



2026 INSC 993

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2026
(@ SPECIAL LEAVE PETITION (C) NO. 3680 OF 2025)

UNION OF INDIA & ORS.

...APPELLANT(S)

VERSUS

COL. NC ISAAC (RETD.)

...RESPONDENT(S)

With

CIVIL APPEAL NO. 3557 OF 2025

CIVIL APPEAL NO. 3558 OF 2025

CIVIL APPEAL NO. 3712 OF 2025

CIVIL APPEAL NO. 3713 OF 2025

CIVIL APPEAL NO. 3716 OF 2025

CIVIL APPEAL NO. 3717 OF 2025

CIVIL APPEAL NO. 3711 OF 2025

CIVIL APPEAL NO. 7451 OF 2025

Signature Not Verified
Digitally signed by
KAPIL TANDON
Date: 2026.09.15
19:53:03 IST
Reason:

CIVIL APPEAL NO. _____ OF 2026
(@ SPECIAL LEAVE PETITION (C) NO. 9467 OF 2024)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 59381 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 59727 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 62613 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 64460 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 69399 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 69404 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 69407 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 69410 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 69725 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 69737 OF 2025)

CIVIL APPEAL NO. _____ OF 2026
(@ SPECIAL LEAVE PETITION (C) NO. 5180 OF 2026)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 70218 OF 2025)

CIVIL APPEAL NO. _____ OF 2026
(@ SPECIAL LEAVE PETITION (C) NO. 7489 OF 2026)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 70268 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 70269 OF 2025)

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(@ SPECIAL LEAVE PETITION (C) NO. 4252 OF 2026)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 70335 OF 2025)

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(@ DIARY NO. 70860 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
(@ DIARY NO. 70861 OF 2025)

SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
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SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
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SPECIAL LEAVE PETITION (C) NO. _____ OF 2026
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I. Introduction

1. Leave granted in Special Leave Petitions.
2. The appeals before us are only a speck in comparison to the number of similar matters that have already been taken up and dismissed by this Court on delay and on merits. When civil appeals and special leave petitions involving questions concerning disability element of service pension ("**disability pension**") of ex-servicemen were routinely listed before us, many of them filed with enormous delay, we asked the learned

Attorney General to inquire as to why the Union is preferring so many appeals. We were concerned, not about the filing of appeals, but about the system in which such disputes remained unresolved despite a conclusive judgment of this Court. Nothing really happened thereafter. In the meanwhile, appeals and Special Leave Petitions were being filed, and this burgeoning docket had to be taken up for disposal. These matters need not have been dealt with separately as there is no distinction between these appeals and those that were dismissed, but as the learned Attorney General addressed us on the merits of the matter, we considered it appropriate to deal with the contentions and dispose them.

3. It is relevant to state that in each of these cases, a Release Medical Board ("**RMB**") had, at the first instance of assessment, opined that the disability caused to an ex-serviceman was *neither attributable nor aggravated* ("**NANA**") by military service. Relying on the Medical Board's opinion, the intra-departmental appeals of the ex-servicemen were also dismissed. Assailing these orders, the ex-servicemen went to the Armed Forces Tribunal ("**AFT**") or the High Courts, which interfered and proceeded to grant disability pension on the premise that disability was either attributable or aggravated (A/A) by military service. The present appeals challenge both the AFT Orders and the orders of various High Courts which confirmed the AFT orders.

4. The controversy before us is confined to the entitlement to disability element of service pension upon retirement, i.e., completion of service or engagement.

5. For determining this controversy, it would be necessary for us to examine the underlying legal framework, i.e., the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1982 (**“Entitlement Rules 1982”**), and Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008¹ (**“Entitlement Rules 2008”**), the precedents on the subject and the respective submissions of the parties.

II. Governing Rules

A. Background and Evolution of the Entitlement Rules

6. Starting from the pre-independence era, against the backdrop of the Indian freedom struggle and the Second World War, the British Government promulgated the Pension Regulations of 1940, introducing definitive regulations for pensions and other benefits for persons serving in the army.

6.1 The period between 1943 and 1945 witnessed the active involvement of Indian soldiers fighting for the British Armed Forces. During

¹ There is much controversy about the very existence of such rules. This issue will be examined in the latter part of this judgment.

this period, the concept of a *disability benefit* was introduced for the first time, adopting a liberal approach to its entitlement. Subsequently, the notification of the Wartime Rules, 1946, introduced the principle of *attributability* through the explicit use of phrases such as *directly attributable* and *materially aggravated*.

6.2 Later, upon attaining Independence, the Army Act, 1950, the Air Force Act, 1950, and the Navy Act, 1957, provided for dedicated pension regulations. These regulations codified the substantive right to the grant of disability pension under specified circumstances, which shall be adverted to in detail later in this judgment.

6.3 Due to large-scale casualties during the unanticipated and tragic Indo-China and Indo-Pak wars of 1962 and 1971, context-specific entitlement rules were formulated on 26.12.1962, 16.12.1971, and 01.02.1972 to make special provisions covering cases of death and disability.

B. Pension Regulations for Army, 1961

7. In the year 1961, the Pension Regulations for Army, 1961 (“**PRA 1961**”) were issued, superseding the 1940 Regulations. The 1961 PRA structurally categorised pensionary benefits based on rank and mode of cessation.

7.1 In so far as rank is concerned, Chapter II (Regulations 47 to 64) of PRA 1961 governs the Disability Pensionary Awards for Commissioned Officers, whereas Chapter III (Regulations 172 to 190) delineates the parallel framework for Junior Commissioned Officers (JCOs) and Other Ranks (ORs).

7.2 In so far as *cessation* is concerned, the regulations categorise the modes of cessation into, i) invalidment from service before superannuation and ii) normal retirement on superannuation or end of service. Normal retirement occurs when an individual successfully completes their prescribed service obligation, tenure, or age limit, representing a routine, non-medical exit from the forces. In contrast, medical invalidment occurs when a serviceman's career is prematurely terminated (boarded out) by an Invaliding Board because they are found medically unfit for further service. When an individual is medically invalided, the exact entitlement crystallizes, based on whether or not the medical board classifies the disability as attributable to or aggravated by military service.² If the invalidating disability is classified as A/A, the soldier is granted disability pension. Conversely, if the soldier is invalided due to a NANA disability, they are not entitled to a disability pension but may receive an "*invalid pension*", as a financial safety net, provided they have

² Disability should be assessed at 20% or more as per Regulation 179 of 2008 Pension Regulations read with Rule 4 of the Entitlement Rules 2008.

completed the requisite minimum qualifying service, which is generally 10 years. If they are invalidated without the required service, they are entitled to an “*invalid gratuity*”, which is a one-time payment.³

7.3 For cases involving *premature medical invalidation*, Regulation 48 for officers and Regulation 173 for JCOs and ORs establish the primary threshold for the grant of a full disability pension. These provisions mandated that if an individual is *invalidated from service* on account of a disability assessed at 20% or over, and such disability is either attributable to or aggravated by military service, they will be awarded a disability pension comprising both a service element and a disability element -

“Reg 48 - Disability Pension When Admissible -

(a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20% or more.

(b) The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.

Reg 173 - Primary conditions for the grant of disability pension-

Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated - by military service in non-battle casualty and is assessed at 20% or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.”

³ Regulation 59, Army Pension Regulations, 2008.

7.4 Expanding this scheme, Regulation 173A introduces a legal fiction for JCOs and ORs permanently placed in a Low Medical Category (LMC) i.e., if such personnel are discharged because no suitable alternative employment could be provided then they are legally deemed to have been invalidated from service -

“Reg 173A - Individuals discharged on account of their being permanently in low medical category-

Individuals who are placed in a lower medical category (other than ‘E’) permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalidated from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.”

8. In the present batch of appeals, the expression “*disability pension*” has frequently been used loosely in the pleadings, obscuring a subtle distinction between an *invalid pension* and a *disability pension*. We have, however, maintained that distinction by referring to the first category of as cases of invalidation and the latter as cases involving regular discharge from service. We will now deal with the latter category.

9. Dealing with the latter class of personnel who have retired from service in normal course, Regulation 53 for officers and Regulation 179 for JCOs and ORs govern individuals who retired upon reaching the prescribed age, completion of tenure, or service limits. Under these

provisions, if a soldier suffered from a disability upon retirement that was accepted as either attributable to or aggravated by military service (A/A), they were entitled to receive a “*disability element*” in addition to their ordinary service pension -

“Reg 53- Officers Compulsorily Retired on account of Age or on Completion of Tenure-

(1) An officer retired on completion of tenure or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military Service and recorded by service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more, and service element if the degree of disability is less than 20%. The retiring pension/retiring gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.

Note: In the case of an officer discharged on fulfilling the terms of his retirement, his unwillingness to continue in service beyond the period of his engagement should not effect his title to the disability element under the provision of the above regulation.

Reg 179 - Disability at the time of retirement/discharge-

An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more, and service element if the degree of disability is less than 20%. The service pension/service gratuity, if already sanctioned and paid, shall

be adjusted against the disability pension/service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.”

10. The fundamental question of whether a disability is attributable to or aggravated by military service has to be determined under the accompanying Entitlement Rules.⁴ Therefore, while the Pension Regulations of 1961 established the substantive right to the award, the precise manner of determining attributability, aggravation, and the degree of disability remains strictly governed by the prevailing Entitlement Rules.

C. Entitlement Rules for Casualty Pensionary Awards, 1982

11. To comprehend the core principles governing disability pension, it is essential to first examine the Entitlement Rules 1982. On 22.11.1983, the consolidated Entitlement Rules for Casualty Pensionary Awards, 1982, were notified, and made applicable to personnel who became non-effective from 01.01.1982.

