



2025:DHC:7935-DB



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

+ W.P.(C) 17124/2024

COLONEL SUJATA SIROHIPetitioner
Through: Mr. K R Verma and Mr. P K
Narula, Advs.

versus

UNION OF INDIA AND ORS.Respondents
Through: Ms. Pratima N Lakra, CGSC
with Mr. Shailendra Kumar Mishra, Mr.
Chandan, Ms. Kanchan Shakya, Mr. Priyam
Sharma, Advs. with Major Anish Muralidhar
and Caption Carolin Johnson (Army).

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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08.09.2025

C. HARI SHANKAR, J.

1. The petitioner was commissioned in the Army Medical Corps¹ on 27 December 1982. At the time of commissioning in the AMC, it is not in dispute that the petitioner was not recorded as suffering from any disability or ailment.

2. After serving the Armed Forces close for 34 years, the petitioner retired on 30 September 2016 in Low Medical Category² A3P2. At that time, she was found to suffer from fracture acromion with 15 to 19% disability ailment for life and Minimal Cognitive

¹ "AMC" hereinafter

² "LMC" hereinafter



Impairment³ (Amnestic Type) with 20% disability for life.

3. During her service and a little over two months prior to her retirement, the petitioner had suffered a fall. She was admitted to hospital, where she was found to be suffering from forgetfulness. The forgetfulness was aggravated owing to the fall.

4. The petitioner was assessed by a medical board, which assessed that she was suffering from Chronic Degenerative Disease⁴ of the central nervous system. Even as per the Review Medical Board⁵ report, the CDD from which the petitioner was suffering was a sequel to the amnestic episodes from which she had been suffering from a period of five years prior to that date. The RMB opined that the petitioner's ailment was not attributable to service. The opinion of the RMB in this regard reads, thus:

OPINION OF THE MEDICAL BOARD

³ "MCI" hereinafter

⁴ "CDD" hereinafter

⁵ "RMB" hereinafter



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)	Reason/ Cause/ Specific condition and period in service
1.FRACTURE ACROMION (RT) Duty	-	-	-	To be decided by pension something authority statement encls
2.MINIMAL COGNITIVE IMPAIRMENT (AMNESTIC TYPE)	NO	NO	YES	Chronic degenerative disease of CNS not related to servitor vide para 20 GMO 2008
3.FRACTURE DISTAL 1/4 ULNA (LT)	NO	NO	YES	Onset during leave vide IAPY 2006 dt 13 May 2016

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”).

“Chronic degenerative disease of CNS not related to service *vide* para 20 GMO 2008”.

5. Para 20 of the 2008 GMO reads as under:

“20. **Chronic Degenerative Diseases of CNS.** Diseases like motor neuron disease, chorea, athetosis, Alzheimer's disease are grouped under this category. A variety of possible causes including viral infection, trauma, exposure to toxins and electric shock have been postulated for motor neuron disease but no factual evidence exists to support any of these in typical cases. chorea the majority falls in Huntington's In case of disease but other causes include post-drug therapy (L. Dopa, phenothiazines), viral encephalitis, rheumatic chorea and hyperthyroidism. The exact cause of parkinsonism is not known, however repeated trauma e.g. punch drunk syndrome in boxers, encephalitis (Japanese B Encephalitis, lethargica), certain drugs like reserpine, **phenothiazine** and carbon



dioxide poisoning, exposure to certain 76 toxic agents, can lead to parkinsonism. Alzheimer's disease of presentile onset is insidious and often in middle life. Genetic factors play a predominant role in genesis of presentile Alzheimer's disease.

Attributability will be appropriate if there is antecedent history of infection, trauma and exposure to drug therapy.

The diseases are not normally affected by external circumstances unless it can be established that the individual had the disease for some time and continued serving. In other words, the course of the disease may be held to be hastened by stress and strain of service in an individual with an established disease by conceding the benefit of reasonable doubt.”

