IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 28TH DAY OF NOVEMBER 2024 / 7TH AGRAHAYANA, 1946

WP(C) NO. 8414 OF 2024

AGAINST THE ORDER DATED 04.08.2022 IN OA NO.457 OF 2018 OF ARMED FORCES TRIBUNAL,REGIONAL BENCH,KOCHI

PETITIONERS/RESPONDENTS:

1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI, PIN – 110011.

2 THE CHAIRMAN
SECOND APPELLATE COMMITTEE ON PENSION ADDITIONAL DTE GEN PERSONNEL SERVICE, ADJUTANT GENERAL'S BRANCH, IHQ OF MOD (ARMY), ROOM NO.11, PLOT NO.108 (WEST), BRASSEY AVENUE, CHURCH ROAD, NEW DELHI, PIN – 110001.

3 THE CHIEF RECORD OFFICER,
DEFENCE SECURITY CORPS RECORDS, PIN – 901277.

BY ADV R.V.SREEJITH, SCGC

RESPONDENT/APPLICANT:

BHASKARAN.N (JC-843384P EX NB SUB CLK)
S/O LATE NARAYANAN N., AGE 59 YEARS, RESIDING AT
NARIKAKANDAN HOUSE, CHIRAKKAL P.O., KANNUR, PIN – 670011.

BY ADV JAMES ABRAHAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23.10.2024, THE COURT ON 28.11.2024 DELIVERED THE FOLLOWING:

NITIN JAMDAR, C.J. [CR]
&
S.MANU, J.

W.P.(C)No.8414 of 2024

Dated this the 28th day of November, 2024

JUDGMENT

S.MANU, J.

The granting of disability pension to ex- service personnel largely depends on the opinion of the medical boards. Authorities in charge either grant or deny the benefit after analysing the opinions of medical experts. When the benefit is denied, the aggrieved individual often seeks recourse by approaching the Armed Forces Tribunal (henceforth referred to as AFT). The Tribunal then proceeds to examine the impugned decision. The main issue addressed in this judgment is to what extent and in what manner the decisions made by the authorities, relying on the opinion of medical experts, can be reviewed by the AFT.

Facts

2. Union of India and officials of it concerned have filed this writ petition against the order dated 4 August 2022 in O.A.No.457/2018 of

the Armed Forces Tribunal, Regional Bench, Kochi. The sole Respondent in the writ petition was the Applicant in the O.A.

3. We shall begin narrating the factual backdrop. The Respondent initially joined 122 Infantry Battalion (Territorial Army) in the year 1983 and continued for 6 years and 15 days. On 12 August 1989 he joined Defense Security Corps at DSC Centre, Kannur. After serving at various stations, he retired on 31 April 2016 from DSC, Kannur. He was placed in Low Medical Category with effect from 22 July 2013. The Medical Board proceedings show that he was suffering from type-II diabetes mellitus and percentage of disablement was assessed as 20.

4. In the certificate dated 26 September 2015 it has been mentioned that the Respondent was not entitled for disability pension on account of diabetes mellitus type-II, since the same was not aggravated/not attributable to service. By communication dated 7 April 2016 Respondent was informed by the Records Officer that the competent authority, after consultation with the competent medical authority and in accordance with the relevant rules and other provisions, had decided that the Respondent was not entitled to disability pension. Assessment made by the Release Medical Board was referred in the communication

dated 7 April 2016. The Respondent submitted appeal as provided under the relevant Rules, but the same was rejected by order dated 12 April 2017. The second appeal submitted by the Respondent also met the same fate as it was rejected by order dated 17 May 2018.

5. In the O.A., the Respondent sought following reliefs:-

> *"(i) To set aside Annexure A5 order.*
>
> *(ii) To declare that the applicant is entitled for disability element/pension and thereafter direct the respondents to grant and disburse all disability pension along with statutory interest.*
>
> *(iii) To issue such other direction or orders as this Hon'ble Tribunal deem fit and proper in this case."*

6. The Petitioners filed reply statement refuting the contentions of the Respondent. They referred to the relevant Rules and Regulations and contended that the Release Medical Board is the competent authority to determine about disability and the Board in the case of the Respondent opined that the disease is not attributable or aggravated by military service. The disease of the Respondent is a metabolic disorder with a strong genetic preponderance. They also contended that the disability for qualifying for disability pension is nil in the case of the

Respondent and not 20% as claimed in the O.A. The Petitioners cited various orders of the Armed Forces Tribunal and judgments of the Hon'ble Supreme Court in support of their arguments.

7. The AFT disposed the O.A. by order dated 4 August 2022. The AFT disagreed with the reasoning of the statutory authorities. It relied on its order in O.A.No.95/2019 to rule in favour of the Respondent. It also granted benefit of rounding off the disability at 50%. The AFT categorically held that the Release Medical Board went wrong in denying the claim for disability pension on the reason that the illness is not aggravated by Military service as the onset was during in a peace station. The AFT directed the 3rd Petitioner to issue a corrigendum pension payment order granting disability element of pension rounded off at 50% from the date of retirement of the Respondent and to pay the arrears in a time bound manner failing which the Petitioners shall be liable to pay interest at 9% per annum.

8. This writ petition was listed before us along with similar cases arising from the AFT. The matter was heard elaborately. As we felt it necessary to address the issue comprehensively in view of large number of similar cases being filed in the AFT and thereafter carried to this

Court, we allowed the learned counsel appearing for either side to address the Court in the larger perspective of the matter. We permitted counsel appearing for party Respondents in other similar matters also to address the Court on the legal issue involved. Senior Central Government Counsel Mr.R.V.Sreejith assisted by Central Government Counsel Mr.T.V.Vinu argued on behalf of the Petitioners. Mr.James Abraham, the learned counsel for the Respondent made submissions on behalf of the Respondent. Other learned counsel who opted to supplement the submissions of Mr.James Abraham were also heard.

