A UNION OF INDIA & ORS.

v.

ANGAD SINGH TITARIA

B (Civil Appeal No. 11208 of 2011)

FEBRUARY 24, 2015

[SUDHANSU JYOTI MUKHOPADHAYA AND N.V. RAMANA, JJ.]

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Pension Regulations for Indian Air Force, 1961: Regulation 153 – Disability Pension – Claim for – Medical Board recommended that the disabilities were not attributable to nor aggravated by service in Air Force – Held: In the absence of any specific note as to the respondent suffering from any disease prior to his joining the service, he is presumed to have been in sound physical and mental condition while entering service as per Rule 5(a) of the Entitlement Rules – Simply recording a conclusion that disability was not attributable to service, without giving a reason would show lack of proper application of mind by the Medical Board – View taken by Medical Board not upheld – Tribunal did not commit any error in awarding disability pension to the respondent for 60% disability from the date of his discharge – Entitlement Rules for Casualty Pensionary Awards, 1982 – rr.5, 14(b), 14(c), 15.

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Dismissing the appeal, the Court

HELD: 1. Admittedly, at the time of his enrolment

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into the employment of Indian Air Force in the year 1971, the respondent was medically and physically examined and was found fit as per prescribed medical standards. The material on record shows that the respondent was put under lower medical classification A4 G4 (permanent) on account of his ailments. The Medical Board assessed the composite disability of the respondent to be 60%. Rule 4 of the Entitlement Rules makes it clear that invalidating 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". [Paras 9, 10] [533-C,D; 534-A-B]

2. 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. According to sub-rule (b) of Rule 14 that a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds that the disease could not have been detected at the time of enrolment, the disease will not be deemed to have arisen during service. In that case, the medical opinion must contain valid reasons that the disease is not attributable to service. [Paras 12, 14] [535-C; 536-D-G]

3. In the case on hand, the respondent was rendered ineligible for further promotion and thereby invalidated on the ground of his being in medical

A **category A4 G4 (Permanent). In the absence of any specific note on record as to the respondent suffering from any disease prior to his joining the service, he is presumed to have been in sound physical and mental condition while entering service as per Rule**
B **5(a) of the Entitlement Rules. The fact remains that the respondent was denied promotion on medical grounds and the deterioration in his health shall, therefore, be presumed to have been caused due to service in the light of Rule 5(b) of the Entitlement**
C **Rules. Moreover, simply recording a conclusion that the disability was not attributable to service, without giving a reason as to why the diseases are not deemed to be attributable to service, would show**
D **lack of proper application of mind by the Medical Board. The view taken by the Medical Board cannot be upheld. The Tribunal did not commit any error in awarding disability pension to the respondent for 60% disability from the date of his discharge**
E **along with 10% p.a. interest on the arrears. [Paras 16, 17] [538-D-H; 539-A,C]**

Ministry of Defence v. A.V. Damodaran **(2009) 9 SCC 140: 2009 (13) SCR 416;** *Union of India v. Keshar Singh* **(2007) 12 SCC 675: 2007 (5) SCR**
F **408;** *Union of India v. Baljit Singh* **(1996) 11 SCC 315: 1996 (7) Suppl. SCR 626;** *Controller of Defence Accounts v. S. Balachandran Nair* **(2005) 13 SCC 128 : 2005 (4) Suppl. SCR 431;** *Dharamvir Singh v. Union of India & Ors.* **(2013) 7 SCC 316 –**
G **relied on**

Case Law Reference		
2009 (13) SCR 416	relied on	Para 5
2007 (5) SCR 408	relied on	Para 5
1996 (7) Suppl. SCR 626	relied on	Para 5

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2005 (4) Suppl.SCR 431 relied on Para 5 A
(2013) 7 SCC 316 relied on Para 7

CIVIL APPELLATE JURISDICTION: Civil Appeal No 11208 of 2011

From the Judgment and Order dated B
03.12.2010 of the Armed Forces Tribunal, Chandigarh Bench at Chandi Mandir, in O. A. No. 837 of 2010.

