$~143

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

% *Date of Decision : 22.01.2026*

\+ W.P.(C) 559/2026, CM APPL. 2757/2026
UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Brijesh Kumar Tamber, CGSC, Ms. Arani Mukherjee and Mr. Vinay Singh Bist, Advs.

versus

711829 EX SGT RAJKUMAR BABURAO NANAWARE

.....Respondent

Through: None.

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

MANMEET PRITAM SINGH ARORA, J. (*ORAL*)

1. This petition under Article 226 of the Constitution of India challenges the order dated 13.07.2023 ('impugned order') passed by the Armed Forces Tribunal, Principal Bench, New Delhi ('Tribunal') in Original Application (O.A.) 19/2020 titled '**711829 Ex SGT Rajkumar Baburao Nanaware v. Union of India and Ors.**', whereby the Tribunal has held that the respondent is entitled to disability element of pension in respect of disability of Right Vestibular Schwannoma GKS at 40% for life rounded off to 50% for life from the date of discharge, i.e., 30.04.2017.

2. The facts to be noted are that the respondent was enrolled into the Indian Air Force on 28.04.1994 and was discharged from the services on

30.04.2017. The Release Medical Board ('RMB') proceedings were held on 19.07.2016, wherein the Medical Board assessed the respondent's disability of Right Vestibular Schwannoma GKS at 40% for life and composite disablement for all disabilities was assessed 40% for life. It was assessed that the aforesaid disease was neither attributable nor aggravated ('NANA') by military service. It was further opined that the said disease is idiopathic in nature.

3. The respondent's claim for disability element of pension was rejected by the petitioners vide letter dated 03.01.2017, on the basis of the said RMB proceedings and the same was communicated to the respondent vide letter dated 10.01.2017. Subsequently, the respondent preferred a First Appeal challenging the said rejection letter; however, the said appeal was also rejected. Therefore, the respondent approached the Tribunal by way of filing O.A. 19/2020, praying for the grant of disability element of pension.

4. By the impugned order dated 13.07.2023, the Tribunal allowed the respondent's claim and referred to the judgment of the Supreme Court in **Dharamvir Singh v. Union of India and Ors.**[1] for granting the relief as claimed by the respondent herein.

5. It is contended by the learned counsel for the petitioners 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'), whereas the case of the respondent needs to be considered under the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 ('2008

[1] 2013 (7) SCC 361

Entitlement Rules').

The petitioners contend that the Tribunal has overlooked the 2008 Entitlement Rules, which govern attributability and aggravation, and no longer permit a blanket presumption in favour of the claimant/officer. He states in the facts of this case that the respondent was discharged on 30.04.2017, and therefore, the respondent would be governed by the 2008 Entitlement Rules. He states that the impugned order incorrectly applies the presumption under the repealed 1982 Entitlement Rules, ignoring the amended regime under the 2008 Entitlement Rules. He states that the 2008 Entitlement Rules have done away with the general presumption to be drawn to ascertain the principle of 'attributable to or aggravated by military service' in favour of the officer.

5.1. It is contended that the Tribunal has also failed to appreciate that there cannot be a universal yardstick for adopting presumption or deemed attributability in all cases, wherein the disease has arisen during service, which is diagnosed by a medical authority at the time of release or retirement. In this regard, reliance is placed upon the judgment of the Supreme Court in the case of **Union of India and Ors. v. Ex. Sep R Munusamy**[2].

5.2. It is contended that the Tribunal has overlooked the facts that the Medical Board held the respondent's disability as NANA and awarded disability element of pension contrary to the findings of the Medical Board.

5.3. It is also contended that the Tribunal has failed to consider Rule 15 of the Guide to Medical Officers (Military Pension), 2008, which provides for an opportunity to the individual to request a review.

[2] 2022 SCC OnLine SC 892 [Paragraph No. 25]

6. Having perused the opinion of the RMB set out at Part-V of the said proceeding, we are unable to agree with the submission made by the learned counsel for the petitioners that the Tribunal committed any error in granting relief to this respondent. In the facts of this case, as discussed hereinafter, the respondent would be entitled to disability pension even under the 2008 Entitlement Rules in view of the lack of reasons recorded by the RMB for opining NANA.

7. In another petition, i.e., W.P.(C) 88/2026 titled **Union of India v. 781466 Ex. SGT Krishna Kumar Dwivedi**, decided by this Bench on 06.01.2026, 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**[3] and W.P.(C) 140/2024 titled **Union of India vs. Col. Balbir Singh (Retd.**) and other connected matters[4], 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 NANA 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 of the Medical Board opining 'onset in peace station' or 'lifestyle disorder' would not be sufficient for the

[3] 2025: DHC: 2021-DB
[4] 2025: DHC: 5082-DB

military department to deny the claim of disability pension. The judgments hold that the burden to prove the disentitlement of pension therefore remains on the military department even under the 2008 Entitlement Rules, and emphasise the significance of the Medical Board giving specific reasons for denial of this beneficial provision to the officer. The judgments hold that even under the 2008 Entitlement Rules, the onus to prove a causal connection between the disability and military service is not on the officer but on the administration.

8. For reference, we also note that the Supreme Court in its recent opinion in the case of **Bijender Singh vs. Union of India and Others**[5], wherein at paragraphs 45.1, 46 and 47, has held as under on the aspect of furnishing of reasons:-

> *"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."