Pertinent legal provisions

9. Reference to the relevant provisions governing the matter is essential for a comprehensive analysis of the issues involved. 'Pension Regulations for the Army, 1961' and allied rules, 'Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982' is one set of the relevant rules. 'Pension Regulations for the Army, 2008' and 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008' is the next set of relevant rules. Reference to the contents of ‘Guide to Medical Officers (Military Pension)’ is also advantageous.

10. We hereafter refer to some relevant provisions of 'Pension Regulations for the Army, 1961' and allied rules, 'Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982'.

'Pension Regulations for the Army, 1961' -

> *"Primary conditions for the grant of disability Pension*
> **173. 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 percent or over.*
>
> *The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.*
>
> **Note for Examines:-Service element or Disability pension is being notified on permanent basis w.e.f. 1/1/73 and even if at some stage the percentage of disability of the pensioners, goes below 20%, his service element notified initially continues to remain in force for life of the pensioner. However in the case of pre 1/1/73 disability pensioners, the service element is contingent upon the continuance of disability element unless and until the pensioner has put in minimum of 10 years of service before 1/3/68 and 5 years of service after that date upto 31/12/72, after which the service element becomes permanent feature as explained above.*

Individuals discharged on account of their being permanently in low medical category

173-A. 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 invalided from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

***Note**. The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension.*

Disability at the time of retirement/discharge

179. 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 percent or more, and service element if the degree of disability is less than 20

percent. 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.*
***Note**: In the case of an individual 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.]**
**Amended vide MOD Lr.No.A/22255/AG/PS4 (d)/2725/Pen-c date 5/11/69 & CGDA Letter No. 6517/AT-P date 3/7/71*

'Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982' -

4. Invaliding from service is a necessary condition for grant of a 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 but are discharged before the completion of their engagement will be deemed to have been invalidated out of service.

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

Prior to and during service

(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.

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

Onus of proof

9. The claimant shall not be called upon to prove the conditions of entitlement. 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.

Miscellaneous Rules

17. Medical Opinion: At initial claim stage, medical views on entitlement and assessment are given by the

IMB/RMB. Normally, these views shall prevail for decisions in accepting or rejecting the claim. In cases of doubt the Ministry/CDA(Pensions) may refer such cases for second medical opinion to MA(Pensions) Sections in the Office of the DGAFMS/Office of CDA(P), Allahabad, respectively. At appeal stage, appropriate appellate medical authorities can review and revise the opinion of the medical boards on entitlement and assessment.

Assessment

22. Assessment of degree of disability is entirely a matter of medical judgment 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 condition of the member as so disabled and the condition of a normal healthy person of same age and sex, without taking into account the earning capacity of the member in his disabled 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.

In other than paired organs, conditions may co-exist

which through interaction may give rise to the need for consideration under the greater disablement principle. One of the simplest examples is, the pensioner with entitlement for bronchitis who also suffers from coronary atherosclerosis and as a consequence of acute bouts of coughing claims increasing frequency of attacks of angina. In such cases it is a matter of clinical judgment as to the extent to which the assessment for bronchitis should be increased to cover the greater disablement arising from the interaction between that condition and the coronary atherosclerosis. The pensioner is not entitled to the total assessment of disablement for the coronary atherosclerosis which might well be in the regions of 30 to 40%, but only to that portion of that assessment which it is reasonable to add to cover greater disablement. Depending on the increased frequency in the attacks of angina due to severe bouts of coughing a greater disablement addition in the less than 20% range might well be appropriate.

(a) The assessment of a disability is the estimate of the degree of disablement it causes, which can properly be ascribed to service as defined below.

(b) The disablement properly referable to service will be assessed as under:-

(i) <u>At the time of discharge from the forces:</u>

Normally, the whole of the disablement then caused by the disability. This will apply irrespective of whether the disability is actually attributable to service, or is merely aggravated thereby.

(ii)On resurvey of disability after discharge from service:

The whole of the disablement then caused by the disability, less the following:-

(1) The part due to non-service factors, such as individual's habits, occupation in civil life, accident after discharge, climatic environment after discharge;

(2) *Any worsening due to the natural progress of the disability since discharge, apart from the effect of service.*

Note: Deduction (1) will be made in all cases; while deduction (2) will apply only in cases where the disability is accepted as aggravated by, but not attributable to, service.

Appeals

23. Right of Appeal: Where entitlement is denied by the Pension Sanctioning Authority on initial consideration of the claim, the claimant has a right of appeal against decision on entitlement and assessment. Whereas for decisions on entitlement all concerned authorities have to give opinions, assessment of degree of disablement is entirely a matter of medical judgment and is the responsibility of appropriate medical authority.

Appellate Bodies

25. *(a) Defence Minister's Appellate Committee on Pensions*

DMACP shall deal with second or the final appeal on claim for casualty pensionary awards. This Committee consists of -

Chairman	*RM/RRM*
Members	*URM* *Chiefs of Staff (Army, Navy & Air Force)* *Defence Secretary* *Financial Adviser (DS)* *DGAFMS* *JAG (Three Services)*

(b) <u>Appellate Committee for First Appeals</u>

ACFA shall deal with claims for casualty pensionary awards on first appeals. This Committee consists of:

Chairman	*DS (Pensions), Ministry of Defence dealing with pension cases.*
Members	*Director Personal Services, Army HQ. and his counterparts in Naval and Air HQ. dealing with pension cases.* *Deputy Director General (Pensions) of Office of DGAFMS* *Deputy Financial Adviser (Pensions).*

11. Reading of the provisions of Regulation 173 makes it clear that in order to avail the benefit of the said Regulation, invalidating out of service is necessary. When the person is invalidated out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and disability is assessed at 20% or above, the situation will be governed by Regulation 173. When the individual is placed in a low medical category permanently and is discharged, Regulation 173A would apply. In both situations the person leaves the employment before completion of his tenure. Regulation 179 operates in altogether different situation. Benefit under the said provision will be extended when the person is found to be suffering from a disability attributable to or aggravated by military service at the time of retirement/discharge and so recorded by service medical authorities.

