2025 INSC 549

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4458-4459 OF 2024

BIJENDER SINGH **APPELLANT(S)**

VERSUS

UNION OF INDIA & ORS. **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

Heard learned counsel for the parties.

2. Subject matter of both the civil appeals is the same. Therefore, both the appeals are being disposed of by this common judgment and order. However, for the sake of convenience, we refer to the facts mentioned in Civil Appeal No. 4458 of 2024.

2.1. This is an appeal under Section 30 of the Armed Forces Tribunal Act, 2007 against the order dated 22.01.2018 passed by the Armed Forces Tribunal, Chandigarh Regional Bench in R.A. No. 20 of 2016 in O.A. No. 3977 of 2013 as well as the order dated 26.02.2016 passed by the Armed Forces Tribunal, Chandigarh Regional Bench in O.A. No. 3977 of 2013.

3. Be it stated that appellant as the applicant had filed O.A. No. 3977 of 2013 before the Armed Forces Tribunal, Chandigarh Regional Bench ('Tribunal' for short) under Section 14 of the Armed Forces Tribunal Act, 2007 (briefly 'the 2007 Act' hereinafter) contending that he was entitled to the disability element of disability pension on account of his disability attributable to military service, rounding off of his disability to 50%. By the order dated 26.02.2016, Tribunal held that disability of the appellant was less than 20%. Therefore, no relief could be granted to the appellant. Resultantly, O.A. No. 3977 of 2013 was dismissed.

4. Appellant filed a review application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 for review of the order dated 26.02.2016. The same was registered as R.A. No. 20 of 2016. By order dated 22.01.2018, Tribunal held that there was no ground to review the order dated 26.02.2016 and, accordingly, dismissed the review application. Request made by the appellant for grant of leave to appeal was declined.

5. Aggrieved thereby, appellant has preferred the present civil appeal. Notice in this case was issued on 13.08.2018. In the hearing held on 19.03.2024, leave to appeal under Section 31(1) of the 2007 Act was granted. Delay in filing the appeal was condoned.

6. Relevant facts may be briefly noted.

7. Appellant was enrolled in the army on 30.09.1985. He was invalided out from service w.e.f. 14.08.1989 on account of low medical category for the disease *generalized tonic clonic seizure old 345 V-67*

assessed at less than 20% on the recommendations of the Invaliding Medical Board.

8. According to the appellant, he was hale and hearty when he had joined the army. He had suffered the aforesaid disability during his posting at high altitude Siachen glacier from May, 1988 to 20.09.1988. Onset of the disability was from 09.10.1988.

9. Invaliding Medical Board in its proceedings dated 12.07.1989 opined that the disability was not attributable to or aggravated by military service; the disability was assessed for a period of two years.

10. In view of the opinion of the Invaliding Medical Board, appellant was invalided out from service w.e.f. 14.08.1989. He was granted disability pension consisting of the service element only since the disability was assessed at less than 20% and held as not attributable to or aggravated by military service.

11. Re-Survey Medical Boards were held on 07.08.1993, 23.06.1998 and 28.06.2002. On all the three

occasions, Re-Survey Medical Boards had assessed the disability of the appellant at around 15 to 19% further observing that such disability was for life.

12. Appellant had submitted representations dated 07.08.2010 and 05.02.2013 before respondent No. 3 requesting the authorities to accept his disability as attributable to and aggravated by military service and thereafter to release disability pension (disability element) to him by assessing the disability at 50% w.e.f. 01.01.1996. However, there was no response.

13. At that stage, appellant approached the Tribunal by filing O.A. No. 2322 of 2013. By order dated 13.05.2013, Tribunal disposed of O.A. No. 2322 of 2013 directing the respondents to take a decision on the aforesaid representations by passing a speaking order within four months.

14. Pursuant to the aforesaid order of the Tribunal dated 13.05.2013, respondents passed an order dated

30.07.2013 rejecting the claim of the appellant for disability pension.

15. Aggrieved thereby, appellant approached the Tribunal again by filing O.A. No. 3977 of 2013 seeking the following reliefs:

> (i) to quash the order dated 30.07.2013;
>
> (ii) to quash the recommendation of the Invaliding Medical Board to the extent that disability suffered by the appellant was not considered as attributable to and aggravated by military service;
>
> (iii) to direct the respondents to release the disability element of disability pension at the rate of 50% w.e.f. 01.01.1996 for life with 18% interest;
>
> iv) to direct the respondents to pay the arrears of disability element of disability pension w.e.f. 01.01.1996 till full and actual payment.