(Emphasis Supplied)

9. In the background of the law settled by the judgments of this Court vis-à-vis the 2008 Entitlement Rules, we have examined the facts of this case.

10. The Tribunal has held that the respondent is entitled to disability element of pension in respect of his disability of Right Vestibular Schwannoma GKS at 40% for life, rounded off to 50% for life. The petitioners have not disputed the disease and the percentage of the disability of the respondent, which is borne out by the medical record.

11. The petitioners have raised the issues of non-entitlement of the disability element of pension solely on the ground that the Medical Board has held the disease is idiopathic in nature and is NANA by military service. The opinion rendered by the RMB on 19.07.2016 is extracted as under: -

PART V

OPINION OF THE MEDICAL BOARD

1. Casual Relationship of the Disability with Service conditions or otherwise				
Disability	Attributable to service (Y / N)	Aggravated by service (Y/N)	Not Connected with service (Y/N)	Reasons / cause / specific condition and period in service.
(i) VESTIBULAR SCHWANNOMA (RIGHT) (H 81.8)	NO	NO	YES	Idiopathic in nature, hence neither Attributable to service nor Aggravated by service as per Para 23 of Amendment Chapter VI, "Guide to Medical Officers, (Military Pensions 2008
Note. A disability "Not connected with service" would be neither Attributable nor Aggravated by service (This is in accordance with instructions contained in 'Guide to Medical Officers (Mil pension)-2002')				

12. The respondent was enrolled in the Indian Air Force on 28.04.1994, and the disease was discovered in August 2014, the time when the respondent was serving and therefore the disease has indisputably arisen during his military service. The Medical Board has merely recorded that the

disease was idiopathic in nature, which means that the Medical Board itself has been unable to determine the cause of the disease. The effect is that the Medical Board has failed to ascertain and identify a cause, other than military service, to which the disease can be attributed. If no other causal connection for the disease has been found to exist by the Medical Board, the plea of disability pension cannot be rejected by the Military establishment, and the officer would be entitled to disability pension. (Re: **Dropadi Tripathi v. Union of India**[6]).

13. At this juncture, it would be apposite to refer to the judgment of the coordinate Bench of this Court in **Union of India v. Col. Balbir Singh (Retd.)** (supra), wherein the Court while examining the 2008 Entitlement Rules emphasised the significance of the Release Medical Board recording clear and cogent reasons for denying the entitlement of disability pension to the officer. The relevant paragraphs of the said judgment are as follows: -

> *"47. This Court has thus observed that with the removal of the 'presumption' under the 2008 Entitlement Rules, the absence of a note regarding the disease at the time of induction no longer automatically leads to the conclusion that the disease is attributable to military service, however, under Rule 7, the onus remains on the RMB to substantiate, through cogent reasoning in its Report, that although the disease was not present at the time of induction or at least not reported/discovered, it is still not attributable to military service. This implies that the RMB must identify some other factor, apart from military service, as the cause of the disease. The RMB cannot merely assert, without adequate reasons, that the disease, though contracted during military service, is not attributable to such service.*
>
> …

[6] 2025: DHC: 8709-DB at paragraphs 13 and 14.

53. Particularly in this milieu, it is of paramount importance that Medical Boards record clear and cogent reasons in support of their medical opinions. Such reasoning would not only enhance transparency but also assist the Competent Authority in adjudicating these matters with greater precision, ensuring that no prejudice is caused to either party….

…..

56. It must always be kept in view that the Armed Forces personnel, in defending this great nation from external threats, have to perform their duties in most harsh and inhuman weather and conditions, be it on far-flung corner of land, in terrains and atmosphere where limits of mans survival are tested, or in air or water, where again surviving each day is a challenge, away from the luxury of family life and comforts. It is, therefore, incumbent upon the RMB to furnish cogent and well- reasoned justification for their conclusions that the disease/disability suffered by the personnel cannot be said to be attributable to or aggravated by such service conditions. This onus is not discharged by the RMB by simply relying on when such disability/disease is noticed first."

(Emphasis Supplied)

14. In view of the aforesaid findings, the petitioners' challenge to the grant of disability pension is without any merit. As held above, the report of the Medical Board fails to give any cogent reasons for opining that the disease is not attributable to the military service and the respondent has therefore been rightly held entitled to disability element of pension as per the 2008 Entitlement Rules.

15. Before we conclude, we note that the learned counsel for the petitioners stated that the Court may consider remanding the matter back for a fresh review by the Medical Board. We may note that no such prayer was made by the petitioners before the Tribunal, and this issue of pension has

been pending adjudication since the year 2017, when the respondent first prayed for the grant of disability element of pension to the petitioners. A similar request made by the petitioners was rejected by the Division Bench of this Court in **Union of India v. Col. Balbir Singh (Retd.)** (supra), similarly on the grounds of delay. Firstly, there is no justification on record for seeking a fresh review. Secondly, the RMB has already opined that the cause is idiopathic and there is nothing on record to show that the cause can now be identified. Lastly, the RMB was held on 19.07.2016 as a precursor to the discharge on 30.04.2017, and holding a fresh review ten years down the line, when the respondent has aged further, in our considered opinion may fail to answer the questions, which had to be ascertained in the year 2016 during his military service and would be based on respondent's medical condition existing as on date and therefore unlikely to bring any clarity to the issue at hand. We are also of the opinion that any such exercise would only result in delay and inconvenience to the respondent.

16. We therefore find no merit in this petition; the petition is dismissed. No costs.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JANUARY 22, 2026/MG/aa