12. Rule 4 of the 1982 Rules provides that invalidating from service is a necessary condition for grant of disability pension. An individual will be treated as invalidated from service, if at the time of his release he is in a lower medical category than that in which he was recruited. Rule 5 speaks about presumptions in the matter of evaluation of disabilities. A member of the Force is presumed to be in sound physical and mental conditions upon entering service and any deterioration in his health for

which he is being discharged will be presumed as taken place due to service. It is clear from the language of the provision that it applies when the employee is being discharged from service on medical grounds. In view of Rule 8, if the appropriate medical authority certifies causal connection between death/disablement and military service, attributability/aggravation shall be conceded. Rule 9 speaks about onus of proof. It unequivocally states that the claimant shall not be called upon to prove the conditions of entitlement. Benefit of any reasonable doubt shall enure to the employee. Liberal approach in granting the benefit to the claimants in field/afloat cases is also mandated. Rule 17 provides that normally the views given by the Medical Board shall prevail. The Ministry/CDA (Pensions) may refer cases for second medical opinion. Appellate Medical Authorities can review and revise the opinion of the Medical Boards. Rule 22 makes it clear that assessment of degree of disability is entirely a matter of medical judgment and is the responsibility of the Medical Authorities. Rule 23 provides for appeal and appellate bodies are provided under Rule 25.

13. We shall now refer to the relevant provisions of Pension Regulations for the Army, 2008.

"*DISABILITY ELEMENT IN ADDITION TO RETIRING PENSION TO OFFICER RETIRED ON ATTAINING THE PRESCRIBED AGE OF RETIREMENT*

37.(a) An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more.

(b) The disability element for 100% disability shall be at the rate laid down in Regulation 94(b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 94(c) shall not be applicable for computing disability element.

DISABILITY ELEMENT FOR DISABILITY AT THE TIME OF DISCHARGE /RETIREMENT

53. (a) An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.

(b) The disability element for 100% disability shall be at the rate laid down in Regulation 98 (b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 98(c) shall not be applicable for computing disability element.

***Notes**: 1. An individual discharged on fulfilling the terms of his engagement, his unwillingness to continue in service beyond the period of his engagement should not affect his title to the disability element under the provisions of the above Regulation.*

2. *An individual who seeks discharge at own request shall not be eligible for disability element provided that the individual who is due for discharge on completion of tenure or on completion of service limit or on completion of terms of engagement or on attaining the prescribed age of retirement and who seeks within one month pre-mature retirement/discharge within one month on request for the purpose of getting higher commutation value of pension, shall remain eligible for disability element.*

WHEN ADMISSIBLE

81. (a) Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section.

Explanation:

There shall be no condition of minimum qualifying service for earning service element."

14. The following provisions of Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 are germane :-

"*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%.

(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.

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

*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.

*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.

*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, Fields, Operations, High Altitudes etc.

*14. **Appeals**:*
***(I) (a) First appeal**:*
If a person is aggrieved by the denial of entitlement, he may, if he so desires, submit an appeal before Record Office/Service HQrs within six months, which would be considered by the Appellate Committee for First Appeal. The Appellate Committee's decision for upholding or rejecting the appeal will be by consensus.
***(b) Second appeal**:*
Any person, aggrieved by the decision in the first appeal, may file a second appeal within six months of the decision of the Appellate Committee for First Appeal, to the Defence Minister's Appellate Committee on Pension (DMACP).
(II) The composition of the Appellate Committee for First Appeal and the Defence Minister's Appellate Committee on Pension and detailed procedures for disposal of appeals shall be issued by the Ministry of Defence from time to time."

15. Regulation 37 deals with disability element in addition to retiring pension for officers retiring on attaining superannuation. If an officer retiring on attaining the prescribed age of retirement or on completion of tenure is found by Medical Board as suffering from a disability either attributable to or aggravated by military service, he is entitled to a disability element in addition to retiring pension, if the degree of

disability is assessed at 20% or more. Regulation 53 is an identical provision providing the same benefit to personnel below officer rank. Disability pension is dealt with under Section 1 of Chapter IV of the Regulation. Admissibility is provided under Regulation 81. Personnel who are invalided from service on account of a disability attributable to or aggravated by such service are entitled for disability pension consisting of both service element and disability element. Different circumstances of death/disablement, attributable to or aggravated by military service are provided under Regulation 82.

16. Rule 4 of the 2008 Rules is about invalidment from service. It is clear from the said provision that invalidment from service with disablement caused by service factors is the essential pre-condition for grant of disability pension. In consonance with the Regulation, the Rule also provides that disability element will also be admissible on retirement/discharge on completion of the term of engagement in low medical category on account of disability attributable to or aggravated by military service if the disability is accepted as not less than 20%. Rule 5 makes it clear that a medical test at the time of entry to the service is not exhaustive but limited to broad physical examination. Rule 6 mandates that establishing a causal connection between

disability or death and military service is essential for award of disability pension. Rule 7 deals with the onus of proof. Rule 10 deals with attributability and aggravation is dealt with under Rule 11. Assessment of disability by competent authorities is provided under Rule 12. Under Rule 14 first and second appeals are provided.

17. The following provision of Regulations for the Medical Services of the Armed Forces is also relevant:

> "*ATTRIBUTABILITY TO SERVICE*
> *423.*
> *(a) For the purpose of determining whether the 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. 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 benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an*

individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to Service if the wound/injury was sustained during the actual performance of "duty" in Armed Forces. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. 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 Service in the Armed Forces. 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 risen during service.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the death certificate. The Medical Board/ Medical officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether, the cause and the attendant circumstances can be attributed to Service will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the C.O. unit will furnish a report on:-
(i) AFMS F-81 in all cases other than those due to injuries.
(ii)IAFY-2006 in all cases of injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished

on a Medical Board form and countersigned by the ADMS (Army)/DMS(Navy)/DMS (Air).”

