that disability pension may be granted to an individual invalided from service on account of disability which is attributable to and aggravated by Army service and is assessed as 20%, it specifically provides as well that the question as to whether such disability is attributable to or aggravated by Army service is to be determined by the Rules.

20.2. Rule 14(*b*) in specific terms enjoins that a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of his acceptance for Army service. The exception to this deduction is only in the event of a medical opinion supported by reasons to the effect that the disease could not have been detected on medical examination prior to acceptance for service whereupon it would be deemed that the disease had not arisen during service.

20.3**.** The underlying ordainment of these salutary provisions is patently supportive of the inference that the disease/disability for which a member of the Army service is boarded out had been contracted by him during his tenure unless the same is displaced by cogent, coherent and persuasive reasons to be recorded by the Medical Board as contemplated. Absence of such a presumption in favour of attributability to the Army service or aggravation thereby, displaceable though, cannot be readily assumed unless endorsed by contemporaneous records and overwhelming reasons recorded by the invaliding Medical Board to the contrary.

20.4. The acknowledged primacy extended to the opinion of the Medical Board, and its views and recommendations thus assuredly would have to be subject to the hallowed objectives of the relevant provisions of the Rules, Regulations and the General Principles laden with the affirmative presumption in favour of the member of the service. Not only the manifest statutory intendment and the avowed purpose of these provisions cannot be disregarded, a realistic approach in deciphering the same has to be adopted. The incident of invaliding a member of the Army service entails curtailment of the normal tenure for his recorded disability to the extent of 20% or more and thus in our own comprehension, the disentitling requisites would have to be stringently construed.

20.5. The decisive determinant as per the relevant provisions of the Regulations, Rules and the General Principles, is the attributability of the disability involved or aggravation thereof to Army service. It cannot be gainsaid, however, that there ought to be at least a causal and perceptible nexus between the two, but denial of disability pension would be approvable, only if the disability by no means can be related to the Army service.

20.6. The burden to disprove the correlation of the disability with the Army service has been cast on the authorities by the Regulations, Rules and the General Principles and thus, any inchoate, casual, perfunctory or vague approach of the authorities would tantamount to non-conformance with the letter and spirit thereof, consequently invalidating the decision of denial. Though the causative factors for the disability have to be the rigour of the military conditions, no insensitive and unpragmatic analysis of the relevant facts is envisaged so as to render any of the imperatives in the Regulations, Rules and General Principles otiose or nugatory. To the contrary, a realistic, logical, rational and purposive scrutiny of the service and medical profile of the member concerned is peremptory to subserve the true purport and purpose of these provisions.

20.7. To reiterate, invaliding a member from the service presupposes truncation of his normal service tenure thus adjudging him to be unsuitable therefor. The disability as well has to exceed a particular percentage. The bearing of the Army service as an aggravating factor qua even a dormant and elusive constitutional or genetic disability in all fact situations thus cannot be readily ruled out. Hence the predominant significance of the requirement of the reasons to be recorded by the Medical Board and the recommendations based thereon for boarding out a member from service. As a corollary, in absence of reasons to reinforce the

> opinion that the disability is not attributable to the Army service or is not aggravated thereby, denial of the benefit of disability pension would be illegal and indefensible.
>
> 21. The medical opinion in the instant case, as the precursor of the invalidment of the respondent therefore needs to be assayed in this presiding statutory backdrop.
>
> *****
>
> 25. Significantly, as would be evident from the above quoted extracts, the respondent had on being queried during his examination, denied to have been suffering from any of the disabilities at the time of joining the Army service.

32. Following the above discussion, the Supreme Court upheld the decision of the Single Judge and the Division Bench of the High Court and dismissed the appeal of the UOI.

Ex Gnr Laxmanram Poonia v UOI[20]

33. The appellant here was found suffering from "acute schizophrenia like psychotic disorder". There was no record of his suffering from the said ailment at the time of his entrance into military service. The Medical Board denied disability pension on the ground that the ailment was neither attributable to, nor aggravated by, military service.

34. The Supreme Court, after referring to Regulation 173 of the Army Pension Regulations, Rules 5 and 14 of the Entitlement Rules and para 423(a) of the Military Pensions Guide, as well as the

[20] **(2017) 4 SCC 697**

judgments in ***Dharamvir Singh*** and ***Rajbir Singh***, proceeded to hold thus, in paras 18 to 23 of the report:

> 18**.** In the present case, as per the opinion of the Medical Board, disability attending the appellant is acute schizophrenia like psychotic disorder and assessed percentage of the disablement is 60% for life. The Medical Board in its report dated 9-9-2009 has also opined that the disability is neither attributable to nor aggravated by military service. The relevant portion of Medical Board's opinion is as under:
>
> > "1. Though the disablement has been mentioned in percentage in Paras 6 of Part V, this does not mean eligibility for disability pension since the disability/disabilities is/are neither attributable to nor aggravated by service.
> >
> > 2. Opinion of assessment by the Board is recommendatory in nature and is subject to acceptance by Pension Sanctioning Authority.
> >
> > Or
> >
> > 1. Individual is not entitled for disability pension for the disability/disabilities since the same is/are not attributable to/aggravated by service.
> >
> > 2. Opinion of assessment by the Board is recommendatory in nature and is subject to acceptance by Pension Sanctioning Authority."
>
> Notably, the Medical Board has not given any reason in support of its opinion, particularly, in reference to the fact that there was no note of such disease or disability available in the service record of the appellant at the time of entering military service.
>
> 19. The learned Additional Solicitor General appearing for respondent Union of India has submitted that when the Medical Board recorded a specific finding that the disability was neither attributable to nor aggravated by the military service, the same must be given due weight and credence. In support of his contention, the learned counsel placed reliance on dictum of this Court in ***Union of India*** **v** ***Ravinder Kumar***,[21] wherein it was held as under :