11.1 The foundation of the framework lies in the *twin presumptions* stipulated under Rule 5. It mandates that a service member is presumed to have been in sound physical and mental condition upon entering service, except for any physical disabilities explicitly noted at the time of

⁴ See Regulations 48 and 173 of the PRA, 1961, read with the Entitlement Rules 1982.

entrance. Consequently, if a member is discharged on medical grounds, Rule 5 presumes that any deterioration in their health occurred due to military service. The said presumption provision reads as follows -

“Rule 5 – The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions: --

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.”

11.2 Rule 5 operates in tandem with Rule 4, which dictates *invalidation from service* as a pre-condition for entitlement to disability pension. Rule 4 further clarifies that personnel placed permanently in a lower medical category and subsequently discharged are legally deemed to have been invalidated out of service -

“Rule 4 - Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than ‘A’ and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment will be deemed to have been invalidated out of service.”

11.3 Building upon these initial presumptions, Rules 6 and 8 define the exact medical parameters for disablement or death on the one hand and attributability/aggravation by military service on the other hand. Disability or death is accepted only when it is certified by the appropriate medical

authority and attributability/aggravation is conceded only when there is a *causal connection* between death/disablement and military service and certified by appropriate medical authority. These two rules read as follows

“Rule 6- Disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that -

(a) The disablement is due to a wound, injury or disease which
(i) is attributable to military service, or
(ii) existed before or arose during military service and has been and remains aggravated thereby. This will also include the precipitating /hastening of the onset of a disability.

(b) The death was due to or hastened by
(i) a wound, injury or disease which was attributable to military service; or
(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Rule 8- Attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority.”

11.4 The most crucial aspect of these rules is the *burden of proof*, which is addressed in Rule 9. Serving as a beneficial measure, this rule insulates the claimant-serviceman from being called upon to prove the conditions of their entitlement. Instead, the claimant legally receives the benefit of any reasonable doubt, a benefit that this rule directs to be applied even more liberally for those involved in field or afloat service. Rule 9 reads thus:

“Rule 9 - The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.”

11.5 In the same breath, it is necessary to mention and extract Rule 20 of the Entitlement Rules 1982, which speaks about *aggravation* -

“Rule 20 - AGGRAVATION: If it is established that the disability was not caused by service, attributability shall not be conceded, however, aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim.”

11.6 The Entitlement Rules 1982 also provide specific operational frameworks for assessing injuries and diseases under Rules 14, 15, and 23. Under Rule 14, injuries sustained while a person is on duty are deemed to have resulted from military service, safeguarding the soldier unless there is evidence of serious negligence, misconduct, or self-infliction. For diseases, Rule 15 recognises that even if the harsh conditions of military service did not directly cause the onset of an illness, but materially influenced or worsened its subsequent course, the claim falls squarely within the bounds of acceptance based on aggravation. To finalise the process, Rule 23 clarifies that assessment of the degree of this disability is entirely a matter of medical judgment, determined purely by comparing the disabled individual to a normal healthy person of the same age and sex, without factoring in extraneous circumstances or the individual's earning capacity:

“Rule 23- Assessment of degree of disability is entirely a matter of medical judgement and is the responsibility of the medical authorities.

The degree of disablement due to service/duty of a member of the military forces shall be assessed by making a comparison between the conditions of the member as so disabled and the conditions of a normal healthy person of same age and sex, without taking into account the earning capacity of the member in his disable condition in his own or any other specific trade or occupation, and without taking into account the effects of any individual factor or extraneous circumstances.

Where disablement is due to more than one disability a composite assessment of the degree of disablement shall also be made by reference to the combined effect of all such disabilities in addition to separate assessment for each disability...”

12. Between 1996 and 2001, the Government of India issued various policy letters bringing about certain changes, including the aftermath of the Fifth Central Pay Commission, which introduced, among other things, the concept of broad-banding of disability percentage on invalidment. It is stated in some of these policy letters that the Pension Regulations of the three services would in due course be correspondingly amended. In 2002, the Guide to Medical Officers (Military Pensions) was promulgated as a technical, disease-specific guide to assist medical officers in applying the Entitlement Rules and in the assessment of the percentage of disability, retaining a liberal approach consistent with the Entitlement Rules 1982.

D. Entitlement Rules for Casualty Pensionary Awards, 2008

13. Learned Attorney General submits that on 18.01.2010, the Entitlement Rules 1982 were superseded with effect from 1st January 2008 and the Entitlement Rules 2008 were brought into force.

13.1 Before we deal with the Entitlement Rules 2008, it is necessary for us to mention that there is a great amount of uncertainty about the very existence of the Entitlement Rules 2008. This is not a casual statement but an enquiry which eluded this Court from time to time. However, as the Ld. AG insisted on the existence of these rules, for completion of narration, we will deal with this and the Entitlement Rules 2008 as they are presented before us, before entering into a detailed discussion.

13.2 Ld. AG submits that certain focal changes were made under the Entitlement Rules 2008, such as the removal of the presumption clause and the addition of the causal connection requirement to prove attributability. It is submitted that Rule 5 formally removes the *ipso facto* presumption of attributability by altering the sacrosanct weightage attached to the medical test conducted at the entry stage and that the mere manifestation of a disease during military service does not per se establish attributability or aggravation. According to the Learned AG, this rule limits initial medical examination to a broad physical check and is not exhaustive; hence, it may fail to detect dormant, hereditary, constitutional, or congenital diseases that can manifest later in life irrespective of service conditions -

“Rule 5 - The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The

mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.

13.3 Rule 4 outlines the foundational preconditions concerning invalidment from service. Rule 4(a) clearly dictates that invalidation with a disablement caused by service factors is a condition precedent for granting a disability pension. Crucially, however, it preserves the right to a “disability element” for personnel who retire or are discharged in a low medical category upon completing their terms of engagement, provided the disability is attributable to or aggravated by military service and assessed at not less than 20%.⁵ Rules 4(b) and 4(c) expand on this by clarifying that individuals boarded out on medical grounds before completing their engagement are treated as invalided. Furthermore, a legal fiction of “deemed invalidment” is created for Personnel Below Officer Rank (PBOR) placed in a permanent low medical category who are discharged because suitable alternative employment cannot be provided, they refuse such employment, or they are discharged before their engagement ends despite being retained in an alternative role -

Rule 4- Invalidment from Service:

(a) Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.

⁵ Identical to the deeming fiction under erstwhile Rule 4 of 1982 Entitlement Rules.

(b) An individual who is boarded out of service on medical grounds before completion of terms of engagement shall be treated as invalided from service.

(c) PBOR and equivalent ranks in other services who are placed permanently in a medical category other than SHAPE 1 or equivalent and are discharged because (i) no alternative employment suitable to their low medical category can be provided, or, (ii) they are unwilling to accept alternative employment, or, (iii) they having been retained in alternative employment are discharged before the completion of their engagement, shall be deemed to have been invalided out of service.

13.4 This is intrinsically linked to Rule 6, which imposes a strict requirement that a definitive causal connection between the disability (or death) and military service must be affirmatively established by the appropriate authorities to grant a casualty award -

“Rule 6- Causal Connection- *For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.”*

13.5 Despite this stricter causal threshold, Rule 7 retains the most contentious protective procedural shield for the servicemen regarding the *onus of proof*. The *onus of proof* contemplated under Rule 9 of the Entitlement Rules 1982 is modified and has been subjected to a quintessential 15 years' time period requirement. It states that, ordinarily, the claimant will not be called upon to prove the conditions of entitlement, transferring this burden to the authorities. The only exception provided is when a claim is preferred after 15 years, by which time service documents are typically destroyed, under which circumstances the onus to prove

entitlement shifts to the claimant. Rule 7 of the present Entitlement Rules 2008, as amended, reads thus -

“Rule 7- Onus of Proof - 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 lie on the claimant.”

13.6 While the Entitlement Rules 1982 deemed that discharge or death is deemed to have arisen in service if on the date of entry, no note was made by RMB, the amended Rule 10 introduces the “causal connection” which requires twin conditions to be satisfied in order to attribute the injury/disease to military service. Rule 10(b)(iii) is significant as it supplies a distinct proviso for cases where the cause of the disease is not known at all. It concedes attributability in case the cause of the disease is unknown. In substance, this proviso is the direct successor to Rule 20(a) of the Entitlement Rules 1982-

“Rule 10 – Attributability

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

(i) Injuries sustained when the individual is ‘on duty’, as defined shall be treated as attributable to military service, (provided a nexus between injury and military service is established).

(ii) In cases of self-inflicted injuries while ‘on duty’, attributability shall not be conceded unless it is established that service factors were responsible for such action.

(b) Diseases:

(i) *For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*

a) *That the disease has arisen during the period of military service, and*

b) *That the disease has been caused by the conditions of employment in military service.*

(ii) *Diseases due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.*

(iii) *If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.*

(iv) *When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable."*

13.7 Rule 11 specifically provides for the additional criteria on *aggravation* in the following words -

"Rule 11 – Aggravation - A disability shall be conceded aggravated by service 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., field operations, High Altitudes, etc."

13.8 It is necessary to read these provisions with Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces, 2010 ("**RMSAF**"), which governs the medical process by which attributability and aggravation are determined, and provides as follows -

"Regulation 423(a) — For the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, 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 conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt, if any, will be given to the individual...”