Rama Mukherjee, B. V. Balram Das, Chetan C
Chawla, Anil Katiyar for the Appellants.

Col. S. R. Kalkal, R. C. Kaushik for the Respondent.

The Judgment of the Court was delivered by D

N.V. RAMANA, J. 1.This appeal arises out of the impugned order dated 3rd December, 2010 passed by the Armed Forces Tribunal, Chandigarh, Bench at Chandimandir in OA E
No.837/2010 whereby the tribunal allowed the Respondent's application for grant of disability pension.

2. The undisputed facts of the case are that the respondent herein was enrolled in Indian Air F
Force on 13th November, 1971 in the Clerical trade. At the time of his recruitment, the respondent was medically and physically examined by the concerned medical officers and was found fit as per prescribed standards in medical categorization G
known as SHAPE-I. On 17th July, 1987, during the period of his service in Indian Air Force, the respondent was admitted to the Commando Hospital (Air Force), Bangalore where he was

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A diagnosed for coronary artery disease namely Infero-lateral Myocardial Infraction (1st disability). The respondent was therefore placed in Low Medical Classification from September, 1987. As a result of deterioration of health due to aggravation of ailment, B the respondent was again downgraded and placed in the medical classification A4 G3 (Permanent). While the respondent was discharging his duties at 2228 Squadron, he was also diagnosed for the disease Type-II Diabetes Mellitus in the year 2006 (2nd disability). Thereafter, on 27th November, 2008 the C respondent was referred to the Release Medical Board. The Medical Board assessed his 1st disability i.e. coronary artery disease at 60% and 2nd disability at 15 to 19%. The composite disability was however assessed as 60%. The Medical Board recommended D that both the aforementioned disabilities were found to be constitutional in nature and not attributable to nor aggravated by service in Air Force. Accordingly, the disability pension claim preferred by the respondent has been rejected by the competent Pension E Sanctioning Authority i.e. Air Force Record Office by its order dated 16th April, 2009.

3. Aggrieved thereby, the respondent filed first appeal before the Appellate Committee. The first appellate authority by its order dated 28th October, F 2009 rejected the same observing that both the disabilities are neither attributable to nor aggravated by service (NANA) and the 14 days charter of duties did not reveal any under stress and strain of military service. At this point of time, the respondent was G superannuated from service on 31.10.2009 after rendering 30 years, 11 months and 18 days of service. The second appeal before Defence Minister's Appellate Committee was also rejected. The respondent then filed O.A. No. 837 of 2010 before the Armed Forces Tribunal ("The Tribunal" for short) which came to be H

allowed directing the appellants to assess and release the disability element of disability pension in favour of the petitioner for 60% disability from the date of his discharge with interest @ 10% p.a. on the arrears.

4. The appellants—Union of India, having aggrieved by the decision of the Tribunal, preferred this appeal. We notice that there is a delay of 234 days in filing the present appeal. We, however, condone the delay for the reasons stated in the application for condonation of delay.

5. Learned counsel for the appellants submitted that according to Regulation No. 153 of the Pension Regulations for Indian Air Force, 1961 (Part-I) (for short "the Regulations") the disability should be either attributable to or aggravated by Air Force Service. Whereas in the present case the Release Medical Board which is an expert Body, has clearly expressed its opinion that the disabilities suffered by the respondent were neither attributable to nor aggravated by service and constitutional in nature. The Tribunal has committed serious error by ignoring the opinion dated 27th November, 2008 of the Release Medical Board. The record clearly shows that the onset of disabilities on the respondent was at peace locations as the respondent, at the relevant time, was not engaged in duty in high altitude areas or snow bound remote areas. He was not in war bound field area or undergoing intensive physical or arms training. The respondent was neither a prisoner of war nor exposed to adverse climatic conditions while performing his duties. Throughout his employment, the respondent has served in peace station. Therefore, there cannot be any stress or strain caused by the service which could