[21] **(2015) 12 SCC 291**

> "4. This Court recently decided an identical case in ***Union of India*** **v** ***Jujhar Singh***[22], and after reconsidering a large number of earlier judgments including ***Ministry of Defence v A.V. Damodaran***[23], ***Union of India*** **v** ***Baljit Singh***[24], and ***ESI Corpn.*** **v** ***Francis De Costa***[25], came to the conclusion that in view of Regulation 179, a discharged person can be granted disability pension only if the disability is attributable to or aggravated by military service and such a finding has been recorded by Service Medical Authorities. In case the Medical Authorities record the specific finding to the effect that disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that Medical Board is specialised authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual. A person claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury/ailment to the person and the normal expected standard of duties and way of life expected from such person. [See also ***Govt. of India (Ministry of Defence)*** **v** ***Ajit Singh***]"

20. There is no gainsaying that the opinion of the Medical Board, which is an expert body has to be given due weight and credence. But the opinion of the Medical Board cannot be read in isolation; it has to be read in consonance with the Entitlement Rules for Casualty Pensionary Awards, 1982 and General Rules of Guide to Medical Officers (Military Pensions), 1982. As per Chapter II of the Guide to Medical Officers (Military Pensions), 2002, which relates to "Entitlement : General Principles", it is made clear that the Medical Board should examine cases in the light of the etiology of the particular disease and only after considering all the relevant particulars of a case, the Board should record its conclusions with reasons so as to enable the Pension Sanctioning Authority to examine the question of entitlement of pension as per Rules.

21. As referred to above, in *Dharamvir Singh case*, it was observed that it is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the General Rules of Guide to Medical Officers (Military Pensions), 2002— "Entitlement : General

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[22] **(2011) 7 SCC 735**
[23] **(2009) 9 SCC 140**
[24] **(1996) 11 SCC 315**
[25] **(1996) 6 SCC 1**

Principles", relevant extract in this behalf reads as under:

> "27. Para 7 talks of evidentiary value attached to the record of a member's condition at the commencement of service e.g. pre-enrolment history of an injury, or disease like epilepsy, mental disorder, etc. Further, guidelines have been laid down at Paras 8 and 9, as quoted below:
>
> > '7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.
> >
> > The following are some of the diseases which ordinarily escape detection on enrolment:
> >
> > *(a)* Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation.
> >
> > *(b)* Certain familial and hereditary diseases e.g. Haemophilia, Congenital Syphilis, Haemoglobinopathy.
> >
> > *(c)* Certain diseases of the heart and blood

vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8**.** The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted

> by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history.' "

22. In the present case, it is undisputed that the appellant was not suffering from any disease/disability at the time of entering into military service. It was on the respondent to show that the appellant was suffering from schizophrenia at the time of entering into service by producing any document viz. medical prescription, etc. In the absence of any note in the service record in this regard at the time of joining the military service, the Medical Board should have called for the service records and looked into the same; but nothing is on record to suggest that any such record was called for by the Medical Board to arrive at the conclusion that the disability was not due to military service. The Medical Board simply stated that the disability is neither attributable to nor aggravated by military service. The relevant portion reads as under:

> "1. Though the disablement has been mentioned in percentage in Para 6 of Part V, this does not mean eligibility for disability pension since the Disability/Disabilities is/are neither attributable to nor aggravated by service.
>
> 2. Opinion of assessment by the Board is recommendatory in nature and is subject to acceptance by Pension Sanctioning Authority."

In the absence of any evidence on record to show that the appellant was suffering from any such disease like schizophrenia at the time of entering into the military service, it will be presumed that the appellant was in a sound mental condition at the time of entering into the military service and the deterioration of health has taken place due to military service.

23. Based on the above discussion, we hold that the Tribunal did not examine the case at hand in the light of the Army Pension Regulations, 1961, the Entitlement Rules for Casualty Pensionary Awards, 1982 and General Rules of Guide to Medical Officers

(Military Pensions), 2002 and, therefore, the impugned order cannot be sustained. Applying the principles of ***Dharamvir Singh*** *case* and ***Rajbir Singh*** *case*, it has to be presumed that the disability of the appellant bore a causal connection with the service conditions. The appellant was diagnosed to be suffering from medical disability at 60% for life on 9-9-2009 and he was discharged from service on 7-10-2009. After invalidation from the service, the appellant passed away on 1-6-2015. By order dated 13-2-2017 in ***Laxmanram Poonia*** **v** ***Union of India***, [wherein it was directed: "IA No. 1 of 2016 is an application seeking permission to file the appeal. The second application is for condonation of delay in filing the application for substitution and the third application is for prosecuting the appeal as legal representatives before this Court. Having heard the learned counsel for the parties, leave to appeal is granted. Delay in filing the application for substitution is condoned and the application for substitution stands allowed. Admitted. Hearing concluded. Reserved for judgment. Written notes of submissions, if any, be filed by 14-2-2017."], the legal heirs have been ordered to be substituted. Hence, wife of the appellant and other legal heirs shall be entitled to disability pension as per the Rules."