13.9 While the Ld. AG submits that the Entitlement Rules 2008 constitute a fundamental departure in the framework for granting or rejecting the disability element of service pension, learned counsel for the respondent-ex-servicemen vehemently counter this proposition. They contend that the foundational principles of the Entitlement Rules 1982 remain virtually unaltered, characterizing the Entitlement Rules 2008 as introducing mere changes in form rather than any abrogation of substantive rights. It is their submission that the beneficial protections enshrined in the Entitlement Rules 1982 continue to flow seamlessly into the 2008 regime. Before we consider the changes, if any, brought about by the Entitlement Rules 2008, it will be beneficial to consult the legal precedents on the subject. These precedents existed before the substantive decision of this Court in *Dharamvir Singh v. Union of India*⁶ was delivered.

III. Developments through Judicial Interpretation

A. Position prior to *Dharamvir Singh v. Union of India*

⁶ (2013) 7 SCC 316.

14. Ld. AG placed reliance on *Secretary, Ministry of Defence v. A.V. Damodaran*⁷ to submit that the fact that a disease arising during service would not suffice by itself for an entitlement to disability element unless the conditions of military service determined or contributed to its onset. A perusal of *A.V. Damodaran's* case shows that the original applicant therein was enrolled in Army in 1979 and was discharged on 30.06.1984 owing to being diagnosed with 'Schizophrenia'. Relying on Regulation 173 and Regulations 423 on 'Attributability of service' of Pension Regulations for the Army it was observed that if a disease is accepted as having arisen in service, it must also be established that the conditions of military service contributed to onset of disease. Thus, since the medical Board had opined the disability to be 'NANA', this Court held that Respondent was not entitled to disability pension, however, any amount already paid was directed not to be recovered.

14.1 Ld. AG further submitted that in a catena of cases prior to *Dharamvir*, Disability Pension was outrightly denied. Some of these cases are briefly discussed below -

14.2 In *Controller of Defence Accounts (Pension) and Ors. v. S. Balachandran Nair*⁸ case, the Respondent had joined the Army in 1972 and was discharged from service on account of illness identified as

⁷ (2009) 9 SCC 140.

⁸ (2005) 13 SCC 128.

‘anxiety neurosis’. Relying upon dicta in *Union of India vs. Baljit Singh*⁹ as well as *Union of India vs. Dhir Singh China*¹⁰, it was held that where the Medical Board found that there was no proof of injury having been sustained due to military service/ attributable thereto, the direction to pay disability pension was not correct. This Court held that Respondent was not entitled to disability pension but payment already made with regard to disability pension was directed not to be recovered.

14.3 In *Union of India and Ors. v. Ajay Wahi*¹¹ case, Respondent was commissioned on 27.02.1977 and opted for invalidment/ pre-mature retirement on 20.10.1994 after being diagnosed with Bronchial Asthma and Low Backache by Medical Board (the same being opined as ‘NANA’). Herein, this Court observed that an officer is entitled for disability pension only when he is invalided out of service on account of disability attributable to military service or aggravated thereby and shall not be entitled for disability pension in case of voluntary retirement, unless it is found and held that the officer deserved to be invalided out of service on account of disability attributable to military service but same was not granted for unjustified reasons. Hence, Disability Pension was denied in this case.

⁹ (1996) 11 SCC 315.

¹⁰ (2003) 2 SCC 382.

¹¹ (2010) 11 SCC 213.

14.4 In *Union of India and Ors. v. Surinder Singh Rathore*¹² case, the Respondent was employed as a Signal Man in the army on 05.01.1985 and subsequently, released from service in low medical category as suffering from 'Maculopathy Eye' opined as 'NANA'. Relying on *Union of India vs. Baljit Singh*¹³ it was observed that in each case when a disability pension is sought for making a claim, it must be affirmatively established as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for military service. Hence, Disability Pension was denied in this case also.

14.5 In *Union of India and Anr. v. Talwinder Singh*¹⁴ case, the Respondent was enrolled for Infantry on 23.05.1987 and placed in low medical category in 1990. The Release Medical Board opined that the attributability/aggravation factors of disability "perforating injury left eye" were to be assessed at 30% for life and 'NANA'. Relying on Regulation 179 of Pension Regulation of Army (PRA) as well as a catena of earlier verdicts such as in *Union of India vs. Baljit Singh, Regional Director, E.S.I. Corporation vs. Francis De Costa*,¹⁵ it was observed that if medical board records any specific finding that a disability is NANA, the same cannot be eschewed for the reason that the Medical board is a specialized authority

¹² (2008) 5 SCC 747.

¹³ (1996) 11 SCC 315.

¹⁴ (2012) 5 SCC 480.

¹⁵ (1996) 6 SCC 1.

comprising of expert medical doctors. The view taken in *Secretary, Ministry of Defence vs. Ajit Singh*¹⁶ was further reiterated i.e., a person claiming disability pension must be able to show a reasonable nexus between act, omission or commission resulting in injury to person along with the normal expected standard of duties and way of life expected from such person. Hence, this Court again denied disability pension.

14.6 Resultantly, Ld. AG relying on the above cases, submitted that entitlement to disability element is not an automatic consequence of any illness or disability occurring or manifesting during military service. The mere fact that the individual was medically fit at enrolment and subsequently developed a disease establishes only the time of its manifestation; it does not establish the presumption that the disease was caused or aggravated by service.

B. Decision of this Court in *Dharamvir*

15. Ld. AG also submitted that the case of *Dharamvir Singh v. Union of India*¹⁷ (“***Dharamvir***”) was decided on the basis of Entitlement Rules 1982 whereas the present Entitlement Rules 2008 had materially altered the presumptive framework by expressly recognising that manifestation of a disease during service does not per se establish attributability or aggravation.

¹⁶ (2009) 7 SCC 328.

¹⁷ (2013) 7 SCC 316.

15.1 At this stage, it is necessary to examine *Dharamvir's* case wherein a Sepoy in the Indian Army was boarded out of service with effect from 01.04.1994 on ground of 20% permanent disability owing to 'generalized seizure (epilepsy)' which was considered to be 'NANA', leading to a rejection of the disability pension. Aggrieved, he filed a Writ Petition at the High Court, wherein a Single Judge granted disability pension but a Division Bench set aside the relief in an appeal filed by Union of India. When the case reached the Supreme Court, the following issues were framed –

“2. The questions involved in this case are:

2.1. Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance?

2.2. Whether the appellant is entitled for disability pension?”

15.2 The Court, after closely reading the Pension Regulations for the Army, 1961, Entitlement Rules for Casualty Pensionary Awards, 1982 and the Guide to Medical Officers (Military Pensions), 2002, reached the following conclusions –

“29. A conjoint reading of various provisions, reproduced above, makes it clear that:

29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)].

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and

29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 — "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27).

30. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

31. In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of the appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and

no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from clause (d) of Para 2 of the opinion of the Medical Board, which is as follows:

“(d) In the case of a disability under (c) the Board should state what exactly in their opinion is the cause thereof.

yes

Disability is not related to military service”

32. Para 1 of Chapter II — “Entitlement: General Principles” specifically stipulates that certificate of a constituted medical authority vis-à-vis invalidating disability, or death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre- and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and dispute. For the said reasons the Medical Board was required to examine the cases in the light of etiology of the particular disease and after considering all the relevant particulars of a case, it was required to record its conclusion with reasons in support, in clear terms and language which the Pension Sanctioning Authority would be able to appreciate.

33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from “generalised seizure (epilepsy)” at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

34. *As per Rule 423(a) of the General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, 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 conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under Para 4 post-traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing, etc. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions.*

35. *In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31-7-2009 in Union of India v. Dharamvir Singh and uphold the decision of the learned Single Judge dated 20-5-. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be liable to pay interest as per the order passed by the learned Single Judge. No costs."*

15.3 In view of above observations, it is clear that the court relied on Regulation 173 of PRA, 1961 as well as Rule 5 of Entitlement Rules 1982 to note that a member is *presumed* to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. As regards 'onus of proof', it was considered to be not on the claimant as per Rule 9 of Entitlement Rules 1982. Rule 423 of Chapter VIII of General Rules of Guide to Medical Officers was also considered to suggest that direct and circumstantial evidence must be taken into account and benefit of doubt must always go to the individual.

15.4 Further, Para 7 of Chapter II of Guide to Medical Officers was relied upon to suggest the evidentiary value attached to the record of a member's condition at commencement of service i.e., pre-enrolment history of an injury or disease like epilepsy, mental disorder and so on.

15.5 Lastly, *Dharamvir* observed that the pension sanctioning authority mechanically passed the impugned order based on a report of the Medical Board which gave no reason in support of its opinion. It concluded that in absence of any evidence on record to show that the Appellant was suffering from '*generalized seizure*' at the time of acceptance of his service, it will be presumed that appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

15.6 Principles laid down in *Dharamvir* can be summarised as follows -

- a) Grant of Disability Pension to an individual who is invalided from service on account of a disability which is attributable to or aggravated (A/A) by military service in non-battle casualty and is assessed at 20% or over, is to be determined under Regulation 173 of Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II.
- b) A member is to be presumed in sound condition upon entering service and in the event of subsequently being discharged from service on medical grounds, presumption will arise if any deterioration in health

occurs due to service [Rule 5 read with Rule 14(b) of the Entitlement Rules 1982].

- c) The onus of proof is not on the claimant (employee), but on the employer. A claimant has a right to derive benefit of any reasonable doubt. [Rule 9 of the Entitlement Rules 1982].
- d) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease. [Rule 14(c) of Entitlement Rules 1982].
- e) If no record of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b) of Entitlement Rules 1982].
- f) Medical Board shall state reasons if it holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service [Rule 14(b) of Entitlement Rules 1982]
- g) Medical Board shall mandatorily follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 — "Entitlement: General Principles". [Para 27 of Entitlement Rules 1982].