16. Respondents filed written statement opposing the claim of the appellant. Contention of the respondents was that disability of the appellant was found less than 20% by the Invaliding Medical Board as well as by the Re-Survey Medical Boards. Therefore, the appellant was not entitled to

the grant of disability element of disability pension. As the disability of the appellant, in any case, was less than 20% and was neither attributable to nor aggravated by military service, he was not entitled to such relief.

17. Tribunal *vide* the impugned order dated 26.02.2016 held that disability of the appellant was less than 20%. The Invaliding Medical Board as well as Re-Survey Medical Boards had observed that the disability of the appellant was neither attributable to nor aggravated by military service. Therefore, no relief could be granted to the appellant. Consequently, O.A. No. 3977 of 2013 was dismissed.

18. Appellant filed R.A. No. 20 of 2016 for review of the impugned order dated 26.02.2016. It was contended that Tribunal had not taken into consideration the judgments relied upon by the appellant. That apart, another Bench of the Tribunal in which one of the members common to the Bench which had passed the order dated 26.02.2016 had decided a similar matter by allowing disability pension

of the applicant in O.A. No. 908 of 2011 (*Mahal Singh Vs. Union of India*) *vide* the order dated 19.12.2014. It was argued that there being an error apparent on the face of the record, the order dated 26.02.2016 should be reviewed. On the other hand, respondents argued that the impugned order was a well considered one and there was no error apparent on the face of the record which would justify review.

18.1. By the order dated 22.01.2018, the Tribunal dismissed the review application by holding that the impugned order was a well-considered one and that there was no error apparent on the face of the record to justify a review. Tribunal also declined the oral request of the appellant for grant of leave to appeal.

19. Learned counsel for the appellant submits that both the orders of the Tribunal dated 26.02.2016 and 22.01.2018 are wholly unsustainable in law. In so far the review is concerned, Tribunal simply held that there was no error apparent on the face of the record and, thereafter,

dismissed the review application. He submits that another Bench of the Tribunal in which one of the members was common had allowed O.A. No. 908 of 2011 (*Mahal Singh Vs. Union of India*) on 19.12.2014 by granting disability pension to the applicant therein who was similarly placed like the appellant.

19.1. In so far the impugned order dated 26.02.2016 is concerned, the same is contrary to the law laid down by this Court in *Dharamvir Singh Vs. Union of India*[1], *Union of India Vs. Rajbir Singh*[2] and *Union of India Vs. Angad Singh Titaria*[3]. By ignoring the binding precedents of this Court, Tribunal had declined the prayer of the appellant to grant the disability element of disability pension to him.

19.2. Learned counsel submits that the disease or disability which led to an individual's discharge will ordinarily be deemed to have arisen in service if no note of it was made at the time of his entry into military service. Medical opinion must disclose cogent reasons as to why the

[1] (2013) 7 SCC 316
[2] (2015) 12 SCC 264
[3] (2015) 12 SCC 257

disease or disability is not attributable to military service though he is invalided out from service on account of such disease or disability. In the case of the appellant, there is no note that the disease of *generalized tonic clonic seizure old 345 V-67* could not be detected at the time of entry into service though on account of such disease, appellant was invalided out of military service in low medical category.

19.3 Learned counsel has also argued that in the present case, Tribunal did not even consider as to whether the disease suffered by the appellant is attributable to or aggravated by military service. This, he submits, itself is an error apparent on the face of the record. Instead, the entire focus of the Tribunal was on the issue as to whether the disability was at 20% or above. Since the Tribunal held that the disability was less than 20%, it did not consider the core issue as to whether such disease or disability is attributable to or aggravated by military service.

19.4. Learned counsel also submits that Tribunal had overlooked the instructions dated 31.01.2001 which

provided for rounding off of disability less than 50% (i.e. 1% to 49%) to 50%. The condition of minimum 20% disability required for earning the disability element of disability pension was abrogated w.e.f. 01.01.1996. The artificial cut-off date i.e. 01.01.1996 has already been set aside by this Court in *K.J.S. Buttar Vs. Union of India*[4]. Therefore, the finding of the Tribunal that since the disability of the appellant was less than 20%, no relief could be granted to him is clearly unsustainable in law.