6. Based on the aforesaid report, the RMB arrived at the opinion that the CDD from which the petitioner was found to be suffering was neither attributable to, nor aggravated by, military service. As such, the petitioner was found not to be entitled to disability pension.

7. Aggrieved thereby, the petitioner approached the Armed Forces Tribunal⁶ by way of OA 893/2018.

8. The AFT has dismissed the petitioner's case. The reasoning of the AFT as regards the MCI (Amnestic Type) is contained in the following paras:

“14. It is apparent through the Summary and opinion dated 29.08.2016 qua the applicant that the applicant sustained an accidental fall on 21.07.2016 whilst climbing down the staircase and her saree was stuck in the shoe and as per the clinical assessment Part-II recorded by the Senior Advisor(ORTHO), she was admitted to AH R&R and was suspected with hydrocephalus and on being seen by neurologist, the applicant had given history of recurrent falls and during one such fall in her office on 20.07.2016, she sustained an injury to right shoulder region. As per

⁶ “AFT” hereinafter



the statement dated 03.09.2016 of the applicant on 20.07.2016 whilst coming to the office she was climbing to the office staircase and stumbled on the broken portion of the stairs and fell down on her right shoulder and also hit her head on the floor and as a result thereof, there was pain in her right shoulder and reported to MH, Meerut and subsequently transferred to AHR&R, Delhi Cantt, on 23.07.2016 for further management and was diagnosed with 'FRACTURE ACROMION RIGHT' and 'MINIMAL CONGNITIVE IMPAIRMENT(AMNESTIC TYPE) and was sent on sick leave for four weeks w.e.f 01.08.2016 to 28.08.2016. The applicant has stated that on termination of her sick leave, she reported to AH(R&R) on 28.08.2016(AN) and was subsequently transferred to MH Meerut on 03.09.2016 in med cat A2(P) and P2(P) for diagnosis for 'FRACTURE ACROMION RIGHT' and 'MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE)' for holding Medical Board. On behalf of the applicant has been submitted the copy of the letter no. 6107/1/M-1 dated 03.08.2017 received by her from the Headquarters, 9 Infantry Division to indicate to the effect:-

“3. The offr had undergone following med bds at MH Meerut:-

- (a) 1st RMB held on 04 Jun 16 for Diag:
FRACTURE DISTAL 1/4 ULNA (LT)
- (b) Medical bd held on 03 Sep 16 for Diag:
 - (i) FRACTURE ACROMION (RT)
 - (ii) MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE)
- (c) 2nd RMB held on 28 Sep 16 for Diag:
 - (i) FRACTURE ACROMION (RT)
 - (ii) MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE)

4. As the offr was admitted in MH Meerut and tfr to AH (R&R) Delhi, erroneously the Injury report was not initiated hence Court of Inquiry could not to be held.

5. The offr was discharged from AH (R&R) on 02 Sep 16 and tfr to MH Meerut for holding med bd, which was held on 03 Sep 16 and subsequently RMB was held on 28 Sep 16 and offr superannuated on 30 Sep 16 (AN).

6. As per the provisions of letter under ref para 1(c) the offer has to undergo fresh med bd for Post Discharge Claim (PDC), hence you are requested to apply to the hospital conducting the med bd for PDC i.e. Base Hosp, Delhi Cantt.”

In as much as, the inquiry report has not been initiated erroneously according to the respondents themselves as communicated to the



applicant vide letter dated 03.08.2017, the statement dated 03.09.2016 of the applicant on 20.07.2016 whilst coming to the office she was climbing to the office staircase and stumbled on the broken portion of the stairs and fell down on her right shoulder and also hit her head on the floor would have to be accepted and thus the injury sustained by the applicant on her head would have to be held to be attributable to military service. However, the Summary and Opinion dated 29.08.2016 indicates that MRI of her brain when she was evaluated initially at MH Meerut showed evidence of hydrocephalus. The cause of Hydrocephalus is excess fluid in the brain as reflected by the website of NHS - <https://www.nhs.uk/conditions/hydrocephalus/causes>, and the same is often caused by an illness or injury that affects the brain. As per the website of the AANS said that hydrocephalus can result into unsteady walk or gait, sudden falls which is indicated to be present in the relevant history of the applicant in Part-2 of the Summary and Opinion dated 29.08.2016, even if the injury was in the course of service, the disability of MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE) as reflected through the Summary & Opinion dated 29.08.2016 **is indicated to have had its onset on 20.07.2016 but the same states that the applicant had given a history of being symptomatic with forgetfulness for last five years.**