15.7 Thus, *Dharamvir* became an authority for its conclusions on presumption of attributability, causality and burden of proof to grant disability pension to ex-servicemen.

C. Decisions subsequent to *Dharamvir*

16. In the above context, Ld. AG made a grievance that certain Tribunal Orders¹⁸ had mechanically followed *Dharamvir* without adequately examining the governing Rules, the mode of cessation of service, nature of disease, medical opinion or factual circumstance in which the principles formulated in this case arose. To further his submission about the necessity for fact-specific application of *Dharamvir* principles, Ld. AG pointed towards the dicta in *Ex. Gnr. Laxmanram Poonia v. Union of India*¹⁹ as well as *Narsingh Yadav vs. Union of India*²⁰, wherein it was observed that without considering the aetiology of disease and other particulars of individual case, non-detection at entry would not necessarily conclude the medical question of service led causation.

16.1 In this context, it is relevant to note the decision in *Narsingh Yadav*, wherein this Court observed as follows -

“15. We find that it is not mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service.

¹⁸ OA 174/2023 Order 17.08.2023 AFT New Delhi, OA 1336/2023 Order 08.01.2024 AFT New Delhi, OA 1733/2023 Order 15.05.2024 AFT New Delhi, OA 62/2022 Order 18.04.2023 AFT New Delhi, OA 411/2020 Order 13.02.2024 AFT New Delhi, OA 1865/2021 Order 16.11.2022 AFT Chandigarh, OA 1263/2020 Order 01.04.2022 AFT Chandigarh, OA 1165/2021 Order 01.02.2022 AFT Chandigarh

¹⁹ (2017) 4 SCC 697.

²⁰ (2019) 9 SCC 667.

The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance.

...

18. Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to Psychosis and psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member."

16.2 In *Rajumon T.M. v. Union of India*,²¹ this Court discussed the question of rendering reasons for opinion of Medical Board and held that if the serviceman is denied disability pension on the basis of an unreasoned Medical Board report, the decision of board will be construed to be unsustainable in law.

16.3 It is appropriate to state that post-2013, the legal landscape mostly consisted of cases which followed the dictum in *Dharamvir*. Accordingly, the Respondents relied on cases such as *Union of India vs. Rajbir Singh*²² where this Court followed *Dharamvir* and emphasised that attributability or aggravation of a disability must be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, particularly Rule 5. Following *Dharamvir*, this Court held that where a serviceman is discharged on medical grounds and the Medical Board gives no reasons to rebut the presumption, the disability is presumed to have arisen in, or

²¹ 2025 SCC OnLine SC 1064.

²² (2015) 12 SCC 264.

been attributable to, service. The same principle was followed in *Union of India v. Manjeet Singh*.²³

16.4 Further, in *Union of India vs. Angad Singh Titaria*²⁴ where this Court, relying on Regulation 153 of the Pension Regulations for the Army and Rules 4, 5, 9 and 14 of the Entitlement Rules, emphasised that a mere conclusion by the Medical Board that a disability is not attributable to service, without reasons, demonstrates non-application of mind and cannot defeat the claim for disability pension. The same requirement of onus and reasons was reiterated in *Bijender Singh v. Union of India*.²⁵

16.5 Thus, Post-2013 landscape saw the following propositions emerge - *Firstly*, that this Court rarely passed any order relying upon the Entitlement Rules 2008; *Secondly*, High Courts (relying on *Gawas Anil Madso, K. Bhaskaran, Col. Balbir Singh*) brushing aside Entitlement Rules 2008, also arrived at the conclusion that Entitlement Rules 2008 were more in form than in substance and that any alteration in method of determination of beneficial provision under the Entitlement Rules 1982 would amount to alteration in service condition of personnel to their disadvantage, which was legally impermissible.

D. Recapitulation of Relevant High Court Orders

²³ (2015) 12 SCC 275.

²⁴ (2015) 12 SCC 257.

²⁵ 2025 SCC OnLine SC 895.

17. A bifurcation was also made by Ld. AG between a large number of High Court Orders post 01.01.2008 where the reasoning appeared to start and end with *Dharmvir*/fitness at enrolment/subsequent onset, without applying the changed test of causal connection of Entitlement Rules 2008, without a disease-specific GMO analysis and a separate category of longer High Court verdicts which were not cryptic in form but remained vulnerable because they continued to use the Entitlement Rules 1982 presumption and burden framework.

17.1 Ld. AG pointed out cases such as *Union of India vs. Ex Sub Gawas Anil Madso*²⁶, where the Delhi High Court accepted that the Entitlement Rules 2008 removed the earlier presumption and that manifestation during service did not *per se* establish attributability. It was submitted before us that *Gawas Anil Madso* despite relying on *Dharmvir Singh* had observed that the mere fact that a disease arises during service does not, by itself, establish that it is attributable to military service. On facts, however, the Court declined to interfere with the Armed Forces Tribunal's grant of disability pension. It nevertheless held that the RMB must identify some other cause for the disease, and even treated the relationship between stress and diabetes as a matter of "common knowledge". Ld. AG relied on *Union of India v. Ex. Sep. R. Munusamy*²⁷ to submit that the

²⁶ 2025 SCC OnLine Del 2018.

²⁷ 2022 SCC OnLine SC 892.

Tribunal could not sit in appeal over the expert opinion of a Medical Board and that, absent any demonstrated infirmity in the decision-making process of the Medical Board, there was no justification even for directing a fresh medical assessment.

17.2 Ld. AG also submitted that in *Col. Balbir Singh vs. Union of India*²⁸, the Delhi High Court noted the altered 2008 regime but did not enter a comparison. It reasoned, on fact, that the possibility of earlier field service precipitating later disease could not be ruled out. It is relevant to note that upon a symbiotic reading of the Rules, the Court culled out the following points -

“Para 68. *From a plain reading of Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces, 2010, it is clear that whether a disability or death occurs in a Field/Active service area or under normal Peace conditions is immaterial.*

Para 69. *Nonetheless, it must be noted that even in Peace Stations, military service is inherently stressful due to a combination of factors such as strict discipline, long working hours, limited personal freedom, and constant readiness for deployment. The psychological burden of being away from family, living in isolated or challenging environments, and coping with the uncertainty of sudden transfers or duties adds to this strain. Additionally, the toll of continuous combat training further contributes to mental fatigue. Despite the absence of active conflict or the challenges of hard area postings, the demanding nature of military life at peace stations can significantly impact the overall well-being of personnel.*

Para 70. *Undisputably, even when not on the front lines or in hard areas, soldiers are aware that the threat is never far away. This environment, where danger is a constant reality for their peers and could become their own at any moment, creates a persistent state of mental and emotional strain that*

²⁸ 2025 DHC 5082-DB.

cannot be overlooked. Thus, military service, whether in peace locations or operational zones, inherently carries stress that may predispose Force personnel to medical conditions such as hypertension.

...

Para 79. *Considering all the factors together, it is evident that the mere fact that the onset of the disease occurred during a peace area posting is not sufficient to negate the cumulative stress of military service, which can contribute to the development of diseases such as Primary Hypertension, IHD etc. The RMB's opinion that the onset took place in a peace station and therefore the disease is not attributable to or aggravated by military service cannot be sustained."*

17.3 The clearest articulation of the differences between the Entitlement Rules of 1982 and 2008 came in *Union of India v. Bhaskaran N.*²⁹ The Kerala High Court in *Bhaskaran* held that the Entitlement Rules 2008 altered the earlier position by recognising that dormant, hereditary and congenital diseases may not be detected at recruitment. *Bhaskaran* also observed that the burden of proof under the Entitlement Rules 2008 continues to lie on the establishment as long as the petition seeking disability pension was filed within 15 years of retirement. The Tribunal there had failed to consider these changes and the Medical Board's opinion, so the High Court remanded the matter for fresh consideration. It is significant to note that the Court ultimately, after analysing a myriad of previous decisions, arrived at the following conclusions -

"Para 50. *On a detailed analysis of the factual aspects, approach adopted by the Supreme Court in the cases referred to above and principles laid down, we are of the view that the following conclusions can be arrived at:*

²⁹ 2024 SCC OnLine Ker 7023.

(i) As a basic premise, the AFT shall give due deference to the opinion of the Medical Board, an expert body, and will not lightly interfere with or substitute the views of the Medical Board experts.

(ii) However, in justifiable circumstances, the Tribunal can set aside the department's decision founded on medical opinion when the opinion is arrived at without considering germane factors or omitting the relevant factors. Also when the reasons for the conclusions are not discernible, interference may be permissible. The Tribunal will have to keep in mind all parameters of law in the matter of dealing with expert opinion and merely because, a review of the finding of the Medical Board is permissible, the Tribunal shall not interfere or substitute the views.

(iii) A party challenging the decision of the Department taken on the basis of the opinion of the Medical Board, will have to demonstrate a strong prima facie case before the Tribunal that such decision falls within the parameters for interference by the Tribunal and it will not be advisable for the Tribunal to straight away shift the burden on the Department merely on the ground that the decision is challenged.

(iv) If the Tribunal comes to a conclusion that the views of the Medical Board based on which the order is passed by the department cannot be sustained, the Tribunal would direct the department to reconstitute/constitute a review Medical Board and obtain fresh opinion instead of substituting the opinion of the experts with own opinion arrived at on the basis of materials-on-record, unless exceptional circumstances so warrants.

(v) However, in cases where the assessment by the Board called in question after a long lapse of time and a fresh assessment will be of no assistance to resolve the dispute in the nature of the disability claimed at a distant point of time such review may not be directed. In such cases tribunal/court may take appropriate decision with reference to the materials placed on record as well as the facts of the cases."