A have led to the onset of the disabilities. The Medical Board has clearly and categorically observed that the disabilities of the respondent were "not connected with service" and hence they do not fall under the category of "either
B attributable to or aggravated by Air Force Service" which is a prerequisite for granting disability pension. The adjudicating authority as well as the 1st and 2nd appellate authorities correctly upheld the recommendations of the Release
C Medical Board and rightly denied disability pension to the respondent, but the Tribunal failed to appreciate the recommendation of the Release Medical Board and committed grave error in
D allowing the original application of the respondent. In support of his contention that the Court while deciding the case of granting or otherwise of disability pension must give due weight, value and credence to the opinion of expert body,
E learned counsel relied upon this Court's decisions in ***Ministry of Defence*** Vs. ***A.V. Damodaran*** (2009) 9 SCC 140, ***Union of India*** Vs. ***Keshar Singh*** (2007) 12 SCC 675, ***Union of India*** Vs. ***Baljit Singh*** (1996) 11 SCC 315 and ***Controller***
F ***of Defence Accounts*** Vs. ***S. Balachandran Nair*** (2005) 13 SCC 128. Learned counsel finally submitted that the Tribunal has utterly failed to take into account the settled principle enshrined by the Apex Court in various decisions and hence
G this appeal deserves to be allowed setting aside the impugned judgment.

6. Learned counsel for the respondent, on the other hand, contended that the declaration

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of the Release Medical Board that the disease of the respondent was "neither attributable to nor aggravated by service" was arbitrary and illegal as the Board had not scrupulously followed the Regulations and decided the case in clear violation of the rules framed thereunder. The assessment of disability for attributability is to be ascertained in accordance with Regulation No. 153 and Rules 5, 14(b), 14(c) and 15 of Entitlement Rules for Casualty Pensionary Awards, 1982 (for short" Entitlement Rules") prescribed under Appendix-II further following the rules specified in Annexure-III to Appendix-II. But the Board flouted all the relevant rules and regulations and arbitrarily decided the case of the respondent. The Board ignored the vital fact that the respondent was enrolled in the Indian Air Force on 13th November, 1971 after medically and physically found fit by the medical officers at the time of recruitment. The onset of Disability No. 1 was in the year 1987 which is after rendering 16 years of service. During his service, the respondent was posted at different places where he had to carry on his duties under lot of stress and strain. Consequent to the disabilities emerged during the period of service the respondent was denied promotion to the rank of Warrant Officer in spite of the fact that the respondent's name was empanelled for promotion panel 2008-2009 and again in next promotion panel of Airmen in 2009-2010. His name was dropped from the promotion panel for being placed in medical category A4 G4 (Permanent).

7. Learned counsel further contended that as

A per Rules 9, 5(b) and 14(b) of the Entitlement Rules the Board ought to have given specific findings in its report as to why disability is not deemed to be attributable to service, particularly when the respondent was not affected with any B disease at the time of his enrolment in the Air Force. In the absence of such specific findings by the Board, merely furnishing a declaration that the disability being constitutional in nature was neither attributable to nor aggravated by service, cannot C be accepted and the claim of the respondent for disability pension cannot be rejected. In support of his contention, learned counsel has placed reliance on this Court's judgment in ***Dharamvir Singh*** Vs. ***Union of India & Ors.*** (2013) 7 SCC 316. He D further contended that although the Release Medical Board is an expert body, the adjudicating authority has the power and jurisdiction to interfere and decide the correctness or otherwise of the opinion E given by the expert body. The Court cannot be expected to adhere to the opinion of the expert body. Moreover, in terms of Regulation 423 (a) of Regulations for medical Services, Armed Forces, 1983, for the purpose of determining whether the F cause of a disability or death 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. The Tribunal in G the present case came to the right conclusion only after giving its thoughtful consideration to the opinion given by the Board in the light of true legal norms and prescribed rules and regulations and hence the impugned order need not be

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interfered with by this Court. A

8. Having heard rival contentions on either side, the moot question that falls for our consideration is whether or not the disabilities caused to the respondent during the course of his employment B are attributable to his service entitling him to the benefit of disability pension in accordance with law.