Secretary, Government of India v Dharambir Singh[26]

35. The respondent Dharambir Singh joined the Army on 28 December 1981 and was discharged on 13 December 1999. While on leave on 25-26 January 1999, he suffered a head injury while riding a scooter. The Medical Board certified the disability suffered by Dharambir, as a result, to be 30%, but rejected Dharambir's claim to disability pension on the ground that the disability was neither attributable to, nor aggravated by, military service. Dharambir approached the AFT, which held him to be entitled to disability pension. The UOI appealed to the Supreme Court.

36. The Supreme Court first adverted to the applicable rules and

[26] **(2020) 14 SCC 582**

regulations, thus:

(i) Clause 53 of the 2008 Regulations applicable in respect of the "Disability Element for Disability at the time of Discharge/Retirement"[27] read:

> "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 per cent or more.
>
> *****
>
> 82. For determining the pensionary benefits on death or disability which is attributable to or aggravated by Military service under different circumstance, the cases shall be broadly categorised as follows:
>
> ***Category A***
>
> Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.
>
> *Explanation*.—The cases of death or disability due to natural causes falling under Category A entitles ordinary family pension or invalid pension or invalid gratuity as the case may be.
>
> ***Category B***

[27] "the 2008 Regulations" hereinafter

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as:

(i) Accidents while travelling on duty in government vehicles or public/private transport.

(ii) Accidents during air journeys.

(iii) Mishaps at sea while on duty.

(iv) Electrocution while on duty, etc.

(v) Accidents during participation in organised sports events/adventure activities/expeditions or training.

Explanation.—Invalidment case falling under Category B and Category C due to disease contracted or injury sustained or cause of death if accepted by medical authority and/or competent authority attributable to or aggravated by Military service the individual may be granted disability pension or special family pension as the case may be.

*****

Note : The illustrations given in each category above from 'A' to 'E' are not exhaustive. Case not covered under these categories shall be dealt with as per Entitlement Rules for Casualty Pensionary Awards, 1982 as contained in Appendix IV of these Regulations."

(ii) Though the 1961 Army Pension Regulations had been

substituted by the 2008 Pension Regulations for the Army[28], the Supreme Court noted, in para 7 of the report, that they were "substantially the same in respect of admissibility of disability pension".

(iii) The 1982 Entitlement Rules, and Regulation 423 of the 2002 Guide, were held to continue to apply. However, the Supreme Court adverted, in view of the facts before it, only to those provisions which dealt with disability on account of accidents.

37. The Supreme Court proceeded, in para 10 of the report, to frame the following questions as arising for consideration before it:

> "10.1. (i) Whether, when armed forces personnel proceeds on casual leave, annual leave or leave of any other kind, he is to be treated on duty?
>
> 10.2. (ii) Whether the injury or death caused even if, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?
>
> 10.3. (iii) What is the effect and purpose of COI into an injury suffered by armed forces personnel?"

38. None of these questions, as framed by the Supreme Court, is really relevant to the issue before us. Whereas Questions (i) and (iii) do not arise in the present case, there can be no dispute that the answer to Question (ii) has to be in the affirmative, i.e., that there has to be a causal connection between the injury or disease and the

[28] "the 2008 Army Pension Regulations" hereinafter

military service that the claimant is undergoing for a claim to disability pension to sustain.

39. While concluding, the Supreme Court endorsed the following guiding factors to deal with individual cases, in para 36 of the report:

> (a) The mere fact of a person being on "duty" or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, *howsoever remote*, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as "duty".
>
> (b) *If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable*.
>
> (c) *The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words*, the act must flow as a matter of necessity from military service.
>
> (d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.
>
> (e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. *A*

> *fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service.* What falls ex facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. *At least remote attributability to service would be the condition precedent to claim under Rule 173.* The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.
>
> (f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."
>
> (Emphasis supplied)

While these guiding factors are clearly more applicable to injuries or accidents, it is significant, however, to note the reiteration, by the Supreme Court, of the position that the distinction that was required to be drawn was between "matters connected, aggravated or attributable to military service, and the matter entirely alien to such service". Howsoever wide the sweep of executive magnanimity in the matter of grant of disability pension may be, it is legitimate to hold that it cannot encompass injuries, or even ailments or diseases, suffered by the claimant, which is entirely unrelated to his military service. An injury suffered by "an act alien to the sphere of military service or in no way connected to his being on duty" cannot, therefore, sustain a claim to disability pension. However, if there is a causal connect, "*howsoever remote*", the claim would sustain.

40. Needless to say, the Supreme Court held, in the facts before it, that, as the accident which resulted in the head injury of Dharambir was sustained while on a private errand during leave, it could not be the basis for a valid claim to disability pension.

Ex Cfn Narsingh Yadav v UOI[29]

41. Narsingh Yadav claimed disability pension on account of schizophrenia, from which he was found to be suffering. The invaliding Medical Board, and the AFT, held him to be disentitled, as the ailment was neither attributable to, nor aggravated by, military service. Narsingh appealed to the Supreme Court, contending that, as, at the time of his enrolment in the Army, there was no note to the effect that he was suffering from schizophrenia, he was entitled to disability pension. He relied on ***Dharamvir Singh***, ***Rajbir Singh*** and ***Laxmanram Poonia***.