15. It is apparent thus that the onset of MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE) in the instant case was not related to the fall of the applicant on 20.07.2016 **and was apparently in existence from five years before as per the statement of the applicant herself.** Thus, the disability of MINIMAL CONGNITIVE IMPAIRMENT (AMNESTIC TYPE) in the instant case cannot be held to be attributable to military service nor can it be held to be aggravated thereby.

16. The OA 893/2018 is thus dismissed.”

9. Aggrieved by the aforesaid decision of the AFT, the petitioner has approached this Court by means of the present writ petition.

10. We have heard Mr. K R Verma, learned Counsel for the petitioner and Ms. Pratima N. Lakra, learned CGSC for the respondents.



11. Ms. Lakra submits that there is no cause for this Court to interfere with the well-considered decision of the AFT. She has particularly drawn our attention to the reasons adduced by the RMB for arriving at the conclusion that the MCI from which the petitioner was suffering was neither attributable to, nor aggravated by, military service. She has also invited our attention to para 20 of the GMO, which stands reproduced *supra* and submits that the stipulation, in the said paragraph, which reads “Attributability will be appropriate if there is antecedent history of infection, trauma and exposure to drug therapy” would shift the onus to the petitioner to establish the existence of one of these pre-disposing factors, in which case alone the MCI could be said to be attributable to or aggravated by military service.

12. Having heard learned Counsel, we are unable to agree with the contentions advanced by Ms. Lakra.

13. We are of the opinion that the AFT has fundamentally erred in rejecting the petitioner’s claim for disability pension on the ground that the MCI, which was the immediate cause for the petitioner’s claim, was attributable to amnesic episodes from which the petitioner had been suffering for five years.

14. There is no further examination, by the AFT, as to whether the said amnesic episodes were, or were not, attributable to military service. Even if the MCI, which was the direct and proximate cause of the petitioner being admitted to hospital, was owing to amnesic



episodes from which the petitioner had been suffering for five years, that would still mean that the amnestic episodes commenced almost 29 years after the petitioner had joined the service.

15. This would directly attract the law laid down by the Supreme Court in *Dharamvir Singh v UOI*⁷ and *Bijender Singh v UOI*⁸, which has been followed by two Division Benches of this Court, firstly, in *UOI v Ex Sub Gawas Anil Madso*⁹, authored by one of us (C. Hari Shankar, J.) and, thereafter, by a Coordinate Bench in *UOI v Balbir Singh*¹⁰.

16. Where the onset of an ailment is several years after an officer has joined military service, and, at the time of joining military service, no such ailment was detected, then, unless the RMB comes to an objective finding that the ailment was one which could not have been detected when the candidate joined military service, or that the ailment was attributable to some cause other than military service, the presumption, even as per the 2008 Guidelines which apply at present, is that the ailment or disability is attributable to military service. We have dealt with this aspect in considerable detail in our decision in *Ex Sub Gawas Anil Madso* from which we reproduce the following paragraphs:

“The effect of the change in policy in the 2008 Entitlement Rules

67. Much has been sought to be made, before us, about the fact that the presumption of attributability, contained in Rule 5 of the

⁷ (2013) 7 SCC 316

⁸ 2025 SCC OnLine SC 895

⁹ 318 (2025) DLT 711

¹⁰ Judgment dated 1 July 2025 in WP (C) 140/2024



1982 Entitlement Rules, has been done away with, in the 2008 Entitlement Rules. We have also, therefore, compared the Rules.

