148 (bunch matter).

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2025:PHHC:101526-DB

CWP-10046-2025 (O&M)
Date of Decision: 05.08.2025

UNION OF INDIA AND OTHERS ...Petitioners
V/S
TARSEM CHAND AND ANOTHER …Respondents

2. CWP-10062-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
MALKIT SINGH AND ANOTHER …Respondents

3. CWP-10664-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
BALBIR SINGH AND ANOTHER …Respondents

4. CWP-10743-2025 (O&M)

UNION OF INDIA AND OTHERS
…Petitioners
V/S
NO JC 510494L EX SUB RANJIT SINGH AND ANOTHER

…Respondents

5. CWP-10763-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
JOGA SINGH AND ANR …Respondents

6. CWP-10764-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
DAVINDER SINGH AND ANR …Respondents

7. CWP-10794-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
BALBIR SINGH AND ANR …Respondents

8. CWP-10901-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX HAV JAI NARAYAN AND ANOTHER …Respondents

9. CWP-1836-2025 (O&M)

UNION OF INDIA THROUGH ITS SECRETARY TO GOVERNMENT OF INDIA
…Petitioner
V/S
THE ARMED FORCES TRIBUNAL REGIONAL BENCH CHANDIGARH AND ANOTHER
…Respondents

10. CWP-2179-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
COL TS SURESH KUMAR AGNIHOTRI AND ANOTHER

…Respondents

11. CWP-4034-2025 (O&M)

UNION OF INDIA THROUGH SECRETARY TO GOVERNMENT OF INDIA
…Petitioner
V/S
SHAMSHER SINGH AND ANOTHER …Respondents

12. CWP-4081-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
SMT BIMLA DEVI AND ANOTHER …Respondents

13. CWP-4087-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX HAV MUKESH KUMAR AND ANOTHER …Respondents

14. CWP-5832-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
EX NK RANJIT SINGH BHATIA AND ANR …Respondents

15. CWP-5898-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
NO SC00067Y COL JAGJIT SINGH RETD AND ANOTHER

…Respondents

16. CWP-7448-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
NO 14481843P EX HAV. KARTAR SINGH GILL AND ANR

…Respondents

17. CWP-7463-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
RAM KISHAN AND ANR …Respondents

18. CWP-8437-2025 (O&M)

UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS

…Petitioners
V/S
COL RAVI SETHI RETD AND ANOTHER …Respondents

19. CWP-8620-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
SATISH KUMAR AND ANOTHER …Respondents

20. CWP-8623-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
EX-SUBEDAR JAGDISH CHANDRA AND ANR ..Respondents

21. CWP-8761-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
NO 3993895M EX HAV DEEP KUMAR AND ANR …Respondents

22. CWP-1810-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
PANKAJ KUMAR MAURYA AND ANOTHER …Respondents

23. CWP-3680-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX SPR SHAMSHER SINGH NO 1577085 AND ANOTHER

…Respondents

24. CWP-5156-2025 (O&M)

UNION OF INDIA & ORS …Petitioners
V/S
SOMVIR & ANR …Respondents

25. CWP-5420-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
ADARSH KUMAR AND ANOTHER …Respondents

26. CWP-6423-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
NO 14601996X EX SEP NAND LAL AND ANOTHER

…Respondents

27. CWP-6426-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
NO 14628335F EX HAV PRITHVI SINGH AND ANOTHER
…Respondents

28. CWP-6438-2025 (O&M)

UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS
…Petitioners
V/S
SANJAY KUMAR AND ANOTHER …Respondents

29. CWP-2250-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
OM PRAKASH GULIA AND ANOTHER …Respondents

30. CWP-2918-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX SEP SATISH KUMAR AND ANOTHER …Respondents

31. CWP-4095-2025 (O&M)

UNION OF INDIA THROUGH SECRETARY TO GOVERNMENT OF INDIA
…Petitioners
V/S
ARMED FORCES TRIBUNAL CHANDIGARH & ANR

…Respondents

32. CWP-4114-2025 (O&M)

UNION OF INDIA THROUGH SECRETARY TO GOVERNMENT OF INDIA
…Petitioners
V/S
SUKHDEV SINGH & ANR …Respondents

33. CWP-5411-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX HAV BAPI MAJUMDAR AND ANOTHER …Respondents

34. CWP-5646-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX HAV RAM KUMAR AND ANR …Respondents

35. CWP-6951-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
HARNAM SINGH AND ANOTHER …Respondents

36. CWP-7908-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
MUKESH KUMAR AND ANOTHER …Respondents

37. CWP-7919-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
EX HAV SUSHIL KUMAR AND ANOTHER …Respondents

38. CWP-7929-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
NO 4079500P EX L NK KULWANT SINGH AND ANOTHER

…Respondents

39. CWP-7941-2025 (O&M)

UNION OF INDIA …Petitioner
V/S
LT. COL. VIRENDRA SINGH YADAV(RETD.) AND OTHERS

…Respondents

40. CWP-8767-2025 (O&M)

UNION OF INDIA THROUGH SECRETARY TO GOVERNMENT OF INDIA & ORS.

