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

% Judgment reserved on*: 29.01.2026*
Judgment delivered on*: 20.04.2026*
Judgment uploaded on*: As per Digital Signature~*

\+ **W.P.(C) 1246/2026**

UNION OF INDIA & ANR. .....Petitioners
versus
CAPT J K VERMA RETD .....Respondent

Advocates who appeared in this case

For the Petitioner : Mr. Shoumendu Mukherji, Senior Panel Counsel, UOI with Mr. Aniruddha Ghosh, Ms. Surabhi Tuli, Advs., Major Anish Muralidhar (Army)

For the Respondent : Mr. VS Kadian and Mr. Sukhbir Singh, Advs.

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

JUDGMENT

V. KAMESWAR RAO, J.

CM APPL. 6193/2026

1. For the reasons stated in the application, the same is allowed. The documents annexed as Annexure P3 to P9 are taken on record.

2. The application is disposed of.

W.P.(C) 1246/2026, CM APPL. 6192/2026

3. This petition has been filed with the following prayers:-

> *"(i) Admit and allow the present writ petition and set aside the Impugned Orders dated 13.07.2023 and 14.11.2024 passed by the Hon'ble Armed Forces Tribunal, Principal Bench, New Delhi, In O.A No. 1692/2019 titled as 'Capt. JK Verma (Retd) Vs. Union Of India & Ors.' to the extent of disability pension that was sanctioned upto 22.02.1998 and/or."*

4. The petitioners herein, have filed the present writ petition assailing the orders dated 13.07.2023 and 14.11.2024 (impugned orders), **in O.A. No.1692/2019** and **R.A. No. 63/2023** respectively, titled '***Capt J K Verma (Retd) v. Union of India and Ors.***' passed by the Armed Forces Tribunal ("Tribunal/AFT"), whereby the Tribunal has assessed the disability of the petitioner @20% and broad banded the same to 50% for life and granted the disability element of the pension, with effect from the date of discharge of the petitioner. *Via* order dated 14.11.2024 in R.A. No. 62/2023, the AFT modified the order dated 13.07.2023 to the extent that the disability pension shall consist of service element and disability element both.

FACTUAL BACKGROUND

5. The facts as borne out from the petition are that SS-27055N Ex Capt Jagdish Kumar Verma (Retd), the respondent herein, served in the Indian Air Force from 13.06.1967 to 06.07.1973, for a period of 06 years and 10 months. Thereafter, on 12.05.1974, he was commissioned in the Army (SSC) and invalided out of service on 12.05.1979 in low medical category S1H1A1P5E1, due to the disability "Pulmonary Tuberculosis" and was granted disability pension @100% for 4 years, from 13.05.1979 to 05.06.1983 and thereafter, @60% from 06.06.1983 to 05.06.1985 *vide* PCDA (P) Allahabad letter No. G1/M/44052 dated 23.04.1983 and letter dated 26.07.1983.

6. A Re-survey Medical Board (RSMB) was conducted on 14.05.1985 which reassessed the disability of the respondent @60% for 02 years. Thereafter, another RSMB was conducted on 28.02.1987, which reassessed the disability @ 50% for 02 years, with CDA(P) granting disability pension @20% for 02 years. The RSMB was again conducted on 10.05.1989, which assessed the degree of disablement @50% for 2 years. Again, on 23.02.1993, the disability was assessed @ 20% for 5 years, from 10.05.1991 to 22.02.1998 *vide* PCDA (P) Allahabad PPO dated 16.07.1993.

7. Finally, on 02.02.1998, the Appellate Medical Authority assessed the disability element @11-14% for 10 years, thereby discontinuing the disability pension as it fell below the 20% threshold for meeting the criteria of being granted disability pension.

SUBMISSIONS BY THE PARTIES

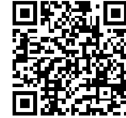
8. Mr. Shoumendu Mukherji, learned Senior Panel Counsel for the petitioners stated that the respondent preferred an appeal against the discontinuation of the disability pension, on 26.04.2000, which was adjudicated and rejected by the Competent Authority *vide* Government of India, Ministry of Defence letter No. 7(1518)/99/D(Pen-A & AC) dated 31.10.2000, stating that the disability pension was sanctioned to the respondent upto 22.02.1998. Upon the perusal of the medical record and service documents, the Appellate Medical Authority found that the disability had improved and finally assessed the disablement at less than 20% i.e. 11-14%, for 10 years. The respondent had again made a representation to convene an RSMB which was not acceded to. Later, the respondent filed the O.A. No. 1692/2019 before the Tribunal.

