
(2025) 11 J&K CK 1798
In the Jammu And Kashmir High Court
Case No : WP(C) No.704 Of 2024

Union of India

APPELLANT

Vs

JC-594381L Ex Sub Parshotam lal

RESPONDENT

Date of Decision : 13-11-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2025) 11 J&K CK 1798

Hon'ble Judges : Sanjeev Kumar, J;Sanjay Parihar, J

Bench : Division Bench

Advocate : Vikas Sharma, B.S.Sarmal, Amit Singh

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. By this writ petition filed under Article 226 of the Constitution of India, Union of India and others seek to throw challenge to an order and judgment dated 3rd March, 2022 passed by the Armed Forces Tribunal, Regional Bench Srinagar at Jammu ["AFT"] in OA No.208 of 2021 titled Ex Sub Parshotam Lal v. Union of India and others, whereby the AFT has allowed the OA filed by the respondent and set aside the impugned order, whereby the respondent's claim of disability pension was rejected. The was held entitled to disability pension @ 50% as against 20% for life, from the date of discharge i.e. 01.11.2020. Strong reliance has been placed by the AFT on Dhahramvir Singh v. Union of India, (2013) 7 SCC 316, and Union of India v. Ram Avtar, 2014 SCC OnLine SC 1761.

2. The impugned judgment of the AFT is assailed by the petitioners on the ground that the AFT has failed to consider that the disability of the respondent had been assessed by the Release Medical Board as neither attributable to nor aggravated by military service. No causal connection has been established by the respondent between his disability and military service. The AFT also did not appreciate that the medical board is an expert body and its opinion is entitled to

be given due weight, value and credence.

3. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the AFT is perfectly legal and does not call for any interference by us in the exercise of our extraordinary writ jurisdiction.

4. The facts which led to the filing of instant petition are that the respondent was enrolled in military service on 1st November, 1990 in a fit state of health. During the course of his service, the respondent incurred the disability of "Cyst 3rd Ventricle (OPTD) (G.93.0)" and was, thus, finally discharged from service on 31st October, 2020. Before discharge, the Release Medical Board assessed the disability incurred by the respondent @20% for life but declared to be neither attributable to nor aggravated by military service. Accordingly, respondent's claim for disability pension was rejected. The first appeal filed by the respondent against rejection of his claim for disability pension yielded no result.

6. Feeling aggrieved, the respondent filed OA No. 208 of 2021 before the AFT seeking inter alia a direction to the petitioners herein to grant disability pension in favour of the respondent with effect from the date of discharge @ 50% as against 20%. The OA was contested by the petitioners herein on the ground that since the invaliding disease was neither attributable to nor aggravated by military service, hence the respondent was not entitled to disability pension. It was submitted that the opinion of the Medical Board, being an expert body, was accepted and must be respected by courts as well.

7. The AFT having considered the OA in the light of rival contentions of the parties and having regard to the legal and factual position obtaining in the matter, held the respondent entitled to disability pension @ 30% with the benefit of rounding off to 50% for life. It is in these circumstances, the OA filed by the respondent came to be allowed.

8. This Court in a batch of writ petitions [WP(C) No. 3173/2023 a/w connected matters decided on 03.11.2025], has considered the issue with respect to the grant of disability pension to persons discharged/invalided out of service from armed forces and after considering the relevant rules, regulations and legal positions obtaining on the issue, culled out following principles:-

i) The grant of disability pension to the army personnel is not a charity or an act of generosity but a true act of acknowledge of the sacrifices made by them during their service, which manifest in the form of diseases and disabilities. The Pension Regulations and the Entitlement Rules framed by the Government of India for providing financial benefits to the soldiers and military personnel, who encounter diseases and disabilities which are attributable to or aggravated by military service are meant to provide absolute undiluted protection and recompense for the injury that leads to loss of service and leaves such soldiers without any effective means of sustenance. The Pension Regulations and the Entitlement Rules being in the realm of welfare measures must receive liberal

interpretation and in case of any doubt or ambiguity, the interpretation must tilt in favour of the claimant/pensioner.