IV. Party Submissions

A. Arguments advanced by Ld. Attorney General

18. The learned Attorney General of India appearing for the Union of India made the following arguments -

18.1 Entitlement to the disability element is contingent upon the satisfaction of two distinct requirements: *first*, a finding that the disability is *attributable to* or *aggravated* by military service (A/A); and *second*, an accepted degree of disability of 20% or more. The satisfaction of the quantitative threshold cannot, by itself, establish the requisite causal nexus with service.

18.2 Mere manifestation of a disease during military service does not, by itself, establish that the disease was attributable to or aggravated by such service. The Entitlement Rules 2008 require a disease-specific and individualised assessment having regard to the nature of the disease, the conditions of service, the individual's clinical and service history, and the existence of a causal connection between the two.

18.3 *Dharamvir Singh*, having been decided in the context of the Entitlement Rules 1982 and on its particular factual foundation, cannot be mechanically applied to cases governed by the Entitlement Rules 2008. In particular, the decision cannot be understood as creating an irrebuttable or automatic presumption that every disability first manifested during service is attributable to military service.

18.4 The opinion of a duly constituted Medical Board, being an expert determination on questions of medical causation, is entitled to due weight and ought not to be substituted by a court merely because another view

is possible. Judicial interference is warranted only where a clear defect is demonstrated, such as absence of reasons, failure to consider germane material, or other manifest error; ordinarily, any such defect should result in reconsideration by the appropriate medical authority rather than substitution of the court's own medical conclusion.

18.5 Diseases of constitutional, metabolic or degenerative origin, including hypertension, diabetes mellitus and ischaemic heart disease, require consideration in accordance with the disease-specific criteria under the applicable Rules and medical guidelines, and cannot be presumed to be service-related merely by reason of their manifestation during service. It is further submitted that belated challenges to NANA determinations ought to be approached with caution where the passage of time has impaired the availability of contemporaneous medical or service material necessary to establish the requisite causal nexus.

B. Arguments advanced by Respondents

19. We have heard the following learned counsels appearing on behalf of the Respondents' ex-servicemen - Mr. Sudhanshu Pandey, Mr. M.V. Mukunda, Brig. Shrivastava, Mr. U.S. Maurya, Col. Naresh Ghai, Mr. Siddharth Agarwal, Mr. Girish Kumar, Mr. Ajit Kakkar, Mr. Praveen Kumar, Mr. Aditya Puar, Col. I.S. Singh, Mr. Baldev Singh, Mr. Maheravesh Rein,

Mr. Vivekbhai Patel and Ms. Kanti. Their cumulative submissions are summarized as follows -

19.1 The statutory framework of the Armed Forces Tribunal Act, 2007 empowers the Tribunal to adjudicate disputed questions of fact akin to a civil court. This argument was pressed to refute the Union's contention that AFT cannot sit in appeal over RMB's scientific and technical findings.

19.2 Entitlement rules have always been fundamentally aligned with the harsh realities of military service, encompassing extreme climatic conditions, counter-insurgency operations, prolonged family separations, and rigorous peace-time duties such as aid to civil authorities. The core philosophy, evolving from the 1940 Regulations through the Entitlement Rules 1982, remained heavily loaded in favour of the soldiers, establishing a settled legal position that the sanction of disability pension is the rule and its denial the exception.

19.3 The Entitlement Rules 2008 introduced merely cosmetic changes in form rather than any substantive abrogation of the soldiers' rights. Relying on *Col. Balbir Singh* which concluded that the Entitlement Rules 2008 did not alter the underlying philosophy of the earlier regime, it was urged that permitting the Union to reopen settled cases based on a purported shift in the Entitlement Rules 2008 would result in a gross miscarriage of justice.

19.4 Reliance was placed on a tabular comparison between the erstwhile Entitlement Rules 1982 and the Entitlement Rules 2008 to demonstrate that there is no material difference in their meaning or interpretation. It was specifically pointed out that the “onus of proof” clause remains entirely intact, i.e., just as Rule 9 of the Entitlement Rules 1982 insulated the claimant from proving the conditions of entitlement, Rule 7 of the Entitlement Rules 2008 similarly mandates that, ordinarily, the claimant shall not be called upon to prove entitlement. It was submitted that in instances where the actual cause of a disease is unknown, both Rule 10(b)(iii) of the Entitlement Rules 2008 and its predecessor Rule 20(a) identically provide that if the presumption of entitlement is not rebutted by the authorities, attributability should be conceded (deemed) on the basis of the clinical picture and current scientific application. Since, the Entitlement Rules are substantially similar, *Dharamvir Singh, Rajbir, Angad Singh Titaria* continue to hold the field.

19.5 Rule 11 of the Entitlement Rules 2008 much like Rule 20 of the Entitlement Rules 1982 concedes aggravation if the onset or subsequent course of a disability is hastened or worsened by specific conditions of military service. Crucially, this Court’s attention was drawn to Regulation 423(a) of the RMSAF, emphasizing that the 1980 and 2010 versions explicitly direct that benefit of reasonable doubt must be given to the

individual, and both state that it is immaterial whether the cause giving rise to the disability occurred in a field service area or under normal peace conditions, provided a causal connection with service conditions exists.

19.6 Consequently, it was asserted that the binding law laid down by this Court in *Dharamvir Singh v. Union of India* still holds the correct position of law and squarely covers the present cases, and that the High Courts and Tribunals below committed no error in its application.

19.7 A Committee of Experts in the Raksha Mantri directed the withdrawal of all the pending NANA cases in 2015. This recommendation, having been accepted by the Raksha Mantri, needs to be acted upon.

19.8 Alternatively, the Entitlement Rules 2008, are invalid and have no force of law for having not been duly notified by the relevant department under the Allocation of Business Rules, 1961.

19.9 Most of the appeals filed are filed belatedly with significant delay, which is yet to be condoned by this Court.

V. Analysis

A. What is the true purport of the Entitlement Rules 2008?

20. Based on the various contentions put forth by the parties, the principal question that arises for our determination is whether the Entitlement Rules 2008, could be treated as having binding legal force in

the absence of material demonstrating their valid promulgation. We are constrained to observe that this question appears to have eluded scrutiny by this Court on more than one occasion. It is relevant to note that the Entitlement Rules 2008 trace their origin to Pension Regulations and as regards the said Pension Regulations itself, this Court in *Dharamvir* observed the following –

“14. ...We also called for the Pension Regulations for the Army, 1961 from the Library which contains Appendix II “Entitlement Rules for Casualty Pensionary Awards, 1982” for our perusal, and we find that it is similar to the photostat copy of the Pension Regulations for the Army, 1961 (Part I) published by the Ministry of Defence, Government of India, New Delhi. The respondents in their counter-affidavit have not made clear as to when the Government of India, Ministry of Defence Letter No. 1(1)/81/D(Pen-C) dated 20-6-1996 was notified in Gazette amending the Rules and why no such amendment has been shown in the published Entitlement Rules for Casualty Pensionary Awards, 1982. In their counter-affidavit they have not mentioned that the Rules extracted in their counter-affidavit is true copy of its original.”

20.1 Apart from the above, in *Union of India & Ors. v. Ex Swr Sanjay Kumar*³⁰, when the Armed Forces Tribunal, which had to grapple with a similar situation, raised a question on the existence the 2008 Pension Regulations, the Union was similarly unable to answer. Since the present case is arising in a similar context, it is necessary to extract the relevant paragraphs –

“8. By our order dated 04.12.2014, we directed Union of India to provide us a correct and authentic copy of the Pension Regulation for Army, 1961 as well as Gazette copy of the said

³⁰ RA 36/2014 with MA 701/2014 in OA 239/2013 dated 22.12.2015 at Armed Forces Tribunal, Principal Bench at New Delhi.

Pension Regulations. We directed the Union of India to give the details of the amendments made in the Pension Regulation from time to time. We also directed respondents to state, whether Pension Regulation for Army, 2008 have come into force? If the Pension Regulation of 2008 have come into force then said Regulation is effective from which date? On 29.01.2015, it was submitted by the learned counsel for the Union of India, that in Pension Regulations, 1961, there are about 167 amendments and, therefore, for filing a correct and authentic copy of the Pension Regulation time may be granted to the respondents. On 29.01.2015 we noticed that in the affidavit submitted by the respondents, it has been stated that the Regulations of 1961 are not statutory Regulations framed under the Army Act, 1950 and the said Regulations are issued with the executive powers vested with the Government of India obviously, under Article 73 of the Constitution of India...The matter was taken up lastly on 16.07.2015 and on that day, learned counsel for UOI submitted copy of the Pension Regulations for the Army, 2008 and it was stated that both the Pension Regulations were framed by following the procedure as laid down for passing executive order (in exercise of power conferred by Article 73 of the Constitution of India)...

Para 11. *We have already given notice to the respondents to show that, whether the Pension Regulation for the Army, 1961 and Pension Regulations for Army, 2008 are the “Regulations” as defined in the clause (xxi) of Section 3 of the Army Act, 1950 and heard learned counsel for the parties on this issue. Therefore, we deem it proper to observe on this issue as it is important issue arising in this review application though co-laterally. Looking to the importance of the issue, we are touching this subject in detail.*

Para 13. *...In the case in hand the Government has not named the above Regulations as “Pension Order” or “Government order” or in any other manner so as to indicate that the Pension Regulations for Army, 1961 and the Pension Regulations, 2008 are Government orders and not the Regulations. We do not find any reason for naming these Regulations as Pension ‘Regulations’ when Government’s own case is that these ‘Regulations’ are not the ‘Regulations’...*

Para 14. *Our above observation is relevant because of the reason that it was very difficult for the Government to produce one authentic copy of the above Pension Regulations much less to a copy of the Pension Regulation with complete amendments. It is admitted case that there is no authentic publication of above Regulations by the Government. There is no Gazette publication of these Regulations or Govt. orders.*

During the course of arguments, we have come across other different provisions printed in the books published by the private persons which also are different from the provisions provided to us by the UOI...”