The above-mentioned Regulations are framed under Section 192 of the Army Act. Source of power to make rules including Rules governing removal, retirement, release or discharge from the service of persons is found in Section 192(2)(a) of the Army Act.

Comparative analysis of the Entitlement Rules of 1982 & 2008

18. Comparison of the relevant provisions of the Entitlement Rules of 1982 and 2008 shows that there are substantial changes regarding presumptions and onus of proof. The important changes are easily perceptible from the following table:-

1982 RULES	*2008 RULES*	*Remarks*
Rule 5. *The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:*	***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*	***Presumption under 1982 Rules removed***

PRIOR TO AND DURING SERVICE *(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*	*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.*	
ONUS OF PROOF ***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.*	*ONUS OF PROOF* *Rule.7 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.*	***Shall presumption changed to Ordinarily***

INJURIES ***Rule 13.*** *In respect of accidents or injuries, the following rules shall be observed:* *(a) Injuries sustained when the man is 'on duty' as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/ misconduct the question of reducing the disability pension will be considered.*	***ATTRIBUTABILITY*** ***Rule 10*** *(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).*	***Shall presumption changed to mandatory establishment of causal connection***
DISEASES ***Rule 14.*** *(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.*	*(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.*	

Arguments raised

19. We shall now address the arguments raised by both sides. The learned Senior Central Government Counsel Mr.R.V.Sreejith submitted that invalidating out of service and superannuation/fulfillment of contract are two normal exit points in Army service. When an employee completes his tenure or attains the age of superannuation, he is referred to a Release Medical Board (RMB). If the employee is diagnosed with any disability or disease attributable to or aggravated by service, he will be entitled for disability element of pension over and above the service pension in case the disability is assessed as 20% or above. Invalid pension is clearly distinct from the disability pension. He referred to various provisions of the Pension Regulations of 1961 and 2008 as also Entitlement Rules of 1982 and 2008. The learned counsel after a comparative reading of the provisions submitted that significant changes have been made in the 2008 Rules. He argued that Rule 5 of the 2008 Rules clearly speaks that the medical examination at the entry stage is not exhaustive. A disease manifested later during service does not per se establish attributability to or aggravation by military service. He pointed out that element of presumption which was there in the analogous provision of the 1982 Rules is now not

available. He also submitted that under Rule 6 it is incumbent upon the appropriate authorities to establish a causal connection between disability or death and military service for awarding disability pension or special family pension. He submitted that in view of Rule 6 the authorities will have to state reasons if disability element of pension is to be granted to an employee. He pointed out that the opinion of the Medical Board is hence crucial as the same would be the most relevant material for the authorities to take a decision in the matter. The learned counsel pointed out the crucial change made in the Rules regarding onus of proof. Under Rule 7 of the 2008 Rules, it has been provided that ordinarily the claimant will not be called upon to prove the condition of entitlement. He submitted that employment of word 'ordinarily' shows that the onus can be shifted to the employee in appropriate cases and it will not be always on the employer. He also argued that the onus on the employer is discharged by obtaining the opinion of the Medical Board. The presumption under the Rules can be rebutted with the opinion of the Medical Board. If the opinion of the Board is against the interest of the employee, then the onus shifts to the employee. Referring to various reported judgments of the Hon'ble Supreme Court the learned SCGC submitted that opinion of the Medical Board falls in the class of expert opinion which shall not be

simply rejected or casually interfered with in judicial review. In case the Tribunal is of the opinion that the consideration by the Medical Board or opinion given by the Medical Board was not proper it may make a reference for re-examination by the Medical Board and not substitute the conclusions by its inferences. The Tribunal or the High Court cannot substitute the opinion of the Medical Board. He therefore submitted that interference by the AFT, ignoring the opinion of the Medical Board and without any fresh reference to medical experts is improper and illegal. He also submitted that in several instances claims for disability pension are raised after a long gap and without any bonafides. The Tribunal when allows such applications, ignoring the medical opinion confirmed by the appellate authorities, unlawful gain is obtained by the applicants and corresponding loss to the public exchequer is also caused. Therefore, he submitted that the Tribunal has to follow a cautious approach in dislodging the opinion of the Medical Boards and decisions by the competent authority.

20. Referring to the judgment of a Division Bench of this Court in W.P.(C)No.43207/2023 and connected cases, the learned SCGC submitted that the said judgment may not be followed for deciding the issue under consideration in this writ petition. He submitted that the

Division Bench has not considered the provisions of the Regulations of and Rules of 2008. The judgment proceeded only with reference to the Regulations of 1961 and Rules of 1982. He also pointed out that some of the cases decided by the Division Bench were governed by the Regulations and Rules omitted to be noted by the Bench. He submitted that the Respondents in W.P.(C)Nos.2458/2024, 16862/2024 and 23112/2024 disposed by the Bench had retired after the Regulations and Rules of 2008 came into force. Therefore, he submitted that the said judgment is one rendered without noticing the relevant Rules. He also submitted that the Division Bench has not laid down/enunciated any principles in the common judgment. The Bench, after referring to various precedents and provisions of the previous Rules and Regulations, proceeded to dispose the cases on the facts of each case. Crux of the submission of the learned counsel is that the said common judgment has no precedential authority.

21. The learned SCGC referred to the following judgments of the Hon'ble Supreme Court:-

1. *Secretary, Ministry of Defence and others v. Damodaran.A.V. (Dead) through LRs. and others [(2009) 9 SCC 140]*

2. *Om Prakash Singh v. Union of India and others [(2010) 12 SCC 667]*

3. *Dharamvir Singh v. Union of India and others [(2013) 7 SCC 316]*

4. *Veer Pal Singh v. Secretary, Ministry of Defence [(2013) 8 SCC 83]*

5. *Union of India and others v. 3989606 P, Ex-Naik Vijay Kumar [(2015) 10 SCC 460]*

6. *No.14666828M EX CFN Narsingh Yadav v. Union of India and others [(2019) 9 SCC 667]*

7. *Union of India and others v. Ex.Sep.R.Munusamy [AIR 2022 SC 3449]*

22. With reference to the issue involved in the case on hand, the learned SCGC submitted that the Tribunal has not applied mind properly while allowing the O.A. by directing to revise the pension of the Respondent. He submitted that the Tribunal has virtually substituted the opinion of the Medical Board and reference to the provisions made in the impugned order in support of the conclusions is without a comprehensive analysis of the scheme of the Rules and Regulations. He also submitted that the learned Tribunal has not

properly assimilated the law laid down by the Hon'ble Supreme Court in various relevant judgments. He therefore prayed that the impugned order may be set aside and the O.A. be dismissed.