19.5. Learned counsel submits that Tribunal also failed to appreciate the letter dated 20.07.2006 of the Ministry of Defence, Government of India clarifying that even if a person has been invalided out from service and having 1% disability, he would still be entitled for commuting the benefit of disability element at the rate of 50%. Failure to consider the aforesaid letter has vitiated the impugned order.

[4] (2011) 11 SCC 429

19.6. Learned counsel, therefore, submits that in any view of the matter, both the impugned orders are liable to be set aside and quashed. Consequently, respondents should be directed to grant the disability element of disability pension to the appellant with applicable interest w.e.f. 01.01.1996.

20. Learned counsel for the respondents on the other hand submits that case of the appellant was duly considered. Since his disability was assessed at less than 20%, he could not be granted the disability element of disability pension. Appellant was provided an opportunity to prefer an appeal against the rejection of disability pension. Instead of preferring an appeal before the appellate authority within the specified period, appellant submitted a representation to the Government of India, Ministry of Defence for grant of disability pension. After considering the representation in the light of the relevant rules, Government of India, Ministry of Defence rejected the same.

20.1. He further submits that the disease or the disability of the appellant was assessed by the Medical Board as neither attributable to nor aggravated by military service.

20.2. Finally, learned counsel submits that the appeal filed by the appellant is devoid of any merit and the same is liable to be dismissed.

21. Submissions made by learned counsel for the parties have been duly considered.

22. Let us first deal with the proceedings of the Invaliding Medical Board dated 12.07.1989. The Medical Board carefully examined the appellant who was being released/invalided out of service in low medical category for *generalized tonic clonic seizure (old) 345 V-67*. The Board opined that appellant was in good bodily health and had the prospect of an average duration of life. He was, therefore, recommended for extended insurance cover by Army Group Insurance after his release/invalidment. In part III of the proceedings which is marked as confidential, the answer of

the Medical Board to the question as to whether the disability/disabilities of the appellant existed before entering service was a clear no. Again, answer to the question as to whether disability was attributable to the appellant's negligence or misconduct, was a categorical no. Percentage of disablement was assessed at 15% for a probable duration of two years.

23. In the Re-Survey Medical Board proceedings dated 07.08.1993, the aforesaid disability was assessed at less than 20% (15 to 19%) for 5 years.

24. The above view was reiterated in the Re-Survey Medical Board proceedings held on 23.06.1998 where the disability was again assessed between 15 to 19% for a period of 10 years.

25. Finally, in the Re-Survey Medical Board proceedings dated 28.06.2002, the disability was assessed at being static i.e. 15 to 19% with the further remark that duration of such disability would be lifelong.

26. We may now deal with the relevant provisions of the Pension Regulations for the Army, 1961 (briefly 'the Regulations' hereinafter).

27. Regulation 173 deals with the primary condition for the grant of disability pension. Regulation 173 reads thus:

> **Primary conditions for the grant of disability Pension**
> **173.** 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 per cent or over.
>
> The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

28. Regulation 183 of the Regulations says that the disability pension consists of two elements viz service element and disability element. Where an individual is invalided out of service before completion of his service period on account of disability which is attributable to or

aggravated by military service and is assessed below 20%, he will be granted an award equal to the service element of disability pension determined in the manner provided in Regulation 183. Regulation 183 stipulates as under:

> **Amount of disability pension**
>
> **183.** The disability pension consists of two elements viz. service element and disability element, which shall be assessed as under: -
>
> **(1)** ***Service element***
>
> *** *** *** ***
>
> **(2)** ***Disability element***
>
> *** *** *** ***
>
> In case where an individual is invalidated out of service before completion of his prescribed engagement/service limit on account of disability which is attributable to or aggravated by military service and is assessed below 20%, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 of the Pension Regulations for the Army Part I (1961)....

29. Thus, as would be evident from the above, the disability pension consists of two elements i.e. service

element and disability element which is determined in the manner provided in Regulation 183. As per Regulation 173, disability pension is to 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 and which is assessed at 20% or over.

30. How the disability which is attributable to or aggravated by military service has to be determined is provided in the Entitlement Rules for Casualty Pensionary Awards, 1982 (briefly 'the Rules' hereinafter) which is placed in Appendix II as referred to in Regulation 173.

31. Rule 4 of the Rules makes it clear that invaliding from service is a necessary condition for grant of disability pension. An individual who at the time of his release is in a lower medical category than that in which he was recruited will be treated as invalidated from service.

32. Rule 5 of the Rules reads as under:

> **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*) 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.

(*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.