20.2 In the same case, when the Union approached this Court, they were asked to produce an authentic copy of Pension Regulations.³¹ Again, they failed to do so. Consequently, the Union’s Appeal was dismissed.³²

i. Promulgation or Issuance of Entitlement Rules 2008

21. As earlier noted, it is not disputed that the entitlement to disability pension of Armed Forces personnel has been governed by a series of statutory and regulatory instruments, including the Pension Regulations and the Entitlement Rules 1982. The material placed before the Court traces the evolution of this framework and indicates that the Entitlement Rules 1982 formed part of the established regime governing the grant of disability pension.

22. The difficulty arises in respect of the Entitlement Rules 2008. Upon an examination, we find that the Union was unable to demonstrate fully the source, the time and the method by which the said Entitlement Rules 2008 were brought into force by repealing or superseding the Entitlement Rules 1982. Instead, the Ld. AG asserted that amendments had been made from time to time and were not necessarily promulgated as separate

³¹ Orders dated 16.01.2020, 18.01.2022 in Civil Appeal Nos.10630-10632/2017.

³² Order dated 30.03.2022 in Civil Appeal Nos.10630-10632/2017.

Rules. Ld. AG submits that the Entitlement Rules 2008 were issued vide letter dated 18.01.2010 as a compilation of policy developed through consultation with competent authorities.

ii. The Raksha Mantri Report's Findings

23. In this context, we also need to refer to Ministry of Defence's *"Review of Service and Pension Matters including Potential Disputes, Minimizing Litigation and Strengthening Institutional Mechanisms related to redressal of grievances"* Report, 2015 (**"Raksha Mantri Report"**). This report is of seminal importance as it directly speaks about the legitimacy of the Entitlement Rules 2008. It is particularly relevant to extract and examine Para 2.4.8 of Chapter II of this Report because of its strong observations on the legality of the Entitlement Rules 2008 -

"(Para 2.4.8- Suspect Legality of Pension Regulations, 2008 and Entitlement Rules, 2010) –

...
When we raised the question about the legality of the Pension Regulations, it was intimated to us by representatives of the DESW that as also informed to the top echelons of the DESW, the new Pension Regulations, 2008 were merely a collection of latest policies as issued from time to time and made no substantive or material changes to Pension Regulations, 1961. We were informed that it was just an exercise undertaken by officers of the Defence Accounts Department of collating all policies in one compilation for the ease of reference and operation. We have also been informed that no minutes have been maintained about any discussions undertaken while "compiling" these so called "Regulations". We were candidly however, informed that these do not have the sanction of the DoPPW as required under the Rules of Business and even the higher authorities did not minutely go through the same since they were intimated that these "Regulations" were merely a collection of the latest orders and not new rules per se. We

were also informed that these were issued to the environment after the file was 'seen' by the then Raksha Mantri. We are however constrained to observe that the higher echelons of the DESW or of the MoD or even the then Raksha Mantri have been kept totally in the dark about the reality and illegality of these 'Regulations' or the fact that many changes have been incorporated in the same by a sleight of hand in the name of 'compiling' existing policies.

To take a very few examples- the language of Regulation 16 of the Pension Regulations 1961 clearly implies that (unlike in the civil services) pension is **not** forfeited in the defence services on voluntary resignation unless a person is called upon to resign by the organisation or called upon to retire and he refuses to do so. However, while ostensibly 'compiling' the said Regulation as Pension Regulations 2008, it has been cleverly and innocuously provided in Note 5 under Regulation 17 that pension shall be forfeited on resignation. The reason of this deceptively clever attempt is not far to seek. Based on Regulation 16, the Supreme Court in Union of India Vs Lt Col PS Bhargava 1997 AIR (SC) 565 had ruled that under the Pension Regulations, there was no automatic forfeiture of service for pension or gratuity unless the person was called upon to resign or retire, this of course was different than the view prevailing in the Accounts wing or even in the Services HQ. To cleverly blunt-out the effect of the Supreme Court decision and to override the law with their own interpretation, the innocuous looking note has been added in the Pension Regulations 2008, but alas, without any sanction of the Union Cabinet, without due process, without approval of the DoPPW and against law laid down by the Supreme Court."

It is also useful to notice Para 2.2.1 of Chapter II of the 2015 Report, which addresses the broader pattern of incorrect NANA determinations and records as follows -

"The problem however is that the rigid interpretation and application of said rules in a literal, unscientific and mathematical manner and issuance of contradictory local instructions are leading to denial of disability benefits by incorrectly declaring disabilities "Neither Attributable, Nor Aggravated by military service" (NANA) which are otherwise authorized to be eligible for benefits under the rules. Apart

from leading to denial of disability benefits, this also results in denial of any form of pension and consequently a dignified life if the disability of a person discharged with less than pensionable service is declared NANA. To take an example from the Entitlement Rules, 1982, Rules 5 and 14(b) provide that in case of discharge from service in low medical category, there is a codified presumption that the deterioration in health is due to service for disabilities that are contracted in service. Rule 18 of the Entitlement Rules clearly states that 'inherent constitutional tendency' is not a disease in itself as is routinely declared by the Medical Boards. Rule 19 provides that if the worsening of a condition persists till the time of discharge... then aggravation is to be accepted. Though Rule 20(a) points out that in case nothing is known of the disease and if presumption of entitlement is not rebutted, then attributability should be conceded, still disabilities are routinely declared as NANA with reasons such as 'idiopathic' or 'cause unknown'. Rule 423 of the Regulations for Medical Services in the Armed Forces (RMSAF) ordains that service in peace or field has no linkage whatsoever with attributability of disabilities to military service but still disabilities are regularly treated NANA on the pretext that the disability had arisen in a 'peace area'."

24. Upon this examination, 2015 Report explicitly noted that the 2008 Pension Regulations and the Entitlement Rules 2008 have no sanctity of law and that they are not validly issued documents on the ground that they unlawfully introduced substantive, regressive changes to retirees' pension rights without requisite Cabinet/Department of Pension and Pensioners' Welfare ("**DoPPW**") approval, stakeholder consultation, or proper records, and created an unjustified disparity between the Army and the other two Services. The conclusions of the Report with regard to the legality are -

"The Committee hence regretfully observes that the so called 'Pension Regulations 2008' and 'Entitlement Rules, 2010' have no sanctity of law and are not validly issued documents. We say so on the strength of the following grounds:

- *That these documents are not just a 'collection' of latest instructions etc issued from time to time after*

implementation of successive pay commission reports as has been projected very innocently. **Many substantive provisions of the actual regulations stand amended by way of a sleight of hand in these so called 'Regulations'.** For example, there is no pay commission report and acceptance thereof which directs a change in the pensionary benefits on resignation in the defence services or the definition of 'invalidation', besides multiple other changes illegally carried out which we are not noting so as not to burden the dockets of our report.

- **That no approval of the Union Cabinet has been obtained** on these changes introduced cleverly in the text of these 'Regulations' and also no approval from the DoPPW which alone is authorized as per the Allocation of Business Rules, 1961, to approve pensionary provisions of civil, railway and defence personnel.
- That there has been no due democratic process or even any discussion with stakeholders before introducing these 'Regulations' or 'Rules'. Needless to state rules and pensionary policies cannot be imposed as one-way traffic by clandestinely introducing amendments by changing the language of substantive provisions in the garb of making a 'compilation'.
- That no recorded minutes or notes of any alterations or amendments are available and the work of reframing and rewording had been handed over to officials of the Defence Accounts Department. Hence ultimately, the language chosen and imposed by a few officers has been circulated in the form of 'Regulations' and that too by altering the precious rights of retirees. Even the then Raksha Mantri was not informed about the true picture and the file was apparently simply shown to him without informing him about the fact that substantive provisions and rights of retirees had been altered. Thereafter, the 'Regulations' were simply circulated by way of a letter stating 'RM has seen.'
- **Pension Regulations of the three services are pari materia to a great extent.** While these Regulations of 2008 have been issued only for the Army, we are told that the other two services continue with the old (actual) Regulations. The question arises whether such a situation be allowed to prevail wherein different services are governed by varied provisions and that the Army is saddled with regressive changes which are not applied to the other two services.

The Committee hence strongly observes that the so-called 'Pension Regulations, 2008' or the 'Entitlement Rules, 2010' have no sanctity of law as far as alteration of entitlements is concerned. The same can at best be adopted to regulate procedural aspects and if there is a conflict between the same and the actual Pension Regulations 1961 or actual Entitlement Rules 1982 thereby affecting the rights of pensioners negatively, then the Regulations of 1961 and Rules of 1982 shall prevail to determine the entitlement. The Committee also recommends that any such changes in the future may be perused by senior officers of the Ministry with the minutest eye so that no amendment of beneficial or welfare oriented provisions is carried out by a sleight of hand. In fact, any change that may be recommended should be first put before the Standing Committee for Welfare of Ex-Servicemen as discussed in preceding parts of this Report. We would have recommended an enquiry into the officers involved in this crude attempt to change the entitlements of pensioners and disabled soldiers but refrain ourselves from doing so since many officers involved in this episode would have retired by now."

