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

% *Date of Decision :06.01.2026*

\+ W.P.(C) 75/2026 & CM APPL. 334-335/2026

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

Through: Mr. Shashank Bajpai, CGSC with Ms. Aashna Mehra, Mr. Vatsal Tripathi and Mr. Govind Singh Chauhan, Advs.
Sgt. Mritunjay and Sgt. Padam Charan, DAV, Legal Cell, Air Force

versus

EX SGT MAHESH KUMAR DUDEJA 790794 S .....Respondent

Through: Mr. Durgesh Kumar Sharma and Mr. Harish Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA. *(ORAL)*

CM APPL. 335/2026

1. Allowed, subject to just exceptions.

2. The application is disposed of.

W.P.(C) 75/2026

1. This petition under Article 226 of the Constitution of India lays the challenge to the order dated 12.07.2023 ('impugned order') passed by the Armed Forces Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in O.A. 1039/2019 titled **Ex. SGT Mahesh Kumar Dudeja v. Union of**

India and Others, wherein the respondent has been granted the benefit of the disability element of pension at 20% for life (for Diabetes Mellitus Type II) and at 30% for life (for Primary Hypertension), compositely assessed at 44% for life, rounded off to 50% for life.

2. The facts to be noted are that the respondent, who was an employee in Indian Air Force was found to be suffering from Primary Hypertension, Diabetes and Obesity. The respondent was released from service on 28.12.2016 under clause "At his own Request" with permanent low medical category A4G4(P). The Release Medical Board ('RMB', for short) proceedings were held on 13.11.2016 and the Medical Board proceedings opined that the respondent has been suffering from the following diseases:

a. Primary Hypertension (Old) ICD-1.10, Z09.0 at 30%.
b. Diabetes Mellitus Type II (Old) E11 Z 09.0 at 20%.
c. Obesity (Old) E66.0 Z09.0 at 1-5% for life (composite assessment for all the diseases @ 50% for life)

3. The RMB further assessed that the aforesaid disability/disabilities neither attributable nor aggravated by the Air Force service.

4. The respondent's claim for disability pension was rejected by the petitioner and therefore, the respondent approached the Tribunal by filing O.A. 1039/2019 praying for grant of disability element of pension. The respondent's claim before the Tribunal for grant of disability element of the pension from the date of release was primarily on the ground that he had developed the disease of Primary Hypertension and Diabetes Mellitus Type II during the course of his service and in that sense, the same are attributable to the military service. By the impugned order dated 12.07.2023, the Tribunal while allowing the respondent's claim held that the respondent is

entitled to disability element of pension in respect of disability 'Primary Hypertension (Old)' at 30% and 'Diabetes Mellitus Type II (Old)' at 20% (compositely assessed @44% for life), rounded off to 50% for life with effect from the date of release of the respondent. The Tribunal referred to the judgment of the Supreme Court in **Dharamvir Singh v. Union of India and Ors**.[1], and other judgments for granting the relief as claimed by the respondent herein.

5. The only submission made by the learned counsel for the petitioner is that the reliance placed by the Tribunal on the judgment of **Dharamvir Singh v. Union of India and Ors**. (supra) is totally misplaced as in the said case) the Supreme Court was concerned with the Entitlement Rules for Casualty Pensionary Awards, 1982 ('1982 Entitlement Rules', for short), whereas the case of the respondent need to be considered under the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 ('2008 Entitlement Rules', for short).

Learned counsel for the Petitioner contends that the Tribunal has overlooked 2008 Entitlement Rules, which govern attributability/aggravation and no longer permit a blanket presumption in favour of the claimant. He states in the facts of this case, Respondent was discharged on 28.12.2016 and therefore he would be governed by 2008 Entitlement Rules. He states that the impugned order applies the presumption under the repealed 1982 Entitlement Rules, ignoring the amended regime under 2008 Entitlement Rules. He states that 2008 Entitlement Rules have done away with the general presumption to be drawn in order to ascertain the principle of '*attributable to or aggravated by*

military service'.

6. We are unable to agree with the submission made by the learned counsel for the petitioner.

7. In W.P.(C) 88/2026 titled **Union of India v. 781466 Ex. SGT Krishna Kumar Dwivedi,** decided today our attention was drawn to the authoritative judgments of the coordinate Benches of this Court passed in **W.P.(C) 3545/2025** titled **Union of India v. Ex. Sub Gawas Anil Madso**[2] and **W.P.(C) 140/2024** titled **Union of India vs. Col. Balbir Singh (Retd.) and other connected matters**[3], which have conclusively held that even under 2008 Entitlement Rules, an officer who suffers from a disease at the time of his release and applies for disability pension within 15 years from release of service, is ordinarily entitled to disability pension and he does not have any onus to prove the said entitlement. The 2008 Entitlement Rules, however, contemplate that in the event the Medical Board concludes that the disease though contracted during the tenure of military service, was not attributable to or aggravated by military service, it would have to give cogent reasons and identify the cause, other than military service, to which the ailment or disability can be attributed. The judgments hold that a bald statement in the report would not be sufficient, for the military department for denying the claim of disability pension. The burden to prove the disentitlement therefore remains on the department even under 2008 Entitlement Rules and the aforesaid judgments emphasize on the significance of the Medical Board giving specific reasons for denial of this beneficial provision. The judgments hold that the onus to prove a casual

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[1] 2013 (7) SCC 361
[2] 2025: DHC: 2021-DB

connection between the disability and military service is not on the officer but on the administration.

8. We for benefit also note that the Supreme Court in its recent opinion in the case of **Bijender Singh vs. Union of India and Others**[4]**,** has in paragraphs 45.1, 46 and 47, 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.*
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> ***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*

[3] 2025: DHC: 5082-DB
[4] 2025 SCC OnLine SC 895

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

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

(Emphasis Supplied)

9. In this background of law settled vis-à-vis 2008 Entitlement Rules we have to examine the facts of this case.

The Tribunal has held that the respondent is entitled to disability element of pension in respect of his disability i.e., Primary Hypertension assessed at 30% and Diabetes Mellitus Type II at 20% (compositely assessed at 44% for life), rounded of to 50% for life from the date of release i.e., 28.12.2016. The petitioners does not dispute the disability of the respondent, which is borne out from the medical record. The petitioners have only raised the issue of non-entitlement of the disability element of the pension on the ground that the Medical Board has held that the diseases are

not attributable to or aggravated by military service. The petitioners have not placed the opinion of the Medical Board on record and has only relied upon the rejection letter dated 28.04.2017 issued by the competent authority.

This Court has perused the rejection letter dated 28.04.20217 and this letter merely refers to the RMB proceedings for rejecting the respondent's claim for disability pension. The Tribunal at paragraph '14' of the impugned order has noted that in the absence of any reason recorded by the Medical Board it must be presumed that the diseases are attributable to or aggravated by Air Force service. In the facts of this petition since the RMB has not recorded any cogent reasons for its conclusion, the Tribunal is justified in granting the relief.

10. Be that if so, we are of the view that the present writ petition is without any merit and the same is liable to be dismissed. We order accordingly. No costs.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JANUARY 6, 2026/msh/hp/MG