42. The Supreme Court noted that Rule 14 of the Entitlement Rules had been amended w.e.f. 20 June 1996, to read thus:

> "14. (a). – For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:
>
> (i) That the disease has arisen during the period of military service, and
>
> (ii) That the disease has been caused by the conditions of employment in military service.
>
> (b) If medical authority holds, *for reasons to be stated, that the*

[29] **(2019) 9 SCC 667**

> *disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service*. In case where it is established that the military service did not contribute to the onset or adversely affect the course of disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.
>
> (c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.
>
> (d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services."

Thus, under Rule 14, as amended, the disease would not be deemed to have arisen if the medical authority holds, *for reasons to be stated*, that the disease was present at the time of enrolment, but could not be detected at that time on medical examination. Thus, the report of the Medical Board must *note, positively, that the disease was present at the time of enrolment*. If it is so noted, it must further state that *it could not have been detected at that time on medical examination*. Further, *the reasons for this view* must be stated.

43. The remainder of the judgment may not be of particular relevance, as the Supreme Court chose to follow its earlier judgment in ***Veer Pal Singh v Ministry of Defence***[30], which specifically dealt with schizophrenia and held that, in the case of mental imbalance, the Court would have to examine "whether the person was posted in harsh

[30] **(2013) 8 SCC 83**

and adverse conditions which led to mental imbalance". It also noted that, even under the 1982 Entitlement Rules, "psychosis and psychoneurosis" were identified as diseases which were affected by climatic conditions, stress and strain and dietary complications, and that "relapsing forms of mental disorders" were not ordinarily detectable at the time of entry into service. The prevailing consideration for the ultimate decision of the Supreme Court is to be found in para 20 of the report, which read thus:

> "20. In the present case, Rule 14(*d*), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. *Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that schizophrenia is presumed to be attributed to or aggravated by military service*."
>
> (Emphasis supplied)

44. Clearly, it may not be correct to apply the ratio of ***Narsingh Yadav*** to cases other than mental disorders.

UOI v R. Munusamy[31]

45. The respondent R. Munusamy[32] was enrolled in the army on 26 March 1987 and discharged from service on 5 April 1997 as an undesirable soldier within the meaning of Rule 13(3)(III)(v) of the Army Rules, 1954. At the time of discharge, Munusamy was in low

[31] **2022 SCC OnLine SC 892**
[32] "Munusamy" hereinafter

medical category. The RMB, which met on 30 January 1997, found him to be suffering from "Right Partial Seizure with Secondary Generalization 345", which neither attributable to, nor aggravated by, military service, though the degree of disability was 20% for two years.

46. Munusamy claimed disability pension. The claim was rejected. An appeal, preferred therefrom, was also dismissed. 20 years thereafter, Munusamy addressed a legal notice to the Army authorities claiming disability pension, and relying on the judgments in ***Dharamvir Singh*** and ***Rajbir Singh***.

47. The Supreme Court, at the very outset, notes, in para 7 of the report, that the case of Munusamy was distinguishable from that of Dharamvir Singh and Rajbir Singh, as Munusamy was discharged as an undesirable soldier, having earned several red ink entries in his service record, and not on medical grounds. Para 7 proceeds to set out the red ink entries earned by Munusamy thus:

"S. No.	Date of Offence	Punishment awarded	Sec of Army Act 1950	Remarks
(a)	25 Oct 1990	28 days Imprisonment in military custody while serving with 4002 Field Ambulance	39(b)	Red Ink entry
(b)	25 Apr 1991	14 days detention in military custody while serving with Command Hospital(Western Command) Chandimandir	39(b)	Red Ink entry
(c)	05 Sep	28 days Rigorous	39(b)	Red Ink entry

	1993	Imprisonment in military custody while serving with 166 Military Hospital, c/o 56 APO		
(d)	30 May 1994	28 days Rigorous Imprisonment in military custody while serving with 166 Military Hospital, c/o 56 APO	39(b)	Red Ink entry
(e)	22 Jun 1995	28 days Rigorous Imprisonment in military custody while serving with 155 Base Hospital C/o 99 APO	39(b)	Red Ink entry
(f)	12 Sep 1995	28 days Rigorous Imprisonment in military custody while serving with 155 Base Hospital, c/o 99 APO	39(b)	Red Ink entry
(g)	14 Feb 1996	28 days Rigorous Imprisonment in military custody while serving with 155 Base Hospital c/o 99 APO	39(b)	Red Ink entry"

48. Following this, paras 11 to 13 of the report read thus:

> "11. At the cost of repetition, it is reiterated that the Respondent was discharged under Rule 13(3) III(v) of the Army Rules, 1954 on administrative grounds as an undesirable soldier and not on the ground of medical disability. Any opinion of the Release Medical Board held on 30th January 1997 with regard to the ailment of the Respondent does not entitle the Respondent to disability pension, as the ailment did not lead to his discharge. In any case, even as per the opinion of the Release Medical Board, the disability, if any, of the Respondent was not attributable to military service. The Tribunal recorded that the Release Medical Board had in Paragraph 3(d) stated "Disability constitutional in origin, unrelated to service".
>
> 12. For over 20 years from the date of the discharge, the Respondent did not challenge his discharge on the administrative ground of being an undesirable soldier. His discharge on

> administrative grounds could not have been challenged after two decades.
>
> 13. In the considered opinion of this Court, the Tribunal fell in error in passing its order dated 2nd November 2018 directing the Appellants to convene a Resurvey/Review Medical Board at the Military Hospital, Chennai or a designated hospital for the purpose of examining the applicant and assessing the degree of disability due to "Right Partial Seizure with Secondary Generalisation 345" and the probable duration of disability. The tenor of the order itself shows that even the Tribunal realized that accurate medical opinion could not have been obtained after lapse of 30 years from the date of recruitment of the Respondent and after 20 years from the date of his discharge. The Tribunal, therefore, sought assessment of 'probable duration of disability'."