32.1. Thus, what Rule 5 says is that the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the presumption that the concerned member was in sound physical and mental condition while entering service except as to physical disabilities noted or recorded at the time of entrance. It is also to be presumed that in the event of him being discharged from service on medical grounds, any deterioration in his health which has taken place is due to service.

33. As per Rule 9, the onus of proof is on the authority and not on the claimant. Rule 9 specifically says that a member who is declared disabled from service shall not be required to prove his entitlement to pension and such benefit is to be given more liberally. Rule 9 is extracted hereunder:

> **Onus of Proof**
>
> 9. 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.

34. Rule 14(b) is also relevant. It reads as follows:

> **Diseases**
>
> 14. In respect of diseases, the following rule will be observed:
>
> (*a*) *** *** *** ***
>
> (*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*) *** *** *** ***

34.1. Rule 14(b) provides for a legal presumption 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 the individual's acceptance of military service. However, if the medical opinion says that the disease could not have been detected on medical examination before entering military service, then such a disease would not be deemed to have arisen during service provided reasons are recorded.

35. This Court in *Dharamvir Singh* (supra) examined the provisions of Regulation 173 and, thereafter, held that disability pension is 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 and is assessed at 20% or above. The question as to whether a

disability is attributable to or aggravated by military service has to be determined under the Rules.

36. In *Rajbir Singh* (supra), this Court from a conjoint and harmonious reading of Rules 5, 9 and 14 of the Rules culled out the following guiding principles:

> (*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.

37. Government of India, Ministry of Defence through the Director (Pensions) issued instructions dated 31.01.2001 addressed to the Chief of the Army Staff, Chief of the Naval Staff and Chief of the Air Staff on the subject implementation of government decisions on the recommendations of the fifth central pay commission regarding disability pension/war injury pension/special family pension/liberalized family pension/dependent pension/liberalized dependent family pension for officers and personnel below the rank of officers belonging to the armed forces retiring invaliding or dying in harness on or after 01.01.1996. Para 2.1 mentioned that the provisions mentioned therein shall apply to the armed forces personnel who were in service on and from 01.01.1996. Part-II of the instructions deals with pensionary benefits on death/disability in attributable/aggravated cases. Para 4.1 says that for determining the pensionary benefits for death or disability under different circumstances due to attributable/ aggravated causes, the cases are broadly categorised under five categories i.e. category A to

category E. Category B deals with cases of death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Examples of disabilities or diseases attributable to or aggravated by military service would be diseases contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards.

38. Para 7.2 of the instructions dated 31.01.2001 says that where an armed forces personnel is invalided out under circumstances mentioned in para 4.1, the extent of disability or functional incapacity shall be determined for the purposes of computing the disability element in the following manner:

Percentage of disability as assessed by Invaliding Medical Board	Percentage to be reckoned for computing of disability element
Less than 50	50
Between 50 and 75	75
Between 76 and 100	100

39. Para 8.2 declares that for disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. However, no disability element shall be payable for disability less than 20%. In such a case, provisions contained in para 7.2 would not be applicable for computing disability element.

40. There is a letter dated 20.07.2006 of the Adjutant General's Branch, Integrated Headquarters of Ministry of Defence(Army) dealing with revision of rules and procedures regarding grant of disability pension/special family pension to armed forces personnel. A standard operating procedure has been laid down by the aforesaid letter. Para 5 of the said letter mentions that if the resultant disability is held as attributable to service by the competent authority and assessed at 20% or more (01% or more in case of post January 01, 1996 invalidment cases) by the Invaliding Medical Board/Re-Survey Medical Board, further action would be taken as per clauses (a) and (b). As per clause (b), the disability element in cases of invalidment shall be regulated in terms of para 7.2 of the instructions dated

31.01.2001. Therefore, this letter removed the disability cap of 20% in respect of invalidment due to disability attributable to military service cases post 01.01.1996.

41. This takes us to the letter dated 19.01.2010 of the Department of Ex-Servicemen Welfare, Ministry of Defence, Government of India addressed to the Chiefs of all the three services. It is stated therein that in order to consider various issues relating to pension of armed forces pensioners, government had set up a committee headed by the cabinet secretary. The committee had made recommendations on disability/war injury pension which were considered by the government. Upon such consideration, it was decided that with effect from 01.07.2009, the concept of broad branding of percentage of disability/war injury as provided in para 7.2 of the instructions dated 31.01.2001 would be extended to officers and armed forces personnel who were invalided out of service prior to 01.01.1996 and are in receipt of disability/war injury pension as on 01.07.2009. However, it was clarified that wherever the disability element/war injury

element of pension in pre 01.01.1996 cases were not allowed for disability being accepted as less than 20% at the initial stage or subsequent stage on reassessment of the disability, the same will continue to be disallowed and such cases will not be reopened.