ii) The nature and extent of disability or cause of death falls within the domain of medical experts and, therefore, the opinion of the medical board with regard to nature and extent of disease or disability should ordinarily be accepted as final, unless there is strong medical evidence on record to dispute such opinion. And even in such cases, the judicial review would be limited to the extent of directing the army authorities to consider review medical board for examination of the claimant.

iii) That since the entitlement of a member of the force to disability pension depends largely on the opinion of the medical board, as such, it is obligatory on the medical boards to record clear and cogent reasons in support of their medical opinion. Absent such clear and cogent reasons in support of the medical opinion, it shall be presumed that the disease that afflicted the soldier during service was due to army service.

iv) Under the 1982 Entitlement Rules, there was a presumption in favour of the claimant that he was in sound physical and mental condition when he joined the service except to a specific disability noted or recorded at the time of entrance into service. In the event of his subsequently being discharged from service on medical grounds, any deterioration of his health which has taken place, is due to service (Rule-5).

v) A disease which has led to an individual's discharge or death shall ordinarily be deemed to have been arisen in service, if no note of it has been made at the time of individual's acceptance in military service. This is, however, subject to medical opinion holding, for reasons to be stated, that the disease was such as could not have been detected on medical examination prior to acceptance for service. Even if, in the circumstances aforementioned, disease is accepted as having arisen in service, the army authorities must establish that conditions of military service determined or contributed to the onset of the disease and that the conditions were due to circumstances of duty in military service. The onus of proof is not on the claimant and it is for the employer to demonstrate the conditions for non-entitlement of the claimant, for, there is a presumption in favour of the army personnel, who entered in service while being in fit physical and mental conditions and suffered from disease or disablement during service. This was the position precisely in the 1982 Entitlement Rules. However, in 2008 Entitlement Rules, there is no such presumption, yet the onus of proof is still on the employer to establish the disentitlement of the soldier to the benefit of disability pension on the prescribed grounds. It is only where claim for disability pension is lodged after 15 years, the initial onus will shift to the claimant.

vi) That notwithstanding the removal of presumption of entitlement envisaged in the 1982 Entitlement Rules, the legal position has not undergone any substantial change. An army personnel, who is accepted in army service after proper

physical and mental examination shall be deemed to possess sound physical and mental condition. The Army would not accept an individual, who is not mentally and physically fit for army service. Though, as is now provided under the 2008 Entitlement Rules, the examination at the time of entering into service shall be of general nature and would not be exhaustive to find out latent and hidden hereditary, constitutional or congenital diseases, yet any onset of such disease during service has to be certified to be so by the medical authorities supported by clear and cogent medical reasons.

vii) In terms of Rule 15 of 1982 Entitlement Rules, if onset and progress of a disease is affected by environmental factors relating to service conditions, dietic compulsion, exposure to noise, physical and mental stress and strain or is due to infection arisen in service, such disease would merit entitlement of attributability. The possibility of pre-service history of such condition as may be certified by the medical authorities may rule out entitlement of attributability but would require consideration regarding aggravation. Annexure-III to the 1982 Entitlement Rules classifies the diseases which are affected by environmental factors in service and would serve as guide to find as to whether a particular disease or disability is attributed to or aggravated by army service.

viii) However, the cases post 2008 Regulations and governed by 2008 Entitlement Rules would leave the attributability or aggravation to be determined by the medical authorities. The disease would be accepted as attributable to military service, if it has arisen during the period of military service and has been caused by the conditions of employment in military service. The diseases due to infection arisen during service, other than sexually transmitted diseases, shall be deemed to be attributable to military service. In the case of diseases where their cause is not known, there shall be presumption of entitlement in favour of the claimant that it is also attributable to military service unless such presumption is rebutted on the basis of clinical picture and current scientific medical application.

ix) A disability shall be considered aggravated by service conditions, if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitudes etc. This again would be subject to clear and cogent medical opinion by the competent medical authority.

x) A disease or disability shall not be held attributable to or aggravated by military service unless a causal connection between the disability or death and military service has been established by appropriate authority.

xi) That the Guide to Medical Officers (Military Pension), 1980 as amended from time to time shall be kept in mind by the medical boards and the authorities concerned to determine as to whether disability or death is due to military service i.e. either attributable to or aggravated by military service.