49. Noting that the Review Medical Board, which came to be constituted as per the directions of the AFT also did not opine that the disability of Munusamy was attributable to, or aggravated by, military service, the Supreme Court also held, in para 15, that, "even otherwise, the question of entitlement of soldier to disability pension cannot be determined on the basis of medical examination conducted 20 years after his discharge". It was also observed that the AFT had provided no reasons not to accept the recommendation of the Resurvey Medical Board.

50. Interestingly, while dealing with the applicability of the decision in ***Rajbir Singh***, on which Munusamy relied, the Supreme Court held thus:

> "20. Rule 14(b) of the Entitlement Rules relied upon in ***Rajbir Singh (supra)*** is not attracted in this case, because the Respondent was not discharged on account of any disease, ailment or disability, but for administrative reasons. The Rule is only attracted when a disease leads to an individual's discharge or death. *Such disease is ordinarily to be deemed to have arisen in service, if no note of it*

> *was made at the time of the individual's acceptance for military service, but not always*. In any case, *the presumption under Rule 14(b) of the Entitlement Rules is rebuttable. If medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.* There was no direction on the Review Medical Board to give any opinion as to the question of whether the ailment of the Respondent could or could not have been detected at the time of his recruitment. Furthermore, the mere fact that an ailment or disease may have arisen in service does not mean that the ailment or disease is attributable to service conditions."
>
> (Emphasis supplied)

Thereafter, in para 22, the Supreme Court holds that, as the discharge of Munusamy was on administrative grounds, and remained unquestioned for two decades, the decision in ***Rajbir Singh*** and the judgments on which ***Rajbir Singh*** itself relied, would have no application. The AFT, it was held, had erred in holding, even after noting that red ink entries had been made in Munusamy's service records, that his absence as only on account of ailment/disability. The finding was criticized as being "patently conjunctural", "not based on any materials on record".

51. The Supreme Court went on, in para 22, to observe thus:

> "22**.** Moreover, even in the case of discharge on account of any disability or disease, the authorities might dispute that such disability or disease was caused or aggravated by military service. The Medical Board might, *for reasons to be stated*, give an opinion that the disease could not have been detected on medical examination prior to appointment, in which case the disease/disability would not be deemed to have arisen during service."
>
> (Emphasis supplied)

In the case before it, it was observed that, as Munusamy's discharge was not on medical grounds, there was no occasion for the Resurvey Medical Board to opine as to whether the ailment from which he suffered was caused or aggravated by military service.

UOI v Ex Hav. Attar Singh[33]

52. From the order passed by the Supreme Court in this case, we only deem it appropriate to extract the following paragraph, which speaks eloquently for itself:

> "4. Several appeals are being filed by the Union of India in this Court challenging the orders of the Armed Forces Tribunal wherein the benefit of disability pension has been granted to the members of the armed forces when they are invalidated after working for several years. The Government must adopt a benevolent approach while dealing with those who have served the armed forces for several years. The Armed Forces Tribunal consists of a very senior retired armed forces officer apart from a retired Judge of the High Court. In our view, every member of the armed forces, who gets the relief of grant of disability pension from the Tribunal, need not be dragged to this Court. As in the case of tax matters, we are of the view that the Government of India must evolve a policy. There has to be some scrutiny before a decision is taken to drag the members of the armed forces to this Court. As we have given a longer date in these Appeals, we call upon the first appellant to disclose whether it is willing to take such a policy decision before the next date."

<u>Additional Submissions filed by the petitioners in these proceedings</u>

53. The petitioners filed additional submissions before this Court, under cover of Index dated 24 March 2025. It is necessary for us to

[33] Order dated 30 January 2025 in **CA 10637/2024**

advert thereto.

54. Para 2 of the Additional Submissions alludes to the fact that a coordinate Division Bench of this Court has reserved orders in a batch of cases stated to be involving similar issues. We have already pointed out, earlier, that, in view of this fact, we were willing to defer any final view in the matters before us, but were not in a position to stay the order of the AFT in the absence of any *prima facie* case being made out by the petitioners, unless the petitioners acceded thereto. In some matters, the petitioners agreed to comply with the orders of the AFT, subject to the outcome of the writ petitions, and we passed orders accordingly. In these matters, however, the petitioners submitted that they were unwilling to offer to comply with the orders of the AFT, and called upon the Court to take a view regarding the aspect of issuance of notice and grant of stay.

55. Learned Counsel for the respondents, thereupon, submitted that the case is fully covered by earlier judgments of the Supreme Court, and that no case for issuance of notice is made out.

56. We, therefore, were left with no option but to hear the petitioners and respondents, and proceed to pass the present judgment.