23. Mr.James Abraham, the learned counsel appearing for the Respondent contended that the AFT has allowed the O.A. on a proper appreciation of the facts and law involved. He submitted that the Respondent, at the time of his superannuation, was diagnosed with Type-II diabetes mellitus which was attributable to military service and also aggravated by the same. The Respondent was in robust health and good physical condition at the time of entry to service. He was put to work in various parts of the country and was under severe stress and strain during his service. His working conditions did not permit him to have food at regular intervals. The finding of the Medical Board against the Respondent is unacceptable and incorrect. The first and second appellate authorities have mechanically rejected the appeals of the Respondent. Therefore, the intervention by the AFT is proper and legal.

24. The learned counsel made reference to the relevant provisions of the Regulation and the Rules to buttress the contention that the

disability assessed at 20% by the Medical Board made the Respondent entitled for disability element of pension. He argued that disability pension is a welfare measure. When the employees suffer disability on account of stressful military service they are being compensated with the disability element of pension. He therefore submitted that provisions governing the disability pension shall be considered as beneficial legal provisions which deserve liberal interpretations in favour of the employee. He further submitted that opinion of the Medical Board cannot be considered as the last word. He referred to various decisions of the Hon'ble Supreme Court to drive the point that in appropriate cases the AFT can reject the opinion of the Medical Board and arrive at an independent conclusion. The learned counsel relied on the following judgments:-

1. *Veer Pal Singh v. Secretary, Ministry of Defence [(2013) 8 SCC 83].*

2. *Union of India (UOI) and Others. v. Rajbir Singh [(2015) 12 SCC 264].*

3. *Union of India (UOI) and others v. Angad Singh Titaria [(2015) 12 SCC 257].*

25. As the conclusions in this case regarding the legal issues involved would govern all identical cases, we permitted the other learned counsel appearing for the party Respondents in those cases also to advance arguments. Other learned counsel who addressed us adopted and supported the contentions of Mr.James Abraham. It was submitted by Mr.Sathyanathan.V.K., learned counsel appearing for the party Respondents in some of the identical cases that committee of experts engaged by the Ministry of Defence for review of service and pension matters in its report submitted in 2015 have opined against the Regulation and Rules of 2008. He submitted that even the legality of introduction of the said provisions was doubted by the committee and the recommendation was to follow the Regulations of 1961 and Rules of 1982. Therefore, he submitted that the Regulations and Rules of 2008 may be treated as inoperative. We will address the contentions specific to the facts of the case at hand later. Nevertheless, about the contention about applicability of the Rules & Regulations, we find it essential to enter into a finding at this juncture itself, as it is essential for the continuation of the discussion. Regarding the contention raised by learned Counsel Mr.Sathyanathan about the applicability of the Regulations and Rules of 2008, we observe that the said contention is

untenable. The report relied on reflects only the opinion of the Committee. Until and unless the report is accepted by Government and acted upon by repealing the Regulation and Rules frowned upon by the Committee, the same shall remain in force.

26. About the judgment of a Division Bench of this Court in W.P.(C)No.43207/2023 and connected cases, as we noted earlier, the learned SCGC submitted that the Bench proceeded without noticing the Regulations and Rules of 2008 and no principles have been laid down in the judgment. On the other hand, the learned counsel for the Respondent and other counsel appearing for party Respondents in similar cases submitted that the said judgment and conclusions therein in favour of the Applicants may be followed. After a careful reading of the said judgment, we agree with the learned SCGC. Though some of the cases decided by the Division Bench were governed by the Regulations and Rules of 2008, no reference to the provisions of the 2008 laws was made by the Division Bench. It is also noted that the Bench has not laid down any principles and proceeded to dispose the cases after referring to various judgments of the Hon'ble Supreme Court and also provisions of some of the Regulations.

Analysis of the precedents

27. Since both sides relied on various precedents, reference to those judgments is essential. We first refer to the judgment of the Hon'ble Supreme Court in *Secretary, Ministry of Defence and others v. Damodaran.A.V. (Dead) through LRs. and others [(2009) 9 SCC 140]*. The Hon'ble Supreme Court in this case considered an appeal against the judgment of a Division Bench of this Court in a writ appeal. A Sapper enrolled in the Madras Engineers Group of Indian Army was invalided out with 60% disability. According to the authorities, the disability was not attributable to or aggravated by service and therefore the person was not entitled for disability pension. He approached this Court and the writ petition was allowed by learned Single Judge. The Division Bench dismissed the appeal filed by the Department. The Hon'ble Supreme Court held that a person is, under law, entitled to disability pension provided his disability is certified by the appropriate medical authority as being attributable to or aggravated by or connected with the military service. Hon'ble Mr.Justice Dalveer Bhandari in his Lordship's separate judgment observed as follows:-

"15. This Court in Union of India v. Keshar Singh dealt with a case where the respondent, a rifleman was discharged from Army on ground of his non-suitability for continuance in Army as he was suffering from schizophrenia. The respondent's application for grant of disability pension was rejected on the ground that the disability was not connected with the service. The Single Judge as well as a Division Bench had held that it was not mentioned at the time of entering Army service that the respondent suffered from schizophrenia and therefore it was attributable to Army service.

16. This Court in Keshar Singh case has held that 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 are due to the circumstances of duty in military service. This Court relied on Medical Board's opinion to the effect that the illness suffered by the respondent was not attributable to military service. This Court while setting aside the judgments of the learned Single Judge and the Division Bench held that the respondent was not entitled to disability pension.