68. It is true that the 2008 Entitlement Rules does not contain any provision presuming that, if there is no mention of the physical disability or ailment at the time of induction of the officer in service, there would be a presumption that it was attributable to military service. To the extent that the Court cannot presume, based on the fact that the records at the time of induction of the officer in military service did not indicate that he was suffering from the ailment detected later, that the ailment was attributable to military service, the petitioners are correct in their contention.

69. What, however, turns on this?

70. There is no dispute about the fact that the *onset of the Type II DM, from which the respondent suffers*, was more than 30 years after he had been inducted in service, and that he was not suffering from it before he entered military service. This, therefore, is not a case in which the issue of whether the disease could, or could not, have been detected at the time of entry into military service, makes any difference at all. This, in fact, is also acknowledged by the RMB itself, in the answer to Questions 2 and 3 of its Report, as entered by the RMB and reproduced in para 65(v) *supra*.

71. Having said that, we are also conscious of the indisputable legal position that there is a difference between a disease, or infirmity, *arising during military service* and being *attributable to military service*. The fact that the disease has arisen during military service does not *ipso facto* mean, irrevocably, that it was attributable to military service. There can be no cavil with this proposition.

72. To that extent, the amended Rule 5 in the 2008 Entitlement Rules, which proclaims that “the mere fact that a disease has manifested during military service does not per se establish attributability or aggravation by military service” is unexceptionable.

73. That takes us, however, to Rule 7 of the 2008 Entitlement Rules, which deals with “Onus of Proof”, and reads thus:

“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 be on the claimant.”

Mr. Tiwari, appearing for the petitioners, laid great stress on the word “ordinarily”. He points out that Rule 9 of the 1981 Rules, which earlier ordained that the claimant “*shall not* be called upon to prove the conditions of entitlement” had been replaced by the word “*ordinarily*”, which was clearly weaker, in its import, and lacked the mandatory colour of the expression “*shall*”.

74. We are of the view that the change in the language of the Rule is more one of form than of substance.

75. Viewed in isolation, there is clear etymological difference between the import of the words “shall” and “ordinarily”. However, Rule 7 of the 2008 Entitlement Rules has, in our view, to be read as a whole. The Rule does not end with the statement that, ordinarily, the claimant would not be called upon to prove the condition of entitlement. It proceeds to clarify that the onus to prove entitlement would be on the claimant officer “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”. Clearly, therefore, the reason for Rule 7 of the 2008 Entitlement Rules having not chosen to retain the earlier Rule 9 of the 1981 Entitlement Rules in its original form, is only because, where a belated claim, more than 15 years after discharge, or retirement, or invalidment, or release, is preferred, the petitioners would not have retained the original service documents of the claimant. In some circumstances, it would be unfair to expect the petitioners to be burdened with the initial onus to prove that the claimant officer, who has preferred his claim belatedly, is not entitled to it. In such a circumstance, the initial onus to prove entitlement would be on the officer. It is obviously to clarify this position that Rule 7 commences with the word “ordinarily”. If anything, therefore, the word “ordinarily” would re-emphasise the position that the initial onus to prove entitlement remains on the military establishment, and is not on the officer claiming disability pension, and that this onus would shift only where the officer approaches, with his claim, belatedly, more than 15 years after discharge/retirement/invalidment/release.

76. Rule 14 of the 2008 Entitlement Rules, which applies to claims based on diseases, first that, for a disease to be treated as attributable to military service, it has to be simultaneously established that the disease arose during the period of military service and that the disease was caused by conditions of



employment in military service. This, again, is obvious, and cannot be disputed.

77. It goes without saying that the mere fact that the officer may have contracted the disease during military service would not suffer to entitle him to disability pension, unless the disease was attributable to the military service. The petitioners are also correct in their submission that, with the removal, in the 2008 Entitlement Rules, of the presumption that, if no note was entered in the record of the officer, at the time of his induction into military service, to the effect that he was suffering from the ailment, the ailment would be deemed to be attributable to military service.