42. In *K.J.S. Buttar* (supra), this Court examined para 7.2 of the instructions dated 31.01.2001 which provided amongst others that where the disability was assessed between 50% and 75%, then the same should be treated as 75% and it made no difference whether he was invalided from service before or after 01.01.1996. Appellant in this case was an ex-captain in the Indian army who was invalided out of service because of a gunshot injury whereby he was found to be disabled with degree of disability assessed at 50% and attributed to military service. According to the appellant, his disability should have been treated as 75% instead of 50% in terms of para 7.2 of the instructions dated 31.01.2001. It made no difference whether he was invalided from service before or after 01.01.1996. Therefore, this Court held that the appellant in

that case was entitled to the said benefits with arrears from 01.01.1996 and interest at 8% per annum on the same.

42.1. Further, this Court after thorough examination of para 7.2 of the instructions dated 31.01.2001 held that there will be violation of Article 14 of the Constitution if those who had retired/were invalided before 01.01.1996 are denied the same benefits as given to those who retired after that date. Para 16 is relevant and is extracted hereunder:

> **16.** At any event, we have held that there will be violation of Article 14 of the Constitution if those who retired/were invalided before 01.01.1996 are denied the same benefits as given to those who retired after that date.

43. *Dharamvir Singh* (supra) is a case where this Court examined amongst others the question as to whether a member of armed forces can be presumed to have been in sound physical and mental condition upon entering service in the absence of disability or disease noted or recorded at the time of entrance? That was a case where the appellant who was a sepoy in the Indian army was boarded out of service with effect from 01.04.1996 on the ground of

20% permanent disability as he was found to be suffering from *generalized seizure (epilepsy).* As per the Medical Board, the said disability was not related to military service. As a result, he was denied disability pension. His challenge to the same was accepted by the Single Bench of the High Court. Single Bench was of the view that there was nothing on record to show that the appellant was suffering from any disease at the time of his initial recruitment in the Indian army. Therefore, such disease would be deemed to be attributable to or aggravated by military service. Therefore, in terms of Regulation 173 of the Regulations, he would be eligible for disability pension. Union of India challenged the aforesaid decision of the Single Bench before the Division Bench. Division Bench set aside the order of the learned Single Judge whereafter the appellant approached this Court and in the above context, the aforesaid question was framed. After referring to relevant provisions of the Regulations and the Rules, this Court summed up the principles in the following manner:

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.

43.1. Accordingly, this Court answered the question so framed in favour of the appellant and held in the facts of that case that no note of any disease was recorded at the time of the appellant's acceptance for military service. 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 opining that the disease could not have been detected on medical examination prior to the acceptance for military service.

44. This Court in *Sukhvinder Singh Vs. Union of India*[5], noticed that the relevant Rules and Regulations did not set out the medical parameters to be considered by the Invaliding Medical Boards justifying or requiring serviceman/officer to be removed from service. This feature renders the decisions taken by such Boards pregnable to assaults on the grounds of capriciousness or arbitrariness. This is especially so where the extent of disability is below 20%. Highlighting the paradox, this Court posed the following question:

> Can the authorities be permitted to portray that whilst a person has so minor a disability as to disentitle him for compensation, yet suffers from a disability that is major or serious enough to snatch away his employment?

44.1. It was in that context, this Court held that any disability not recorded at the time of recruitment must be

[5] (2014) 14 SCC 364

presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. Para 11 reads thus:

> **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.

44.2. As can be seen from the above, this Court emphasized that the morale of the armed forces requires absolute and undiluted protection. If any injury leads to loss of service without any recompense, this morale would be severely undermined. Further, this Court noticed that there appeared to be no provision authorising the discharge or invaliding out of service where the disability is below 20% which is quite logical. Therefore, it has been held that where 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 20%. Most important is that this Court after considering the extant Rules and Regulations has held that a disability leading to invaliding out of service would attract grant of 50% disability pension.

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 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.

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.

48. Both the appeals are accordingly allowed. However, there shall be no order as to cost.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
APRIL 23, 2025.