(emphasis supplied)

25. In order to address our concerns about the legitimacy of the Entitlement Rules 2008, the Ld. AG brought to our notice and filed photocopies of what is referred to as Department of Ex-Servicemen Welfare's ("**DESW**") 'Implementation Status on the Recommendations of the Raksha Mantri's Committee of Experts Concerning DESW'. There is a tabulated column comprising of the recommendations of the Raksha Mantri Committee on the one hand and on the other side what is called the status as regards the recommendations of the Raksha Mantri Committee. The DESW's proposal indicates as follows -

"Partially Accepted :

As per Para 3 of Transaction of Business Rules, 1961, as amended from time to time, all business allotted to a Department under the GoI (Allocation of Business, Rules 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge. As per Allocation of Business, Rules 1961, as amended from time to time, administration of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel has been allotted to DESW.

Many policy changes have taken place after issuance of Pension Regulations for the Army, 1961 and Entitlement Rules for Casualty Pensionary Awards, 1982 by various policy orders issued from time to time with the approval of Competent Authorities. The Pension Regulations have been amended from time to time through policy letters issued with the approval of Competent Authority.

The Pension Regulations have been amended from time to time through policy letters issued with the approval of Competent Authority. Further, policy letters are issued in implementation of recommendations of Pay Commission, Hon'ble AFT/Supreme Court's Judgement/orders, Cabinet Secretary Committee recommendations and proposals received from Services and Ex-Servicemen associations after due consultation with CGDA, DoP&PW, Service Hgrs Department of Expenditure through MoD(Finance/Pension) and with the approval of competent authority.

Further, several pension policy letters have been issued in pursuance of the policy letters issued by DoP&PW for the Civilian Employees. On several occasions, DoP&PW has stated that "Defence personnel are governed by different sets of rules framed under Army Act, Naval Act and Air Force Act and the CCS(Pension) Rules and CCS (EOP) Rules are not applicable to them. In view of this, MoD being the Administrative Ministry may take an administrative decision taking into consideration the rules and regulations applicable in case of Defence personnel."

Entitlement Rules for the Casualty Pensionary Awards 1982 have also been superseded by Entitlement Rules for the Casualty Pensionary Awards 2008 (issued vide MoD letter dated 18.01.2010). It has been mentioned in the MOD letter dated 18.01.2010 that the Entitlement Rules 2008 shall apply in cases of disablement or death of service personnel who became non-effective on or after 01.01.2008. All Govt. orders issued upto 6th CPC were compiled into PRA-2008. The draft regulation for Army, Navy and Air Force after incorporating all the Govt. orders up to 7th CPC is under process in

consultation with CGDA,PCDA(P), three Services including Ministry of Law & Justice.

Meeting of Standing Committee for Welfare of Ex-servicemen Is held under the Chairmanship of Hon'ble RRM from time to time. Representatives from Ex-Servicemen associations, DGR, KSB, CGDA/PCDA, ECHS and other stakeholders are the participants. The issues related to pensionary matters of Defence forces personnel are deliberated therein.

*It may be seen from above discussions that Pension Regulations for the Army, 2008 and Entitlement Rules-2008 (issued in 2010) are **valid documents**. In view of this, the observation of Expert Committee that Pension Regulation 2008/Entitlement Rule have no sanctity of law is not correct. Placing of pension policy order before Standing Committee for welfare of Ex-Servicemen prior to issuance is neither mandatory nor practical. As and when required, comments of Services and other stakeholders including **DoP&PW** are obtained before issue of Govt. order.*

The observations of the Committee that any such changes in the future may be perused by senior officers of the Ministry are already in vogue in this Department as approval of competent authorities i.e. approval of Secretary (ESW), Hon'ble RM and concurrence of Department of Expenditure is obtained in case of policy change. The approval of the Cabinet is also obtained whenever requires. Further, the Defence pension issues are also discussed in the meeting of Standing Committee for Welfare of Ex-Servicemen from time to time."

26. On this point, it is necessary to examine the relevant provisions of the allocation of business rules to determine the competent authority to formulate and amend pensionary policy. Under the Second Schedule to the Allocation of Business Rules, 1961, the Department of Pension and Pensioners' Welfare is allocated the "*formulation of policy and co-ordination of matters relating to retirement benefits to Central Government employees (Civil, Defence and Railway Pensioners)*". The Department of Ex-Servicemen Welfare, by contrast, is allocated only the "*administration of— (a) the Pension Regulations for the Army, 1961 (Parts I and II); (b)*

the Pension Regulations for the Air Force, 1961 (Parts I and II); (c) the Navy (Pension) Regulations, 1964; and (d) the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982”.

27. The learned counsels for the respondents have vehemently argued that the DESW’s authority is confined to *administering* four regulations, and has no power to formulate, amend, or issue a fresh instrument in their place. Therefore, they would contend, the Entitlement Rules 2008 fell outside its mandate. It is further argued that change in policy would only vest within DoPPW’s remit, which the 2015 Report itself records was never obtained. Subsequent observations made by DESW do not answer the questions raised.

28. It appears that the Entitlement Rules 2008 is a collation of the modified executive instructions issued subsequent to the Entitlement Rules 1982. We are at a loss to understand as to why the position of a rule that governs pensionary benefits be shrouded in mystery. Transparency, clarity and certainty are of enormous importance for any legitimate action. There should not be dissatisfaction and lack of confidence in the minds of ex-servicemen about the manner in which their claims and entitlement are being dealt with. It is necessary, rather compelling, that the applicable rules/regulations are formulated and notified authoritatively by the competent authority as early as possible.

B. Whether the Entitlement Rules 2008 make a significant departure from the Entitlement Rules 1982?

29. Leaving apart the question of legal effect of Entitlement Rules 2008, the further question that arises for our consideration is whether the Entitlement Rules 1982 have actually been varied or modified by the Entitlement Rules 2008. The following is a comparative chart comprising of each subject such as, presumption at entry, onus of proof, when cause of disability is unknown, aggravation and benefit of doubt. As against each of these subjects, we have indicated the position of the Rule as it existed under the Entitlement Rules 1982 and compared with the Entitlement Rules 2008.

Subject	Entitlement Rules 1982	Entitlement Rules 2008
Presumption at Entry	Rule 5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions: (a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.	Rule 5. Medical Test at entry stage: The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere

	(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service.	fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.
Causal Connection	Rule 8 - Attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority.	Rule 6 - Causal Connection- For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.
Onus of Proof	Rule 9 - Onus of Proof The Claimant shall not be called upon to prove the condition of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to claimants in field/afloat service cases.	Rule 7 - Onus of Proof <i>Ordinarily</i> , 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 claimant are destroyed after prescribed retention period, the onus to

		prove entitlement would lie on the claimant.
Aggravation	Rule 20 - If it is established that the disability was not caused by service, attributability shall not be conceded. However, aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim.	Rule 11 - A disability shall be conceded aggravated by service 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.
When Cause of disability is unknown	Rule 20(a) - If nothing at all is known about the cause of the disease, and presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded.	Rule 10(b)(iii) - If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

i. No significant change in core scheme

30. Having conducted a comparative analysis of the modifications in the Entitlement Rules 2008, our opinion against each subject is as follows –

30.1 ***Presumption at Entry of Service:*** Rule 5 of the Entitlement Rules 1982 clearly creates a presumption that a member of service is in sound physical and mental health at the time of entrance, and as such, any disability at the time of discharge would be attributable to military service. Rule 5 of the Entitlement Rules 2008 withdraws this presumption by adding a causal connection requirement. It notes *‘mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service’*.

30.2 ***Causal Connection:*** Rule 8 of the Entitlement Rules 1982 and Rule 6 of the Entitlement Rules 2008 even though the framing is different, in substance, are identical. Rule 8 requires an appropriate medical authority to certify the causal connection, while Rule 6 of the Entitlement Rules 2008 requires an appropriate authority to establish a causal connection.

30.3 ***Onus of Proof:*** Rule 9 of the Entitlement Rules 1982 holds that the ex-servicemen will receive a reasonable benefit of doubt and that they shall not be called upon to prove their disability is attributable to service. Rule 7 of the Entitlement Rules 2008 broadly carries forward this rule position and continues to place the onus of proof on the employer.

30.4 However, this rule carves out a narrow exception to this rule, being claims made after 15 years of discharge/retirement/invalidment/release. While this exception is significant for different reasons, which shall be

discussed, suffice it to say that Rule 7 of Entitlement Rules 2008 broadly carries forward Rule 9 of Entitlement Rules 1982.

30.5 **Aggravation:** Rule 20 of the Entitlement Rules 1982 operates for servicemen who have disabilities which *may not* be attributable to service, but may have been aggravated by service. It assumes aggravation unless it is specifically proved that aggravation was not caused due to service. Rule 11 of the Entitlement Rules 2008 not only reproduces an identical scheme from the earlier rule, but also further clarifies the Rule by noting that “*disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions*”.

30.6 **When cause of disability is unknown:** Rule 20(a) of the Entitlement Rules 1982 concedes attributability to military service in cases where the cause of disease is unknown. Rule 10(b)(iii) of the Entitlement Rules 2008 parallels this logic and only clarifies that attributability is to be conceded *on basis of clinical picture and current scientific medical application*.

30.7 **Conclusion:** The mere addition of a *causal requirement* and a removal of the presumption that when a member joins service healthy, and, if, he leaves with a disability, it ought to be attributable to the military service, does not, by itself, change the core scheme of the Entitlement Rules 2008 because the other beneficial provisions broadly remain

untouched. The onus to prove that the member's disability is not attributable to service still lies on the employer. The relevant rules regarding attributability and aggravation continue to hold that if cause of disability is unknown, and presumption of attributability is not rebutted, then the disability is attributable to service. Rule 7 of the Entitlement Rules 2008 read with Rule 423 of the RMSAF, 2010 continue to generate a reasonable benefit of doubt in favour of the service member.