17. I have heard the learned counsel for the parties. I am of the considered view that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. In the instant case, the Medical Board has clearly opined that the disability of late Shri A.V. Damodaran was neither attributable nor aggravated by the military service. In my considered view, both the learned Single Judge and the Division

> *Bench of the High Court have not considered this case in proper prospective and in the light of the judgments of this Court. The legal representatives of A.V. Damodaran are not entitled to the disability pension."*

28. In his concurring judgment, Hon'ble Dr.Justice Mukundakam Sharma observed as follows after referring to the factual aspects of the case as also the law laid down by the Hon'ble Supreme Court in various cases:-

> *"43. Clearly therefore, the opinion of the Medical Board ruled out the possibility of the disease of the respondent being attributable to or aggravated by military service. That being the position, the respondent cannot claim for payment of any disability pension.*
>
> *44. Another relevant factor which is required to be noted is that the report of the Medical Board is not under challenge. As has been held by this Court, such opinion of the Medical Board would have the primacy and therefore, it must be held that the learned Single Judge and the Division Bench of the High Court were not justified in allowing the claim of the respondent."*

Judgments of the learned Single Judge and the Division Bench of this Court were set aside by the Hon'ble Supreme Court and it was held that the legal heirs of the employee were not entitled for disability pension.

29. Next, we refer to the judgment of the Hon'ble Supreme Court in *Om Prakash Singh v. Union of India and others [(2010) 12 SCC 667]*. In the said case the Appellant was enrolled as a Sepoy in the Territorial Army and he later developed unspecified psychosis. On the recommendation of the Medical Board which assessed the disability of the Appellant as 40%, he was invalided out from service. The Medical Board was of the view that the disease was neither attributable to nor aggravated by the military service. Against rejection of the claim for disability pension, the Appellant approached the High Court of Delhi which rejected his writ petition. The Hon'ble Supreme Court, after elaborate consideration of the relevant provisions and precedents, held as follows:-

> *"17. A similar controversy came up before this Court in Union of India v. Keshar Singh in which this Court relied upon the Medical Board's opinion to the effect that the illness suffered by the respondent was not attributable to military service.*
>
> *18. In the instant case, the records reveal that, in the opinion of the Medical Board, the condition of the appellant cannot be said to have triggered on account of the military service. In the opinion of the Medical Board, the disease was not at all attributable to the military service.*

> *19. We have heard the learned counsel for the parties at length. We are clearly of the view that the Medical Board is an expert body and they take into consideration all relevant factors and essential practice before arriving at any opinion and its opinion is entitled to be given due weight, merit, credence and value.*
>
> *20. In the instant case, the Medical Board has given unanimous opinion that the disease of the appellant was neither attributable to nor aggravated by the military service. The findings of the Medical Board have been accepted by the Division Bench of the High Court. Thus, in our considered opinion, no interference is called for. The appellant is not entitled to the disability pension. However, in case some amount has ever been paid to the appellant towards the disability pension, the same may not be recovered from him."*

In this case also the Hon'ble Supreme Court relied on the opinion of the Medical Board and refused to interfere with the same.

30. *Dharamvir Singh v. Union of India and others [(2013) 7 SCC 316]* is the next judgment relied on by the learned SCGC. The appeal before the Apex Court arose from a judgment of a Division Bench of the High Court of Himachal Pradesh. The learned Single Judge allowed the writ petition filed by a former Sepoy in the Corps of

Signals of the Indian Army who was boarded out of the service on the ground of 20% permanent disability due to Generalised Seizure (Epilepsy). On the basis of the Medical Board's opinion that the same was not attributable to or aggravated by military service, disability pension was denied. His writ petition was allowed as noted above and the said finding was reversed by a Division Bench of the High Court. In the appeal the Hon'ble Supreme Court referred to all relevant provisions of the Pension Regulations of 1961 and Entitlement Rules of 1982. Conclusions of the Hon'ble Supreme Court relevant for the purpose of the issues under consideration in this case are extracted hereunder:

> *"17. From a bare perusal of the Regulation aforesaid, it is clear that disability pension in normal course is to be granted to an individual: (i) who is invalided out of service on account of a disability which is attributable to or aggravated by military service, and (ii) who is assessed at 20% or over disability unless otherwise it is specifically provided.*
>
> *19. "Onus of proof" is not on the claimant as is apparent from Rule 9, which reads as follows:*
>
> > *"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."*

From a bare perusal of Rule 9 it is clear that a member, who is declared disabled from service, is not required to prove his entitlement of pension and such pensionary benefits are to be given more liberally to the claimants.

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).

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"

(emphasis supplied)

32. Para 1 of Chapter II — "Entitlement: General Principles" specifically stipulates that certificate of a constituted medical authority vis-a-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."

The Hon'ble Supreme Court upheld the judgment of the learned

Single Judge by which disability pension was directed to be granted. The Hon'ble Court noted that the pension sanctioning authority failed to notice that the Medical Board had not given any reasons for its opinion. After referring to various relevant provisions, the Apex Court disagreed with the opinion of the Medical Board in this case.