9. He relied upon Para 8.2 of Ministry of Defence policy letter No

1(2)/97/D(Pen-C) dated 31.01.2001 ("policy") which states that *"No disability element shall be payable for disability less than 20%"*. The minimum percentage of disablement for the entitlement to disability pension is 20%, and since the same in the case of the respondent is less than 20%, he was no longer entitled to the benefit of disability pension.

10. Mr. Mukharjee stated that the petitioners have assailed the order dated 13.07.2023 passed by the Tribunal as the same is *ex-facie* illegal and *non-est* in law. He stated the Tribunal erroneously allowed the O.A. of the respondent without appreciating the facts and circumstances of the case and the law applicable thereto.

11. He placed reliance on Para 7 (7.1) (I) (i) of the policy, which states that *"....There shall be no condition of minimum qualifying service having been actually rendered for earning this element, if otherwise due"*. Additionally, Regulation 48(a) of Pension Regulation for the Army 1961, Part-I states that service element of disability pension was being notified on permanent basis w.e.f. 01.01.1973 and even if at some stage the percentage of disability of the pensioners goes below 20%, the service element of the pensioners notified initially, continues to remain in force for life. However, in the cases of disability in respect of pensioners before 01.01.1973, the service element is contingent upon the continuance of disability element unless and until the pensioner has put in minimum of 10 years of service before 01.03.1968 and 5 years of service since after that date up to 31.12.1972, after which the service element becomes permanent as explained above. He relied on the above to state that the same indicated that there was no condition of minimum qualifying service for grant of disability pension to the invalided personnel, and once the same is notified, it attains



finality.

12. His submission is that in the present case, the respondent was invalided out of service on 12.05.1979 and the service element of disability pension was granted to him initially. As per the policy, the respondent was duly entitled for the disability pension @20%, rounded off to 50%, from 01.01.1996 to 22.02.1998. However, thereafter, the disability came to be assessed @11-14%, which disentitled the respondent. It was logical for the disability to heal over time, and the same was not permanent in nature. The petitioners through the Appeal Medical Board assessed the respondent by a panel of doctors of the Armed Forces. In light of the same, the respondent mislead the Tribunal by submitting that the petitioners made unilateral/administrative decisions pertaining to the respondent. As per him, the impugned order wrongly records that the decision by the Authorities, dated 02.02.1998 was an administrative one. The decision of the Tribunal is against settled legal principle and guidelines laid down *via* notifications and circulars.

13. He relied upon Para 7 of the circular dated 07.02.2001 which states that "*There will be no periodical reviews by the Re-survey Medical Boards for re-assessment of disabilities. In cases of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a review. In cases of disabilities which are not of a permanent, there will be only one review of percentage by a Reassessment Medical Board, to be carried out later, within a specific time frame. The review will be carried out by Review Medical Board constituted by DGAFMS.*"**.** In the present case, the disability of the respondent was not permanent in nature, and was assessed for 10 years. The

respondent had asked for a review after a completion of 10 years, on 22.02.2008, but he himself did not follow through with it. He also relied upon Para 8 of the policy which states that "*The appeal shall be referred to the respective service Headquarters, by the Record Offices for decision*".

14. He further assailed the impugned order with respect to non-restriction of arrears regarding the disability pension. The right of the respondent accrued w.e.f. 22.02.2008, on expiry of the period of assessment by the PCDA (P) viz 11-14% for 10 years w.e.f 23.02.1998. However, the respondent approached the Tribunal only in 2019. This goes against the settled law that the arrears of monetary benefits particularly in pension matters, should not be granted for an extended period, especially in cases where no valid reason is provided for the delay in filing the claim. Non restriction of arrears in a belated claim, such as the one under consideration is also against the Supreme Court's decision in ***Union of India v. Tarsem Singh (2008) 8 SCC 648*** and ***Shiv Dass v. Union of India (2007) 9 SCC 628***, wherein it was held that financial benefits are subject to limitations of time and cannot be granted indefinitely.

15. He further submitted that the MoD policy dated 15.09.2014 extended the benefit of broad banding of percentage of disability/ war injury w.e.f 01.01.1996 to Armed Forces Officers and PBOR pensioners who were invalided out of service prior to 01.01.1996 and were in receipt of disability element/ war injury element. Hence, the decision of granting the broad banding benefits to the respondent w.e.f. the date of his discharge (12.05.1979) by the Tribunal is misplaced. The Tribunal also failed to appreciate that the jurisdiction of review by the courts is narrower, especially in the matters having financial implications. In a catena of

decisions, the Supreme Court has reiterated that particular service benefits like pension, etc. should be left to the expert body/ employer as it has financial implications.