57. Para 3 of the Additional Submissions submits that the AFT has not noticed the fact that, as the respondent was discharged from service on 31 August 2015, the 2008 Entitlement Rules applied to him. As is apparent from the orders passed by the AFT in these, and

several similar matters, the AFT has proceeded on the basis of the law enunciated in ***Dharamvir Singh***, which has been followed in several similar matters. We, therefore, are only called upon to examine whether that law no longer applies, in view of the 2008 Entitlement Rules.

58. Para 4 of the Additional Submissions refers to the fact that the applicability of the 2008 Entitlement Rules is presently pending before the Supreme Court in SLP (C) Diary 129/2015. We note that the Supreme Court has, while issuing notice in that case, neither stayed the order under challenge before it, not interdicted High Courts or the AFT from taking a view in similar matters.

59. It goes without saying that any order passed by us would remain subject to the view that the Supreme Court may take in the dispute before it.

60. Besides, in ***Union Territory of Ladakh v Jammu & Kashmir National Conference***[34], the Supreme Court has, recently, observed thus:

> "35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a

[34] **2023 SCC OnLine SC 1140**

reference or a review petition, as the case may be."

61. We, therefore, are obligated, legally, to decide the present matters *on the basis of the law as it stands.*

62. It is in this scenario that we have proceeded to deal with these matters.

Facts and Analysis

63. We refer, now, to the facts of the present case, since, in our opinion, they are significant.

64. The respondent Gawas Anil Madso was enrolled in the Army on 5 August 1985. He was placed in Low Medical Category[35], as suffering from Diabetes Mellitus Type II[36]. Following this, he was discharged from service on 31 August 2015.

65. A RMB, before which he was brought, certified him as suffering from 20% disability for life, on 19 September 2015, *30 years and 27 days after he had been inducted into the Army*. We deem it appropriate to advert to certain features of the report of the RMB:

(i) The RMB certified the respondent as suffering from Type II Diabetes Mellitus.

[35] LMC
[36] "DM-II" hereinafter

(ii) *In the Personal Statement of the respondent, he stated that*

(a) his ailment had first started on 23 July 2015, when he was posted at Shillong, and

(b) he did not suffer from any disability before he had joined the Armed Forces.

At no point of time, even till the filing of the present writ petition, have these assertions of the respondent, in his Personal Statement, been doubted or questioned as incorrect.

(iii) The respondent's Commanding Officer, in his Statement constituting Part III of the Report of the RMB, certified that

(a) the respondent had joined his Unit on 5 June 2013,

(b) at that time, the respondent was not in LMC, and

(c) he was not, at that time, suffering from any disabilities,

though the Commanding Officer did also certify that the duties assigned to the respondent did not involve severe/exceptional stress and strain.

(iv) The RMB opined thus, with respect to the "Reason/Cause/Specific condition and period in service":

> "Onset of disability *while service in Peace*. No close time association of disability occurring with Field Service is noted (As per para 26 Ch VI UMO Pensions 2008."

(v) Further, the view of the RMB certifies thus:

"2. Did the disability exist before entering service? (Y/N/Could be)

No.

3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of entry?

NA.

*****

5.(a) Was the disability attributable to the individual's own negligence or misconduct? If Yes, in what way?

No.

(b) *If not attributable, was it aggravated by negligence or misconduct?*

No."

(vi) Following this, the RMB has certified the respondent as suffering from 20% disability for life, but as not being entitled to disability pension.

(vii) The Report further goes on to state "Invalidment/Release in Medical Category S1H1A1P3(P)E1 for Type 2 Diabetes Mellitus".

66. We, therefore, find, from the facts of this case, that

(i) there is no doubt raised, in the writ petition, to the declaration by the respondent, in the report of the RMB, that the onset of the Type II DM, from which he was suffering, was while he was posted at Shillong, in 2015, more than 30 years after he had been enrolled in the Army, and that he was not

suffering from DM before enrolment,

(ii) this position also stands certified and acknowledged by the entries made by the RMB itself, reproduced in para 66(v) *supra*,

(iii) the RMB has also certified that the respondent was *not suffering* from DM prior to his induction in the Army, and

(iv) save and except for the mention that the onset of DM, in the case of the respondent, was while he was on a peace posting in Shillong, there is nothing whatsoever to support the finding that the DM was not attributable to, or aggravated by, his military service,

(v) the onus of proof, in regard, continues to remain with the Army, no provision to the contrary being found even in the 2002 Entitlement Rules,

(vi) the RMB Report, on the other hand, certifies and acknowledges that the DM, from which the respondent was suffering, *was not attributable to his own negligence*, and

(vii) the RMB Report is completely bereft of reasons, as to why, when the respondent admittedly became a sufferer of DM 34 years after induction in service, *the DM could be regarded as not attributable to military service*.

The effect of the change in policy in the 2008 Entitlement Rules

67. Much has been sought to be made, before us, about the fact that the presumption of attributability, contained in Rule 5 of the 1982 Entitlement Rules, has been done away with, in the 2008 Entitlement

Rules. We have also, therefore, compared the Rules.

68. It is true that the 2008 Entitlement Rules does not contain any provision presuming that, if there is no mention of the physical disability or ailment at the time of induction of the officer in service, there would be a presumption that it was attributable to military service. To the extent that the Court cannot presume, based on the fact that the records at the time of induction of the officer in military service did not indicate that he was suffering from the ailment detected later, that the ailment was attributable to military service, the petitioners are correct in their contention.