..Petitioners
V/S
KAMAL SINGH AND ANOTHER …Respondents

41. CWP-9492-2025 (O&M)

UNION OF INDIA AN OTHERS ...Petitioners
V/S
DURGA DASS AND ANOTHER …Respondents

42. CWP-11241-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX SUB SUBA SINGH AND ANOTHER ...Respondents

43. CWP-11277-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
BRIG JAGDEEP DAHIYA RETD AND ANOTHER ...Respondents

44. CWP-11672-2025 (O&M)

UNION OF INDIA THROUGH SECRETARY AND OTHERS ...Petitioners
V/S
KULWANT SINGH AND ANOTHER ...Respondents

45. CWP-11755-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
PRIYA VART AND ANR ...Respondents

46. CWP-11946-2025 (O&M)

UNION OF INDIA AND ORS ..Petitioners
V/S
EX SUBEDAR SUBHASH CHAND SINCE DECEASED THROUGH
SMT. RAJ KUMARI LR AND ANOTHER
...Respondents

47. CWP-12267-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX NK KAPIL DEV AND ANOTHER ...Respondents

48. CWP-12398-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
SUBEDAR RAGHUBIR SINGH AND ANOTHER ...Respondents

49. CWP-12447-2025 (O&M)

UNION OF INDIA AND ORS ...Petitioners
V/S
NO 2690154P EX HAV RAKESH KUMAR AND ANR ...Respondents

50. CWP-1408-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX HAV HARVINDER SINGH AND ANOTHER ...Respondents

51. CWP-1688-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
KULDEEP SINGH & ANR. ...Respondents

52. CWP-1705-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
EX RIS RAJESH KUMAR AND ANOTHER ...Respondents

53. CWP-4617-2025 (O&M)

UNION OF INDIA & ORS. …Petitioners
V/S
NARANJAN SINGH & ANR. ...Respondents

54. CWP-1789-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
KULBIR SINGH AND ANR ...Respondents

55. CWP-1802-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
EX NK VED PRAKASH AND ANR …Respondents

56. CWP-8147-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
BRIG KANWAL RAJIV ANAND RETD AND ANR …Respondents

57. CWP-773-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
KARNAIL SINGH & ANR. …Respondents

58. CWP-1811-2025 (O&M)

UNION OF INDIA AND ORS …Petitioners
V/S
RANBIR SINGH AND ANR …Respondents

59. CWP-775-2025 (O&M)

UNION OF INDIA AND OTHERS ...Petitioners
V/S
SHRIVASTAV SANSKRITYAYAN RAMAVTAR AND ANOTHER

…Respondents

CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present: Ms. Geeta Singhwal, Sr. Panel Counsel,
Mr. Maheshinder Singh Sindhu, Sr. Panel Counsel,
Mr. Shiv Kumar Sharma, Sr. Panel Counsel,
Ms. Jyoti Choudhary, Sr. Panel Counsel,
Ms. Naveen Gupta, Sr. Panel Counsel,
Ms. Saigeeta Srivastava, Sr. Panel Counsel,
Ms. Shalini Atri, Sr. Panel Counsel,
Mr. Vibhor Bansal, Sr. Panel Counsel,
Ms. Anju Sharma, Sr. Panel Counsel,
Mr. Arihant Goyal, Sr. Panel Counsel,
Mr. Charanjit Bakshi, Sr. Panel Counsel,
Ms. Promila Nain, Sr. Panel Counsel,
Ms. Bhavana Datta, Sr. Panel Counsel,
Mr. Anil Chawla, Sr. Panel Counsel,
Mr. Sushant Kareer, Sr. Panel Counsel,
Ms. Meghna Malik, Sr. Panel Counsel,
Ms. Ayushi Sharma, Sr. Panel Counsel,
Ms. Neha Jain, Sr. Panel Counsel,
Ms. Sonia Sharma, Sr. Panel Counsel,
Mr. Ramesh Chand Sharma, Sr. Panel Counsel,
Mr. Chander Mohan Sharma, Sr. Panel Counsel,
Mr. Arihant Goyal, Sr. Standing Counsel,
Ms. Ayunshi Sharma, Sr. Panel Counsel,
Mr. Vishal Garg, Sr. Panel Counsel, for the petitioner (s).