31. A Bench of three Hon'ble Judges of the Apex Court in *Veer Pal Singh v. Secretary, Ministry of Defence [(2013) 8 SCC 83]* held against the opinion of the Medical Board and authorities in denying disability pension to a former employee of Army. His case was rejected by the AFT and in the appeal the Hon'ble Supreme Court granted relief by directing the Respondents to refer the case to review Medical Board for re-assessing the medical condition of the Appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension. The learned SCGC heavily relied on this judgment of the Hon'ble Supreme Court pointing out that a Bench of higher strength adopted the course of directing re-assessment by a Review Medical Board when it found that the opinion of invalidating Medical Board was flawed. He therefore submitted that the same shall be the approach of the Tribunal when the opinion of the

Medical Board is found unacceptable for any reasons. The following observations of the Hon'ble Supreme Court in this judgment are relevant in the context of the case under consideration: -

> *"10. Although, the courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasised is that the opinion of the experts deserves respect and not worship and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.*
>
> *17. Unfortunately, the Tribunal did not even bother to look into the contents of the certificate issued by the Invaliding Medical Board and mechanically observed that it cannot sit in appeal over the opinion of the Medical Board. If the learned members of the Tribunal had taken pains to study the standard medical dictionaries and medical literature like The Theory and Practice of Psychiatry by F.C. Redlich and Daniel X. Freedman, and Modi's Medical Jurisprudence and Toxicology, then they would have definitely found that the observation made by Dr Lalitha Rao was substantially incompatible with the existing literature on the subject and the conclusion recorded by the Invaliding Medical Board that it was a case of schizophrenic reaction was not well founded and*

required a review in the context of the observation made by Dr Lalitha Rao herself that with the treatment the appellant had improved. In our considered view, having regard to the peculiar facts of this case, the Tribunal should have ordered constitution of Review Medical Board for re-examination of the appellant.

18. In Controller of Defence Accounts (Pension) v. S. Balachandran Nair on which reliance has been placed by the Tribunal, this Court referred to Regulations 173 and 423 of the Pension Regulations and held that the definite opinion formed by the Medical Board that the disease suffered by the respondent was constitutional and was not attributable to military service was binding and the High Court was not justified in directing payment of disability pension to the respondent. The same view was reiterated in Ministry of Defence v. A.V. Damodaran. However, in neither of those cases, this Court was called upon to consider a situation where the Medical Board had entirely relied upon an inchoate opinion expressed by the psychiatrist and no effort was made to consider the improvement made in the degree of illness after the treatment.

19. As a corollary to the above discussion, we hold that the impugned order as also the orders dated 14-7-2011 and 16-9-2011 passed by the Tribunal are legally unsustainable. In the result, the appeal is allowed. The orders passed by the Tribunal are set aside and the respondents are directed to refer the case to the Review

Medical Board for reassessing the medical condition of the appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension."

32. *Union of India and others v. 3989606 P, Ex-Naik Vijay Kumar [(2015) 10 SCC 460]* is a case in which the Hon'ble Supreme Court considered an appeal from the order of AFT whereby the Tribunal allowed the claim for disability pension from the date of invalidation of the applicant. The said case also was governed by Pension Regulations of 1961 and Entitlement Rules of 1982. The Hon'ble Supreme Court noticed that assessment by the Medical Board is recommendatory in nature and is subject to acceptance by the Pension Sanctioning Authority. Further it was observed that the opinion of the Medical Board by itself cannot confer right upon the employee to claim disability pension. In the said case the disability of the former employee was assessed at 60% by the Medical Board and the person claimed benefit of 75% disability, applying the rounding off also. The authorities were of the view that the employee suffered injuries while on leave and the disabilities were neither attributable to nor aggravated due to military service. The Hon'ble Apex Court set aside the order

passed by the AFT, relying on the opinion of the Medical Board and held against the employee.

33. In *No.14666828M EX CFN Narsingh Yadav v. Union of India and others [(2019) 9 SCC 667]* Hon'ble Apex Court considered a case in which the invalidating Medical Board found the Appellant suffering from schizophrenia and to have 20% disability was refused disability pension. Medical Board's opinion was that the disability was not attributable to or aggravated by military service. No relief was granted by the AFT. The Hon'ble Supreme Court agreed with the findings of the Medical Board and found that no infirmity warranting reconsideration by a Review Medical Board was found in the report of the Medical Board. The following observation of the Hon'ble Supreme Court is germane in the present context:

> *"21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the report of the invaliding Medical Board."*

34. *Union of India and others v. Ex.Sep.R.Munusamy [AIR 2022 SC 3449]* is a case in which the Hon'ble Supreme Court considered an appeal arising from the judgment and order of AFT allowing disability pension. The employee concerned was discharged on administrative grounds and his disability was assessed at 20% at the time of discharge. However, the disability was held to be not attributable to/nor aggravated by the military service. The Tribunal, directed the authorities to convene a re-survey/review medical board. The said order was complied with and the re-survey medical board did not opine that the disability was either caused or aggravated by military service. The Hon'ble Supreme Court disagreed with the procedure adopted by the AFT and held that the findings of the Tribunal were improper. The order of the Tribunal was set aside. The relevant findings of the Hon'ble Supreme Court in this case are extracted hereunder: -

> *"16.The Tribunal does not sit in appeal over the expert opinion of a Medical Board holding that the disability suffered by a soldier was not attributable to or aggravated by military service. There was no reason for the Tribunal not to accept the opinion of the Release Medical Board held on 30th January 1997 and no reasons have been disclosed. In the absence of any finding of infirmity in the decision making process adopted by the Release Medical Board, there could be no reason to direct the*

constitution of a Resurvey Medical Board, and in any case, not after two decades from the date of discharge.

25. What exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed and the connection between the cause/aggravation of the ailment/disability and the conditions and/or requirements of service. The Tribunal patently erred in law in proceeding on the basis of a misconceived notion that any ailment or disability of a soldier, not noted at the time of recruitment but detected or diagnosed at the time of his discharge or earlier, would entitle the soldier to disability pension on the presumption that the disability was attributable to military service, whether or not the disability led to his discharge, and the onus was on the employer to prove otherwise, which the Appellants in this case had failed to do.