69. What, however, turns on this?

70. There is no dispute about the fact that the *onset of the Type II DM, from which the respondent suffers*, was more than 30 years after he had been inducted in service, and that he was not suffering from it before he entered military service. This, therefore, is not a case in which the issue of whether the disease could, or could not, have been detected at the time of entry into military service, makes any difference at all. This, in fact, is also acknowledged by the RMB itself, in the answer to Questions 2 and 3 of its Report, as entered by the RMB and reproduced in para 65(v) *supra*.

71. Having said that, we are also conscious of the indisputable legal position that there is a difference between a disease, or infirmity, *arising during military service* and being *attributable to military*

service. The fact that the disease has arisen during military service does not *ipso facto* mean, irrevocably, that it was attributable to military service. There can be no cavil with this proposition.

72. To that extent, the amended Rule 5 in the 2008 Entitlement Rules, which proclaims that "the mere fact that a disease has manifested during military service does not per se establish attributability or aggravation by military service" is unexceptionable.

73. That takes us, however, to Rule 7 of the 2008 Entitlement Rules, which deals with "Onus of Proof", and reads thus:

> "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 be on the claimant."

Mr Tiwari, appearing for the petitioners, laid great stress on the word "ordinarily". He points out that Rule 9 of the 1981 Rules, which earlier ordained that the claimant "*shall not* be called upon to prove the conditions of entitlement" had been replaced by the word "*ordinarily*", which was clearly weaker, in its import, and lacked the mandatory colour of the expression "*shall*".

74. We are of the view that the change in the language of the Rule is more one of form than of substance.

75. Viewed in isolation, there is clear etymological difference between the import of the words "shall" and "ordinarily". However, Rule 7 of the 2008 Entitlement Rules has, in our view, to be read as a whole. The Rule does not end with the statement that, ordinarily, the claimant would not be called upon to prove the condition of entitlement. It proceeds to clarify that the onus to prove entitlement would be on the claimant officer "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". Clearly, therefore, the reason for Rule 7 of the 2008 Entitlement Rules having not chosen to retain the earlier Rule 9 of the 1981 Entitlement Rules in its original form, is only because, where a belated claim, more than 15 years after discharge, or retirement, or invalidment, or release, is preferred, the petitioners would not have retained the original service documents of the claimant. In some circumstances, it would be unfair to expect the petitioners to be burdened with the initial onus to prove that the claimant officer, who has preferred his claim belatedly, is not entitled to it. In such a circumstance, the initial onus to prove entitlement would be on the officer. It is obviously to clarify this position that Rule 7 commences with the word "ordinarily". If anything, therefore, the word "ordinarily" would re-emphasise the position that the initial onus to prove entitlement remains on the military establishment, and is not on the officer claiming disability pension, and that this onus would shift only where the officer approaches, with his claim, belatedly, more than 15 years after discharge/retirement/invalidment/release.

76. Rule 14 of the 2008 Entitlement Rules, which applies to claims based on diseases, first that, for a disease to be treated as attributable to military service, it has to be simultaneously established that the disease arose during the period of military service and that the disease was caused by conditions of employment in military service. This, again, is obvious, and cannot be disputed.

77. It goes without saying that the mere fact that the officer may have contracted the disease during military service would not suffer to entitle him to disability pension, unless the disease was attributable to the military service. The petitioners are also correct in their submission that, with the removal, in the 2008 Entitlement Rules, of the presumption that, if no note was entered in the record of the officer, at the time of his induction into military service, to the effect that he was suffering from the ailment, the ailment would be deemed to be attributable to military service.

78. The removal of this presumption, from the Entitlement Rules, does not, however, automatically shift, to the claimant officer, the responsibility to prove that the disease is attributable to military service. This is clear from Rule 7, which unmistakably holds that, ordinarily, the officer *would not be called upon* to prove the condition of entitlement.

79. All that the removal of the presumption, contained in Rule 5 of the 1981 Entitlement Rules, of the disease being attributable to the service where no note, regarding its existence, was contained in the

record of the officer at the time of his enrolment into military service, entails is that it would be open to the Medical Board to hold that the disease was not attributable to military service, even if it was not present at the time of induction of the officer.

80. Even then, the responsibility would remain with the RMB to demonstrate, in its Report, with cogent reasons to be stated in the Report that, though the disease was not present at the time of induction of the officer in service, it was equally not attributable to the military service undergone by the officer. This would require, in its wake, the Report to fix attributability of the disease on some other factor, other than the military service being undergone by the officer. The RMB cannot seek to content itself with a bald statement that, in its opinion, the disease or ailment, though contracted during the tenure of military service of the officer, was not attributable to such service. The decisions cited supra, including the pronouncement in ***Munusamy***, remain consistent on this aspect, till date. As the law stands today, the mere fact that, at the time of induction into service, the record of the claimant officer did not contain any note to the effect that he was suffering from the disability or ailment on the basis of which he later claims disability pension, would not result in any presumption that the ailment or disability was attributable to military service. It would remain, however, an indisputable fact that, even in such cases, the disease or inability arose during the course of military service. The removal of the presumption would result in the RMB being open to establish, in its Report, that the disease, even if contacted during the military service of the concerned officer, was not

attributable to or aggravated by, it.