Mr. Navdeep Singh, Advocate and
Mr. Rajesh Sehgal, Advocate for the private respondent(s).

***

ASHWANI KUMAR MISHRA J. (Oral)

1. Since the controversy raised in all the petitions is same, they are being dealt with together by this common judgment. For reference, facts are being extracted from CWP-10046-2025.

2. The present writ petition has been filed challenging the order dated 24.07.2024, passed by the Armed Forces Tribunal, Regional Bench, Chandigarh, in OA No.1479 of 2022, whereby the original applicant was held entitled to grant of disability pension @ 50% as against 30% for life, by relying upon the judgment of the Hon'ble Supreme Court rendered in *Civil Appeal No. 418 of 2012* titled as ***Union of India and Others*** Vs. ***Ram Avtar*** ; *SCC Online SC 1761.*

3. Learned counsel for the petitioner(s) submits that the disability suffered by private respondent is neither attributable nor aggravated by military service and thus, the impugned order passed by the Tribunal is liable to be set aside.

4. The issue raised in the present writ petition is no more *res-integra* in view of the judgment passed by the Hon'ble Supreme Court in the case of **Bijender Singh v. Union of India and others, 2025 SSC OnLine SC 895**, wherein after considering the judgments in **Dharamvir Singh v. Union of India (2013) 7 SCC 316** and **Union of India vs. Rajbir Singh (2015) 12 SCC 264**, and while dealing with Rule 5, 9 and 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982, held as under:-

> *"45.1. Thus, this Court held that essence of the Rules is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into the service if there is no*

note or record to the contrary made at the time of such entry. In the event of subsequent discharge from service on medical ground, any deterioration in health would be presumed to be due to military service. The burden would be on the employer to rebut the presumption that the disability suffered by the member was neither attributable to nor aggravated by military service. If the Medical Board is of the opinion that the disease suffered by the member could not have been detected at the time of entry into service, the Medical Board has to give reasons for saying so. This Court highlighted that the provision for payment of disability pension is a beneficial one which ought to be interpreted liberally. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that upon proper physical and other tests, the member was found fit to serve in the army would give rise to a presumption that he was disease free at the time of his entry into service. For the employer to say that such a disease was neither attributable to nor aggravated by military service, the least that is required to be done is to furnish reasons for taking such a view.

46. Referring back to the impugned order dated 26.02.2016, we find that the Tribunal simply went by the remarks of the Invaliding Medical Board and Re-Survey Medical Boards to hold that since the disability of the appellant was less than 20%, he would not be entitled to the disability element of the disability pension. Tribunal did not examine the issue as to whether the disability was attributable to or aggravated by military service. In the instant case neither has it been mentioned by the Invaliding Medical Board nor by the Re-Survey Medical Boards that the disease for which the appellant was

invalided out of service could not be detected at the time of entry into military service. As a matter of fact, the Invaliding Medical Board was quite categorical that no disability of the appellant existed before entering service. As would be evident from the aforesaid decisions of this Court, the law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the member suffered from any particular disease, the presumption would be that the member got afflicted by the said disease because of military service. Therefore the burden of proving that the disease is not attributable to or aggravated by military service rest entirely on the employer. Further, any disease or disability for which a member of the armed forces is invalided out of service would have to be assumed to be above 20% and attract grant of 50% disability pension.

47. Thus having regard to the discussions made above, we are of the considered view that the impugned orders of the Tribunal are wholly unsustainable in law. That being the position, impugned orders dated 22.01.2018 and 26.02.2016 are hereby set aside. Consequently, respondents are directed to grant the disability element of disability pension to the appellant at the rate of 50% with effect from 01.01.1996 onwards for life. The arrears shall carry interest at the rate of 6% per annum till payment. The above directions shall be carried out by the respondents within three months from today."