16. He placed reliance on the recent decision of the Supreme Court, in ***Punjab State Coop. Milk Producers Federation Ltd. v. Balbir Kumar Walia, (2021) 8 SCC 784,*** wherein the Court analysed various earlier decisions with respect to the power of review, especially in which there are serious financial implications. Paragraph 44 of the same reads as under:

> *"44. In BALCO Employees' Union v. Union of India [BALCO Employees' Union v. Union of India, (2002) 2 SCC 333], the Court was examining the policy of disinvestment of public sector undertakings. It was held that wisdom and advisability of economic policies of the Government are not amenable to judicial review unless it can be demonstrated that such policy is contrary to any statutory provision or the Constitution. It is not for the Court to consider relative merits of different economic policies and consider whether a wiser or better one could be evolved. The Court held as under: (SCC pp. 381-82, paras 92-93 & 98)*
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> > *"92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.*
> >
> > *93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the*

> *courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.*
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> *98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."*

17. Reliance is also placed by him on the decision in ***W.P. (C) 15594/2023*** titled ***Ex Rect Naresh Kumar v. UOI & Ors*** wherein this court, after analysing the ratio in the cases of ***Dharamvir Singh v. Union of India and Others (2013) 7 SCC 316, Tarsem Singh (Supra),*** and Co-ordinate Bench Judgment of this Court in ***Keshav Dutt Oli v. Union of India 2023 SCC OnLine Del 5080***, held as under:

> *"22. In any event, this Court finds that as per the settled law grant of disability pension is not based on a straight jacket formula and is certainly not a matter of right as it depends upon the factual position involved."*

18. He further stated that pensionary rights are statutory rights and not fundamental rights. However, no person has a fundamental right to seek benefits which are not granted by any relevant statute. The Tribunal failed to consider this aspect of law while granting the benefit. Primacy must be given to the law over compassion/sympathy. The Tribunal gave a go-bye to the legal provisions while granting disability pension to the respondent.

19. He concluded his submissions by reiterating that the policy, since its

inception has been uniformly applied in all cases including in the case of the respondent. The scope of judicial review in the matters of pension policies relating to the army personnel is only limited to deficiency in the implementation of the process and not otherwise. In view of the above submissions, he states the impugned orders dated 13.07.2023 and 14.11.2024 passed by the Tribunal must be set aside.

20. On the other hand, the learned counsel for the respondent would reiterate the submissions as were advanced before the Tribunal. It is his submission that the respondent was in receipt of disability pension w.e.f. 10.05.1980 to 22.02.1998. Between 1983 to 1998, he has undergone various RSMB. The RSMB conducted on 02.02.1998 has assessed the disability of the respondent at 20% for life, however, the said disability was reduced to 11-14% for a period of 05 years, without conducting fresh medical examination, by CDA, which is an administrative authority and the disability pension, which the respondent was in receipt of, was discontinued. The Appellate Authority conducted another Board on 01.02.1999 wherein PCDA, Allahabad again assessed the disability of the respondent as 11-14% for 10 years. Same is the position on 31.10.2000. The case of the respondent was that the unilateral reduction of the percentage of the disability by an administrative authority like CDA without conducting any medical Board is unjust and illegal. According to him, the Tribunal was justified in allowing the OA filed by the respondent in the manner it has done in the impugned order. He seeks dismissal of the writ petition.

ANALYSIS AND CONCLUSION

21. Having heard the learned counsel for the parties and perused the

documents, at the outset, we may state that the case of the respondent before the Tribunal was that, he worked in the Indian Air Force from 13.06.1967 to 06.07.1973 for a period of 06 years and 10 months and thereafter, was commissioned in the Indian Army as a Short Service Commissioned Officer on 12.05.1974. He was invalided out of service w.e.f. 12.05.1979 in low medical category. The respondent was suffering from ID Pulmonary Tuberculosis attributable to military service. His disability was accepted at 100% from 13.05.1979 to 09.05.1980. He was granted disability pension consisting of service element and disability element of pension from 10.05.1980 to 05.06.1983. Thereafter, the disability pension was extended from time to time *vide* PPO dated 16.07.1993 whereby service element as well as disability element was assessed at 20% and was extended till 22.02.1998. Thereafter, the disability pension was discontinued. The respondent submitted the appeal dated 26.04.1999 seeking continuation of his disability pension as he was invalided out of service due to low medical category and his service was cut short. The petitioners *vide* letter dated 31.10.2000 intimated that the disability pension was discontinued w.e.f. 23.02.1998 as the disability was assessed at less than 20% i.e. 11-14% for 10 years by the CDA, though no fresh medical examination was conducted. Further the respondent again made a representation dated 18.06.2015 for grant of disability pension and to convene the RSMB but nothing was done till the filing of the OA. The case of the respondent was also that the disability pension was reduced without conducting any fresh medical examination.