81. That responsibility has, however, to be assiduously discharged. The RMB has to record reasons as to why it arrives at the conclusion that the disease, forming subject matter of the claim for disability pension, contracted during the military service of the officer, was not attributable to such service in the absence of any such reason, the claim of the officer, disability pension, has necessarily to sustain.

82. In the facts of the present case, we do not deem necessary to state anything further. We have already emphasised the salient features of the report of the RMB in the case of the respondent. There is candid acknowledgement, in the Report, of the fact that the Type II DM, from which the Respondent suffered, was contracted 30 years after the Respondent had entered military service. The fact that the onset of the disease was during the course of military service of the Respondent is not, therefore, in dispute. Beyond this, there is precious little, in the Report of the RMB, to indicate that the military service of the respondent was not the cause of the disease. Inasmuch as the claim of the Respondent was not preferred more than 15 years after his discharge, the onus to establish this fact continues to remain on the RMB, even under Rule 7 of the 2008 Entitlement Rules. A mere statement that the onset of the disease was during a peace posting is clearly insufficient to discharge this onus. The judgments of the Supreme Court are consistent on the fact that the report of the RMB is required to be detailed, speaking, and supported by sufficient cogent reasons. The RMB Report, in the case of the Respondent, clearly does

not satisfy these conditions.

83. While we are not doctors, it is a matter of common knowledge that Diabetes is a disease which can be caused, and exacerbated, by stressful living conditions. The fact that the onset of the disease might have been while the officer was on a peace posting cannot, therefore, be determinative of the issue of whether the disease was, was not, attributable to military service. In such a case, the RMB has a greater responsibility to identify the cause of the disease, so that a clear case, dissociating the disease and its onset, from the military service of the claimant officer, is established.

84. This would be all the more so when, as in the case as the present, the disease has manifested 3 decades after the officer has been enrolled into military service. By certifying that the disease is not owing to any negligence on the part of the officer, there is an implied acknowledgement that the Respondent cannot be said to be responsible for the Type II DM from which he suffers. It was for the RMB, in such circumstances, to identify the cause of the disease, in its report. This, the RMB has, in the present case, clearly failed to do.

85. We are not sitting in appeal over the decision of the AFT. We exercise *certiorari* jurisdiction. Within the limited peripheries of such jurisdiction, we are of the opinion that no case can be said to have been made out, as would justify interference with the decision of the AFT.

86. The writ petition has, therefore, necessarily to fail.

WP (C) 3667/2025 [*UOI v Ex Nk Amin Chand*]

87. The above judgment in WP (C) 3667/2025 would apply, *mutatis mutandis*, to this case.

88. The respondent Amin Chand was enrolled in DSC, Army on 31 December 2005. He was due to superannuate on 31 December 2020. Prior thereto, he was subjected to a RMB, which opined that he was suffering from Peripheral Arterial Occulsive Disease Right Lower Limb[37] composite, with the degree of disability assessed at 20% for life. However, he was denied Disability Pension on the ground that the disease was neither attributable to, nor aggravated by, military service. The respondent approached the AFT, which has allowed his application and held him entitled to Disability Pension, following ***Dharamvir Singh***. The UOI challenges the decision.

89. We have seen the report of the RMB, dated 20 November 2020. The following features merit mention:

(i) In his Personal Statement, the respondent has stated that he did not suffer from any disability before joining the Army. The correctness of this declaration is not questioned either by the RMB or in the present writ petition.

(ii) The respondent has further declared that the disease

[37] "PAOD" hereinafter

started on 19 June 2015, when he was posted at Gwalior, 10 years after induction in the Army. This is confirmed by the RMB in Part VI of the RMB Report. In Part VII, the RMB again mentions that the onset of the ailment was "in peace". We may reiterate, here, that military personnel suffer various postings during their military service, and the mere fact that the onset of an ailment might have been while the officer was on a peace posting does not incontrovertibly indicate that the disease was not attributable to military service. We reiterate, for example, that there are diseases, and ailments, which may have arisen, but may remain dormant for a period of time before becoming manifest.

(iii) The Statement of the Commanding Officer also confirms that the respondent was in LMC from 2 July 2015 onwards, and that he suffered from PAOD.

(iv) The RMB further confirms that the disease was not attributable to the respondent's own negligence or misconduct.

After this, the RMB, without any supportive reasons whatsoever, holds that the PAOD was neither attributable to, nor aggravated by, military service. On that basis the respondent has been denied disability pension.

90. It was sought to be contended that the report of the RMB was entitled to respect, and that the Court should not rule contrary thereto.

There is no doubt that the RMB report is entitled to deference. However, it has to conform to the requirements of the report as enunciated by the judgments of the Supreme Court already cited *supra*. A non-speaking report, merely holding, without prelude or preface, that the disease, *though it arose during the military service of the claimant*, was not attributable to or aggravated by, military service, cannot suffice to deny him disability pension.

91. We, therefore, find no cause to interfere with the decision of the AFT in this case either, within the limits of our jurisdiction under Article 226 of the Constitution of India.

Conclusion

92. Accordingly, we find that no case has been made out by the Union of India for issuance of notice in either of these writ petitions.

93. For all the aforesaid reasons, both the writ petitions are dismissed in *limine*. The impugned orders passed by the learned AFT are upheld in their entirety.

94. Compliance therewith be ensured within a period of four weeks from today.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 27, 2025*/aky/yg*

Click here to check corrigendum, if any