31. The enquiry that we have conducted to see whether there is any variation in the Entitlement Rules 2008 has actually been done, even more meticulously, by the High Courts in cases of *Bhaskaran*, *Anil Madso* and *Col. Balbir Singh*. For instance, the relevant paragraphs from *Bhaskaran* are reproduced –

***“Para 45.** By employing the word “ordinarily”, the rule-making authority has obviously diluted the rigor of the burden which was on the establishment under the Rules of 1982. The intention is very clear that in all cases and under all circumstances it shall no longer be the burden of the establishment to show that the employee is not entitled for the benefit. In appropriate cases the employee shall discharge the onus of proof to seek the benefit. The learned Senior Central Government Counsel placed emphasis on this Rule and argued that the same has made a drastic change in the matter of onus of proof. According to the learned counsel, claimants cannot no longer raise a demand and leave it to the establishment to rebut. We shall now examine this contention. We note that the second part of Rule 7 opens with the expression “however” and the said sentence operates like a proviso carving out exception to the general rule found in the previous sentence. Reason for providing the exception is also clear from the latter sentence that; when claim is preferred after 15 years, by that time, the service documents of the claimant would be destroyed. Hence, ostensibly, the rule*

making authority altered the tenor of the rule regarding onus of proof in view of the fact that when belated claims are raised the establishment will not be in possession of the relevant records and in such situations the employee may obtain undue advantages. Unscrupulous persons waiting for destruction of records and raising claims thereafter is also a conceivable situation. Nonetheless, the intention of the rule makers regarding claims made within 15 years discernible from the language employed, is that the onus will continue to be primarily on the Department. We therefore hold with respect to Rule 7 of the Entitlement Rules of 2008 that the said provision does not exonerate the establishment totally from the burden of proof and in all cases in which the claim is raised within 15 years from the date of discharge/retirement/invalidment/release, the onus of proof will be primarily on the Department. Only in cases wherein claims are raised after 15 years, the burden will be entirely on the claimant. While holding thus, we have kept in mind the observation of the Supreme Court in Union of India v. Vijay Kumar that the Entitlement Rules are beneficial in nature and ought to be liberally construed.

46. In continuance of the discussion on the onus of proof, we note the submission of the learned SCGSC that the onus on the Department is discharged by referring the employee to the Medical Board and if the opinion of the Board is in favour of granting disability pension, the authorities normally accept the opinion. He submitted that in case the opinion of the Board is not in favour, then the burden of the Department shall be treated as discharged and the person claiming the benefit shall bear the onus. In other words the Department must be deemed to have rebutted the presumptions under the Rules by obtaining the medical opinion. We can accept the position canvassed only with riders, keeping in mind the statutory scheme and objectives of providing disability pension. The burden of the Department can be considered as effectively discharged and presumptions rebutted, in the case of a negative opinion by the Board, only when such opinion is sound and not flawed in any manner. We are also of the view that the employee can discharge his initial burden by pointing out the infirmities and illegalities in the procedure or conclusions of the Board. Once a prima facie case is thus made out by the applicant for scrutiny of the opinion of the Medical Board, the Department shall be bound to vindicate the same.

Para 47. Regarding attributability of injuries and diseases also, the position under the Rules has undergone notable changes.

Under Rule 13 of the Entitlement Rules of 1982, injuries sustained when the employee is on duty shall be deemed to have resulted from military service and diseases which led to discharge or death of the individual will ordinarily be deemed to have arisen in service if no note of it was made at the time of entry to service. Nevertheless, under Rule 10 of the Entitlement Rules of 2008 injuries sustained when the individual is on duty shall be treated as attributable to military service, provided a nexus between the injury and military service is established. Likewise, in the matter of diseases also, under the same rule two conditions are to be satisfied that the disease has arisen during the period of military service and that the disease has been caused by the conditions of employment in military service.

Para 48. *In dealing with cases governed by the Entitlement Rules of 2008, the Tribunals and courts should be mindful of the significant changes noted in the previous paragraphs. The principles enunciated by the Supreme Court in various cases referred above on analysing the provisions of the Regulations of 1961 and the Entitlement Rules of 1982 are to be understood as derived from the analysis of the provisions of those laws only. Mechanically adopting the principles laid down on the basis of analysis of the provisions of the Entitlement Rules of 1982 read with Regulations of 1961, to decide cases governed by the Entitlement Rules of 2008, would be therefore improper and incorrect.*

Interference with the opinion of the Medical Board

Para 49. *Under the provisions relating to granting of disability pension the most important element is the opinion of the Medical Board. Functioning of the Medical Board is guided by the guidelines issued from time to time. Whether the disability has causal connection to military service is a crucial aspect which essentially depends upon the opinion of the Medical Board. In most of the cases wherein disability pension is refused by the authorities, opinion of the Medical Board is the only decisive factor. We have already referred to various judgments of the Supreme Court dealing with the opinions of Medical Boards.”*

31.1 The aforementioned High Court judgments in *Bhaskaran, Anil Madso* and *Col. Balbir Singh* converge with our opinion that even though Entitlement Rules 2008 removed the automatic presumption and strengthened the requirement of causal nexus, they did not dismantle the

claimant-protective structure of the Rules, particularly the continued allocation of primary burden to the establishment and beneficial principles governing attributability, aggravation and reasonable doubt. *Bhaskaran* reaches the same conclusion that the onus of proof is similar, with a minor caveat (reversal of onus in belated claims), and, that *attributability/aggravation* to military service can be established through causal connection, which, in our opinion, existed in Entitlement Rules 1982 as well. *Anil Madso* recognises that the Entitlement Rules 2008 removed the earlier *presumption* under Rule 5, but still holds that this did not automatically shift the burden of establishing entitlement onto the claimant, since Rule 7 continues to place the initial burden on the establishment.

32. The present appeals, therefore, have no independent legs to stand because several special leave petitions and civil appeals against such orders have already been dismissed.³³

ii. Limited Qualification – Rule 7’s proviso

33. We are not prepared to go so far as to hold that the two sets of Rules are identical in every particular, or that no difference whatsoever exists between them. Rule 7 of the Entitlement Rules 2008 introduces a proviso, absent in Rule 9 of the Entitlement Rules 1982, shifting the onus to the

³³ For instance, SLP (No. 30497/2025) against *Col. Balbir Singh* has been dismissed.

claimant where the claim is preferred more than fifteen years after discharge, invalidment or release.

34. In our view the Entitlement Rules 2008, assuming they otherwise have legal effect, substantially reproduce the 1982 scheme of causal connection, onus, and attributability/aggravation subject only to the limited qualification introduced by the proviso to Rule 7.

35. Rule 7 of the Entitlement Rules 2008 shifts the burden onto the ex-servicemen if he approaches the medical board/court after a period of 15 years. If the medical board and the appeals had rejected the claim but the AFT or the High Court have routinely allowed the application or the Writ Petition by following the principle of presumption or the decision in *Dharamvir* without a detailed examination of the evidence adduced by the ex-servicemen in support of their case, then there is certainly a case for revisiting those decisions. It is for the Union to identify such cases and raise appropriate objections to demonstrate that the burden is discharged or not.

VI. Conclusion

36. Raksha Mantri Report 2015 observed, “*While the world has moved much ahead... in India many disabled soldiers are still denied disability benefits on hyper-technical reasons... It is important to realize that there is inherent stress and strain in military service. In all democracies,*

disabilities arising in service or during authorized leave are considered as attributable or aggravated by military service”.

37. Raksha Mantri Report recommended the immediate withdrawal of appeals of this nature pending against disabled soldiers, a recommendation that has not been faithfully implemented. Appeals such as these are filed and continue to be filed, even after the Ministry of Defence accepted the Committee’s recommendation for withdrawal of this class of litigation³⁴.

38. The sad part of this litigation is that, out of around 271 Civil Appeals and Special Leave Petitions, most of them are barred by limitation. Many similar appeals that were barred by limitation have already been dismissed in the past; the present batch is only a small number that survive. Moreover, it is significant to note that the number of appeals rejected at the first appellate stage, after a dismissal by the RMB, far exceeds those accepted. As per information obtained under the Right to Information Act, 2005, of the 2,997 appeals before the First Appellate Authority, almost 2,855 of the claims were rejected and only 142 appeals are accepted. Before the Second Appellate Authority, out of 456 appeals, 439 were rejected and only 17 appeals are accepted.

39. Having considered the matter in detail, we are of the opinion that,

³⁴ Ministry of Defence letter dt. 07.09.2018 (MoD ID No. 4(5)/D(CMU)/2018).

i) No case for interference in the present Special Leave Petitions/Civil Appeals is made out. They are accordingly dismissed on the grounds of delay as well as on merits.

ii) We find considerable force in the submission made by the Ld. AG that the opinion of the Medical Board deserves to be given due weight and ought not to be substituted by a Court merely because another view is possible. In pending matters, the Tribunal must scrutinize in detail the opinion and reasons expressed by the Medical Board before deciding upon the claims.

iii) If a claimant approaches the relevant forum after a period of fifteen years, the principle in Rule 7 of the Entitlement Rules 2008 applies and the burden shifts. Onus in such a case will be on the applicant to prove the conditions of entitlement.

40. With the clarification as indicated hereinabove, the present batch of matters stands dismissed.

41. There shall be no order as to costs.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
SEPTEMBER 15, 2026.**