5. Learned counsel for the petitioners has not been able to show any perversity or illegality in the finding of the Tribunal. The factum of disability is not in dispute. Even otherwise, the controversy raised in the matter stands recently adjudicated by our composite order dated 28.07.2025

passed in ***Union of India and Others*** Vs. ***Col. B.S. Bisht and Another***; *CWP-20253-2025 and* ***Union of India and Others*** Vs. ***IC-41068W Maj. Gen. Anil Chaudhary (Retd.) and Another***; *CWP-20287-2025 and connected cases*. In Gen. Anil Chaudhary case (supra), this Court has elaborately discussed the entire conspectus and held as under:-

> *"4. The only ground on which the order of Tribunal is assailed, is that the remedy of second appeal was not availed, and the matter was entertained by the Tribunal.*
>
> *5. The ground placed on behalf of the petitioners does not appeal to this Court. Undisputedly, the respondent no.1 was commissioned in the Indian Army on 18.06.1983. At the time of his commissioning, he was placed in the highest possible medical category Shape-1. He has been discharged from service on account of Permanently Low Medical Category on 31.01.2021. The opinion of the RMB is before this Court, which clearly mentions the date of disease as May, 2019. The rationale for denying disability pension by the RMB reads as under:*
>
> > *"As the disability is of idiopathic origin, onset of disability is in pease Stn. Jaipur (Rajasthan). There is no evidence of military related stress or strain of service in fd/HAAI CIOPS area hence NAMA conceded vide para - 43, Ch-VI of GMO-2008."*
> >
> > *6. Attention of this Court has also been invited to clause 2 of the Report of the RMB, which reads as under:-*
> >
> > *2(a) Was the disease/disability attributable to the individual's own negligence or misconduct? If Yes, in what way? No*
> >
> > *2(b) If not attributable, was it aggravated by the individual's own negligence or misconduct? If so, in what way and to what percentage of the total disablement? No*
>
> *7. It is on account of the opinion of the RMB that the disability was caused during posting at peace station, and that the claim of the respondent no.1 for Disability Pension was rejected by the*

competent authority on 20.01.2021. The appeal filed thereagainst was also rejected on 07.05.2021. It is, thereafter, the matter was taken to the Tribunal.

8. This Court has heard learned counsel for the petitioners at length on the merits of the decision of the petitioners-UOI for denying the Disability Pension to respondent no.1.

9. The issue, as to whether, the Disability Pension could be denied to an Armed Forces personnel was adjudicated at length by a judgment of the Supreme Court in 'Dharamvir Singh Vs. UOI and others' (2013) 7 SCC 316'. There is a long line of judgments virtually reiterating the principles laid down in Dharamvir Singh's case (supra). We do not intend to burden this judgment by referring to large number of cases decided by the Supreme Court and this Court as well as other courts on the issue.

10. This Court may refer to judgment of the Supreme Court in 'Bijender Singh vs. UOI and others' (Civil Appeal No.4458 of 2024 decided on 23.04.2025). After referring to the series of judgments on the issue, the Supreme Court has summed up the law in paragraph no.45 to 47 of the said judgment, which are extracted hereinafter:-

> *"45. We have already noticed the analysis of Rules 5, 9 and 14 of the Rules in Rajbir Singh (supra). After adverting to the decision of this Court in Dharamvir Singh (supra), this Court opined as under:*
>
> *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 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.

45.1. Thus, this Court held that essence of the Rules is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into the service if there is no note or record to the contrary made at the time of such entry. In the event of subsequent discharge from service on medical ground, any deterioration in health would be presumed to be due to military service. The burden would be on the employer to rebut the presumption that the disability suffered by the member was neither attributable to nor aggravated by military service. If the Medical Board is of the opinion that the disease suffered by the member could not have been detected at the time of entry into service, the Medical Board has to give reasons for saying so. This Court highlighted that the provision for payment of disability pension is a beneficial one which ought to be interpreted liberally. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that upon proper physical and other tests, the member was found fit to serve in the army would give rise to a presumption that he was disease free at the time of his entry into service. For the employer to say that such a disease was neither attributable to nor aggravated by military service, the least that is required to be done is to furnish reasons for taking such a view.

46. Referring back to the impugned order dated 26.02.2016, we find that the Tribunal simply went by the

remarks of the Invaliding Medical Board and Re-Survey Medical Boards to hold that since the disability of the appellant was less than 20%, he would not be entitled to the disability element of the disability pension. Tribunal did not examine the issue as to whether the disability was attributable to or aggravated by military service. In the instant case neither has it been mentioned by the Invaliding Medical Board nor by the Re-Survey Medical Boards that the disease for which the appellant was invalided out of service could not be detected at the time of entry into military service. As a matter of fact, the Invaliding Medical Board was quite categorical that no disability of the appellant existed before entering service.

As would be evident from the aforesaid decisions of this Court, the law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the member suffered from any particular disease, the presumption would be that the member got afflicted by the said disease because of military service. Therefore the burden of proving that the disease is not attributable to or aggravated by military service rest entirely on the employer. Further, any disease or disability for which a member of the armed forces is invalided out of service would have to be assumed to be above 20% and attract grant of 50% disability pension.