xii) The amendments to Chapter-VI to Guide to Medical Officer (Military

Pensions), 2008 analyze different type of diseases and lay down guidelines to determine whether a particular disease is attributable to or could be aggravated by military service. Diseases like, hypertension, diabetic mellitus, Ischaemic Heart Disease (IHD) etc etc. find mention in paragraph 43, 26 and 47 of the GMO, 2008 and serve as broad guide to determine attributability or aggravation aspects.

xiii) Burden to disprove the acceptance of causal connection between disability and the military service is on the authorities and the same cannot be said to have been discharged by any inchoate, casual, perfunctory or vague approach of the authorities. This underlines the profound significance of the requirement of recording reasons by the medical board(s).

xiv) That so long as it is established that the disability or death bears causal connection with the service condition, 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 condition (Regulation 423 of the Regulations for Medical Services to Armed Forces, 2010).

9. In view of the aforesaid legal position, the only question that begs determination in this case is whether opinion of the medical board, which assessed the disability incurred by the respondent as neither attributable to nor aggravated by military service can be relied upon to justify the disentitlement of the army personnel to the disability element of pension in respect of his military service.

10. Before we proceed further, it needs to be taken note of that respondent having been discharged for disablement in the year 2020 is covered by 2008 Regulations read with 2008, Entitlement Rules. As provided in Rule 1(b) of 2008, Entitlement Rules, the Guide to Medical Officers (Military Pension), 2008, as amended from time to time, is required to be read with the said Rules.

11. With a view to determining as to whether the petitioners have successfully discharged the burden and have by clear, unambiguous and cogent medical evidence established that the disability ?hypertension?, which led to the invalidation of the respondent from military service is neither attributable to nor aggravated by army service, we have gone through the medical record produced by the petitioners. The relevant portion whereof is set out below:-

Disability

Attributable

to

Aggravated by

Reasons/Cause/Specific

Service (Y/N)

Service (Y/N)

Condition and period in

service

Colloid Cyst 3rd

No

No

NANA as no mil

Ventricle

service related etiology

9OPTD)

is evident.

(G.93.0)

12. From the reading of above, it clearly transpires beyond any shadow of doubt that given the medical opinion on record, it cannot be said that the petitioners have successfully discharged the burden to prove disentitlement on the ground of absence of causal connection between the disabilities and the military service, as the one line opinion by the medical board in respect of the disability with regard to its attributability to or aggravation by military service is not a substitute for clear, unambiguous and cogent medical reasons required to disentitle the personnel from disability pension. The AFT has placed strong reliance on Dharamvir Singh (*supra*) in discarding the opinion of the medical board.

13. Though the disease colloid cyst of the third ventricle finds no mention in the GMO, 2008 or 2002 but as per the information available on official website of National Centre of Biotechnology Information (US), it is a benign intracranial lesion that can cause obstruction to cerebrospinal fluid flow, leading to raised intracranial pressure and related neurological symptoms. Although the condition may exist in an asymptomatic or latent form, the physical exertion, environmental stress, and psychological strain associated with military service can aggravate or precipitate its clinical manifestations. Activities involving strenuous training, high altitude exposure, heat stress, or head injury may alter intracranial dynamics and exacerbate symptoms such as headache, vomiting, or giddiness. Therefore, in individuals with a pre-existing colloid cyst, military service can reasonably be considered a contributing or aggravating factor in the progression or symptomatic presentation of the condition.

14. Medical authorities must clearly opine as to whether the disability which the individual has been found inflicted with at the time of his release, which have arisen during service became worse in service or not. The medical authority must

answer the question whether the service compulsions have caused aggravation or not. The medical authorities are also required to consider the entire service career of the individual to find out as to whether any long and frequent spells of service in field/HAA/ACTIVE operational area have created stressful situation, thus, aggravating the primary hypertension.

15. For the foregoing reasons and in view of the clear legal position applicable to the case, we find no illegality or infirmity with the order of the AFT. The petition is, therefore, found devoid to any merit and is dismissed, accordingly.