22. On the other hand, the case of the petitioners as noted above was that the respondent was granted disability pension at 100% initially for 04 years.

Thereafter, at 60% for 02 years and at 50% for 02 years. There is one aspect/ fact, that the medical examination held on 22.03.1993 had assessed the disability at 20% and the duration of the assessment as permanent w.e.f. 10.05.1991. The grievance of the petitioner is that further reduction below 20% was without conducting fresh medical examination.

23. We find that though in 1993, the disability was assessed as permanent at 20%, the petitioners without conducting a fresh medical examination reduced the disability to 11-14%. It is precisely this conduct of the petitioners that the Tribunal has commented upon by stating in paragraphs 12 to 14 as under:-

> *"12. It is an undisputed fact that the applicant had joined the Army on 06.07.1973 having been adjudged to be fully fit following a rigorous medical examination. There is also no dispute with regard to the fact that the downgrading of the medical category- of the applicant to S1H1A1PSE1 was in view of the invaliding disabilities in question and that the applicant was invalided from service in a low medical category-. Prior thereto, the Release Medical Board assessed the disability of the applicant @ 100% for one year. The applicant thereafter had undergone a number of RSMBs and the disability pension was finally stopped by the PCDA (P) Allahabad in 1998 whereas the RSMB conducted in the same year had assessed the disability to be 20% for life (Permanent) by the medical board.*
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> *13. We are of the view that the administrative decision taken by the respondents to deny disability element of pension to the applicant is against the decisions of the Hon'ble Supreme Court in Ex Sapper Mohinder Singh v. Union of India and another (C.A No. 164 of 1993 decided on 14.01.1993) and Dharamvir Singh v. Union of India and others (2013) 7 SCC 316.*
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> *14. In a catena of judgments this Tribunal has*

> *reaffirmed with consistency that due credibility and primacy has to be given to medical board proceedings. Whether it be the PCDA or an administrative authority, refutation of a medical opinion can only be by another more competent medical opinion. We do not find any justifiable reason on the part of the respondents in denying the disability element of pension to the applicant, especially when the Re lease Medical Board had determined the invaliding disease and assessed his disability @ 20% permanently vide RMB conducted on 02.02.1998."*
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> (*Emphasis supplied*)

24. We agree with the conclusion to the extent, that once the disability of the respondent has been assessed @ 20% for life, by the RSMB, on 23.03.1993, the CDA could not have reduced it. In fact, the circular dated 07.02.2001, as interpreted by the Supreme Court makes it clear that no more periodical reviews by the RSMB shall be held for reassessment of disabilities in case of disabilities adjudicated as being of permanent nature. The decision once arrived at will be for life unless the individual himself requests for a review. If that be so, once the disability has been assessed as permanent *vide* RSMB conducted on 23.02.1993, it could not have been reduced further unless the respondent had himself requested for a review.

25. It follows, once the disability has been assessed at 20% for life then the same is permanent for life. So, to that extent, the conclusion of the Tribunal cannot be contested.

26. One of the submissions of the learned counsel for the petitioners is that the Tribunal has directed disability element of the pension to the respondent at 20% broad-banded the same to 50% for life w.e.f. the date of discharge. According to him, the Tribunal has erred in broad banding the

disability from 20% to 50%, which is not in accordance with the judgment of the Supreme Court in the case of ***Union of India v. Ram Avtar in Civil Appeal no. 418 of 2012***.

27. We agree with the said submission made by the counsel for the petitioners and accordingly, clarify that the respondent shall be entitled to 20% of the disability element of pension from 23.02.1998 till the date of the judgment of the Supreme Court in the case of ***Ram Avtar (supra)*** in the year 2014, wherein the Supreme Court has broad banded the disability of 20% at 50%.

28. It is made clear that with effect from the date of judgment of ***Ram Avtar (supra)***, the disability pension shall be broad banded as 50%. Accordingly, the petitioners are directed to calculate and issue necessary PPO to the respondent within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the petitioners within the same period, failing which the respondent shall be entitled to interest @ 6% per annum.

29. In view of the above, the petition along with the pending application is disposed of.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

APRIL 20, 2026/sr