78. The removal of this presumption, from the Entitlement Rules, does not, however, automatically shift, to the claimant officer, the responsibility to prove that the disease is attributable to military service. This is clear from Rule 7, which unmistakably holds that, ordinarily, the officer *would not be called upon* to prove the condition of entitlement.

79. All that the removal of the presumption, contained in Rule 5 of the 1981 Entitlement Rules, of the disease being attributable to the service where no note, regarding its existence, was contained in the record of the officer at the time of his enrolment into military service, entails is that it would be open to the Medical Board to hold that the disease was not attributable to military service, even if it was not present at the time of induction of the officer.

80. Even then, the responsibility would remain with the RMB to demonstrate, in its Report, with cogent reasons to be stated in the Report that, though the disease was not present at the time of induction of the officer in service, it was equally not attributable to the military service undergone by the officer. This would require, in its wake, the Report to fix attributability of the disease on some other factor, other than the military service being undergone by the officer. The RMB cannot seek to content itself with a bald statement that, in its opinion, the disease or ailment, though contracted during the tenure of military service of the officer, was not attributable to such service. The decisions cited *supra*, including the pronouncement in *Munusamy*¹¹, remain consistent on this aspect, till date. As the law stands today, the mere fact that, at the time of induction into service, the record of the claimant officer did not contain any note to the effect that he was suffering from the disability or ailment on the basis of which he later claims disability pension, would not result in any presumption that the ailment or

¹¹ **Union of India v R. Munusamy, 2022 SCC OnLine SC 892**



disability was attributable to military service. It would remain, however, an indisputable fact that, even in such cases, the disease or inability arose during the course of military service. The removal of the presumption would result in the RMB being open to establish, in its Report, that the disease, even if contracted during the military service of the concerned officer, was not attributable to or aggravated by, it.

81. That responsibility has, however, to be assiduously discharged. The RMB has to record reasons as to why it arrives at the conclusion that the disease, forming subject matter of the claim for disability pension, contracted during the military service of the officer, was not attributable to such service in the absence of any such reason, the claim of the officer, disability pension, has necessarily to sustain.

82. In the facts of the present case, we do not deem necessary to state anything further. We have already emphasised the salient features of the report of the RMB in the case of the respondent. There is candid acknowledgement, in the Report, of the fact that the Type II DM, from which the Respondent suffered, was contracted 30 years after the Respondent had entered military service. The fact that the onset of the disease was during the course of military service of the Respondent is not, therefore, in dispute. Beyond this, there is precious little, in the Report of the RMB, to indicate that the military service of the respondent was not the cause of the disease. Inasmuch as the claim of the Respondent was not preferred more than 15 years after his discharge, the onus to establish this fact continues to remain on the RMB, even under Rule 7 of the 2008 Entitlement Rules. A mere statement that the onset of the disease was during a peace posting is clearly insufficient to discharge this onus. The judgments of the Supreme Court are consistent on the fact that the report of the RMB is required to be detailed, speaking, and supported by sufficient cogent reasons. The RMB Report, in the case of the Respondent, clearly does not satisfy these conditions.”

17. In the present case, there is no cause attributed to the amnestic episodes from which the petitioner was suffering from about five years prior to her retirement, other than military service. These episodes ultimately resulted in the petitioner suffering a fall and being rendered unconscious.



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18. In our considered opinion, the matter would be squarely covered by the law laid down in *Dharamvir Singh, Bijender Singh, Gawas Anil Madso* and *Balbir Singh*. We are unable to sustain the finding of the AFT that the petitioner would not be entitled to disability pension.

19. Accordingly, the impugned order passed by the AFT is quashed and set aside. We hold the petitioner entitled to disability pension. The pension would be computed from the time the petitioner retired from service and be paid to her along with arrears within a period of eight weeks from today. Failure to do so would entail interest @ 9% per annum till the date of payment.

20. The petition is allowed accordingly.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

SEPTEMBER 8, 2025/gunn/AR