47. Thus having regard to the discussions made above, we are of the considered view that the impugned orders of the Tribunal are wholly unsustainable in law. That being the position, impugned orders dated 22.01.2018 and 26.02.2016 are hereby set aside. Consequently, respondents are directed to grant the disability element of disability pension to the appellant at the rate of 50% with effect from 01.01.1996 onwards for life. The arrears shall carry interest at the rate of 6% per annum till payment.

The above directions shall be carried out by the respondents within three months from today."

11. On behalf of the petitioners a feeble attempt is also made to dispute the factum of presumption that would arise with regard to disability having been caused during the course of employment, where the exact cause of disease is not ascertained.

12. According to the petitioners the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 (hereinafter referred to as the 'Rules of 2008') has since come into operation, therefore, the previous judgments ought to be discarded.

13. The submission in that regard is noted only to be rejected.

14. The Rules of 2008, have been introduced by substituting the previous rules framed by the competent authority for the purpose. The amended Rule 4(a) provides that invalidation from service with disablement caused by service factor is a condition precedent for grant of Disability Pension. The latter part of the said rule, however, contemplates that the disability element will also be admissible to personnel who retire or discharge on completion of term of engagement in low medical category on account of disability attributable to or aggravated by military service, provided that the disability is accepted as not less than 20%.

The said rule reads as under:-

4(a). Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.

15. Rule 4(a), therefore, makes it apparent that the Disability Pension would be admissible to a defence personnel, where he is invalidated from service caused by service factors.

16. The other category where the personnel either retired or is discharged on completion of the terms of engagement due to low medical category on account disability attributable to or aggravated by military service would, however, be entitled to Disability Pension, build a disability accepted, is not less than 20%.

17. Rule 10 of the Rules of 2008, deals with 'Attributability'. Clause (b) thereof specifies the diseases for the purposes of low medical category of the disease.

18. Attention of this Court has been invited to sub clause (iii) of Rule 10(b) which reads as under:-

> *"(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted; attributability 'should be conceded on the basis of the clinical picture and current scientific medical application. "*

19. The provision aforesaid, clearly goes to show that even under Rules of 2008, where the cause of disease is not known, the presumption of entitlement is in favour of the claimant, unless is not rebutted and the attributability should be considered on the basis of clinical picture and current scientific medical application. It is therefore, clear that even under the amended rules the presumption of entitlement would continue to exist where the cause of disease is not known. In the facts of the present case, the cause of the disease has not been specified.

20. The RMB has not attributed, such low medical condition to any misconduct or act of respondent concerned. At this juncture, we may also refer to Rule 5 and Rule 7 of the Rules of 2008, which read as under:-

> *Rule 5- **Medical Test at entry stage**: The medical test at the time of entry is not exhaustive, but its scope is limited*

to broad physical examination. Therefore, it may not detect some dormant disease. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.

*7. **Onus of proof**: 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 lie on the claimant.*

21. Under the amended Rule 7 ordinarily the claimant will not be called upon to prove the conditions of entitlement. It is only where the claim is preferred after 15 years of discharge, in that case, such onus to prove the entitlement would lie on the claimant.

22. In a case of the present kind, where the army personnel at the time of entering into the service, was in sound medical condition and the origin of the disease is during the service and the cause of disease is not ascertained, the presumption of sub rule (iii) Rule 10(b) would clearly cast a presumption of entitlement in favour of the claimant.

23. Attention of this Court has also been invited to Regulation 423(a) of Regulations for the Medical Services in the Armed Forces, 2010, which has been amended in the earlier Rules of 1980, with the Rules of 2010, which is extracted hereinafter:-

"423(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or 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 Area/Active Service area or

under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions.

All evidences 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 favor, 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 case occurring in Field Service/Active Service areas."

24. In that view of the matter, this Court does not find any case on merits on part of the petitioners-UOI.

25. Coming to the aspect of non-exhaustion of alternate remedy, this Court is not impressed by such argument, at this late stage, inasmuch as, the issue raised was not only decided by the competent authority, but the first appeal was also rejected.

26. The petitioners-UOI, therefore, cannot insist that non-filing of a departmental appeal before an administrative authority, has caused such prejudice to it, that the claim of the respondent no.1 before the Tribunal, could not have been entertained. At such late stage of the proceedings, this Court is, otherwise, not persuaded to entertain the petition, on such ground.

27. The instant petitions, accordingly, dismissed."

6. In that view of the matter, we do not intend to interfere with the findings recorded by the Tribunal. The writ petitions fail and are accordingly dismissed.

7. All pending misc. application(s), if any, also stands disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(**AARADHNA SAWHNEY**)
JUDGE

05.08.2025
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No