9. Admittedly, at the time of his enrolment into the employment of Indian Air Force in the year C 1971, the respondent was medically and physically examined and was found fit as per prescribed medical standards. The material on record shows that the respondent was put under lower medical classification A4 G4 (permanent) on account of his D ailments. The Medical Board assessed the composite disability of the respondent to be 60%. The Pension Regulations have specified the circumstances under which disability pension could be granted to a person. Regulation No. 153 is E relevant for the purpose, which reads thus:

> 153. Primary Condition for grant of disability pension— Unless otherwise specifically provided, a disability pension may be F granted to an individual who is invalided / discharged from service on account of a disability which is attributable to or aggravated by Air Force Service and is assessed at 20% or over. G
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> The question whether a disability is attributable to or aggravated by military service shall be determined under the rule H

A in Appendix-II.

10. Rule 4 of the Entitlement Rules makes it clear that **invalidating 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".** For the purpose of evaluation of disabilities, two presumptions are provided under Rule 5. They read thus:

> "5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:
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> Prior to and during service
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> (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**.
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> (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. Rule 9 of the Entitlement Rules mandates upon whom the burden lies to prove the entitlement conditions. The said rule is quoted below:

9. Onus of proof.-**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.

12. While considering the aspect of onus of proof, this Court in ***Dharamvir Singh*** (supra) observed:

> "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**".

13. Rule 14 of the Entitlement Rules stipulates how to determine whether a disease shall be deemed to have arisen in service or not. It reads thus:

14. Diseases — In respect of diseases, the following rule will be observed –

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) **A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in**

service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted 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.

14. Thus, a plain reading of sub-rule (b) of Rule 14 makes it abundantly clear that a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds that the disease could not have been detected at the time of enrolment, the disease will not be deemed to have arisen during service. In that case, it is also important that the medical opinion must contain valid reasons that the disease is not attributable to service.

15. Recently, this Court in a similar case (***Union of India &Anr.*** Vs. ***Rajbir Singh*** (Civil Appeal Nos. 2904 of 2011 etc.) decided on 13th February, 2015) after considering ***Dharamvir Singh*** (supra)

and upholding the decision of the Tribunal granting disability pension to the claimants, observed: A

> "... The essence of the rules, as seen earlier, is that ***a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry***. More importantly, ***in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service***. This necessarily implies that ***no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service***. ... B C D E
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> ... Last but not the least is the fact that ***the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces***. ... F G
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> ... There may indeed be cases, where the disease was wholly unrelated to military H

A service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. ***The burden to establish such a disconnect would lie heavily upon the employer*** for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. ***A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same***".

16. Here in the case on hand, the respondent was rendered ineligible for further promotion and thereby invalidated on the ground of his being in medical category A4 G4 (Permanent). In the absence of any specific note on record as to the respondent suffering from any disease prior to his joining the service, he is presumed to have been in sound physical and mental condition while entering service as per Rule 5(a) of the Entitlement Rules. The fact remains that the respondent was denied promotion on medical grounds and the deterioration in his health shall therefore be presumed to have been caused due to service in the light of Rule 5(b) of the Entitlement Rules. Moreover, simply recording a conclusion that the disability was not attributable to service, without giving a reason as to why the diseases are not deemed to be attributable to service, clearly shows lack of proper application of mind by the Medical Board. In such circumstances,

we cannot uphold the view taken by the Medical Board. A

17. Considering the facts and circumstances of the case in the light of above discussed Rules and Regulations as well as settled principles of law enshrined by this Court in ***Dharamvir Singh*** Vs. ***Union of India &Ors.*** (supra) and reiterated in ***Union of India & Anr.*** Vs. ***Rajbir Singh*** (supra), we are of the considered opinion that the Tribunal had not committed any error in awarding disability pension to the respondent for 60% disability from the date of his discharge along with 10% p.a. interest on the arrears. For all the reasons stated above, we do not find any merit in this appeal and the same stands dismissed without any order as to costs. B C D

18. The appellants are directed to release the arrears of disability pension to the respondent within three months from today together with interest @ 10% p.a.

Devika Gujral Appeal dismissed. E