26. In this case, since the discharge was on administrative grounds and not medical grounds, there was no occasion for the Release Medical Board or for that matter, the Resurvey Medical Board to give any opinion as to cause and nature of the ailment of the Respondent of "Right

> *Partial Seizure with Secondary Generalisation 345" as diagnosed, whether such disability/ailment could reasonably have gone undetected at the time of appointment of the Respondent, in terms of Rule 14(b) of the Entitlement Rules. The Appellants did not get the opportunity to show that the ailment was not caused or aggravated by military service in terms of Rule 14(b) and 14(c) of the Entitlement Rules referred to above. The claim of the Respondent for disability pension should not have been entertained and that too, 20 years after his discharge."*

35. We shall now refer to the judgments cited by Mr.James Abraham, the learned counsel for the Respondent. He placed reliance on the judgment in *Union of India (UOI) and others v. Angad Singh Titaria [(2015) 12 SCC 257].* The Hon'ble Supreme Court was considering an appeal arising from AFT, Chandigarh Bench in this case. Though the composite disability of the employee in the case was assessed at 60% the Medical Board was of the view that the disabilities were constitutional in nature and not attributable to or aggravated by service in Air Force. At this stage it is necessary to note that the relevant Regulation involved in the case was the Pension Regulations for Indian Air Force, 1961. The Entitlement Rules of 1982 was however applicable in the case. After analysing the provisions of the Entitlement Rules the Hon'ble Supreme Court noticed that there was lack of proper

application of mind by the Medical Board as it simply recorded a conclusion that the disability was not attributable to service, without giving a reason as to why the diseases were not deemed to be attributable to service. Therefore, the Hon'ble Supreme Court upheld the order of the Tribunal by which disability pension was directed to be granted.

36. Another judgment cited by the learned counsel for the Respondent is *Veer Pal Singh v. Secretary, Ministry of Defence [(2013) 8 SCC 83] which* was relied on by the learned SCGSC also. The Apex Court noted in this judgment that the Tribunal did not even bother to look into the contents of the certificate issued by the invaliding Medical Board and mechanically observed that it cannot sit in appeal over the opinion of the Medical Board. The Hon'ble Court observed that in the peculiar facts of the case the Tribunal should have ordered constitution of Review Medical Board for re-examination of the Appellant. The Respondents were directed to refer the case to a Review Medical Board.

37. *Union of India (UOI) and others v. Rajbir Singh [2015 (12) SCC 264]* is another judgment relied on by the learned counsel for the Respondent. The Hon'ble Supreme Court considered a batch of

appeals filed by the Union of India challenging similar orders passed by AFT in various cases granting benefit of disability pension. The Hon'ble Supreme Court considered the provisions of the Regulations of 1961 and Entitlement Rules of 1982 in this case. Judgment in *Dharamvir Singh's* case was also extensively referred to and quoted. The Hon'ble Supreme Court held as follows in this case:-

> *"**14.** The legal position as stated in Dharamvir Singh case is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. 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.*
>
> ***15.** From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed*

forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. 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. There may indeed be cases, where the disease was wholly unrelated to military 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. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension.

16. *Applying the above parameters to the cases at hand, we are of the view that each one of the respondents*

> *having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants."*

38. We notice that the relevant legal provisions which were applicable to the disputes embroiled in all cases referred to above were the Pension Regulations of 1961 and Entitlement Rules of 1982. Neither side has cited any judgment exclusively dealing with the scope and ambit of Entitlement Rules and Pension Regulations of 2008. We note that the Hon'ble Supreme Court has summed up the scope of the relevant provisions of the Regulations of 1961 and Entitlement Rules of 1982 in some judgments. We shall now refer to the enunciation of

conclusions made by the Hon'ble Supreme Court in three different judgments.

Summing up principles by the Hon'ble Supreme Court

39. In *Dharamvir Singh* (supra) the Hon'ble Supreme Court summed up the resultant position of a conjoint reading of the provisions of the Regulations of 1961 and Entitlement Rules of 1982 as also the Guide to Medical (Military Pension) 2002 as follows:-

> "*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). "

40. In *Sukhwant Singh v. Union of India through the Secretary, Ministry of Defence and others [(2012) 12 SCC 228]* the Hon'ble Supreme Court examined an order passed by the AFT, Chandigarh Bench. The Tribunal, in its order, had summed up the principles laid down by the Hon'ble Supreme Court in various judgments. Summation by the Tribunal regarding attributability was extracted by the Hon'ble Supreme Court in this judgment. The principles summed up have been quoted with approval in paragraph 5 of the judgment. The same are extracted hereunder:-

> *"5. .....*
> *(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.*
>
> *(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the*

legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate

> *basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.*
>
> *(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."*

The same principles were noted again by the Hon'ble Supreme Court in some of the later judgments including *Union of India and another v. Ex Naik Surendra Pandey [2015 (2) SCALE 361]* and *Union of India and others v. 3989606 P, Ex-Naik Vijay Kumar (supra).*

41. In *Union of India (UOI) and others v. Rajbir Singh (supra)* the Hon'ble Supreme Court delineated principles emerging from a conjoint and harmonious reading of Rules 5, 9 and 14 of Entitlement Rules of 1982 as follows:-

"10. From a conjoint and harmonious reading of Rules 5, 9 and 14 of the Entitlement Rules (supra) the following guiding principles emerge:

(i) 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;

(ii) in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;

(iii) the 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; and

(iv) if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated."

Impact of the variations in the Entitlement Rules of 2008

42. In the light of the above enunciation of principles by the Hon'ble Supreme Court regarding the provisions of Regulations of 1961 and

Entitlement Rules of 1982 in various judgments no further elucidation and elaboration regarding the scope of their provisions is required. However, as we noted in the earlier part of this judgment, there are some significant differences between the Entitlement Rules of 2008 and the previous set of Rules of 1982. We have noted those differences in paragraph 17 above. Cumulative effect of the changes made while framing the Rules of 2008, according to us, is to extenuate the burden which was heavily upon the establishment in the matter of deciding the eligibility for disability pension. At the risk of repetition, we may state again for the purpose of clarity that under the Rules of 1982, in the event of an employee being discharged on medical grounds due to any deterioration in his health except for the physical disabilities noted and recorded at the time of entry to service the presumption was strongly in favour of the employee. However, corresponding provision in the 2008 Rules has altered the position considerably and now Rule 5 provides that the mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service. It is clarified that the medical test at the time of entry is not exhaustive and many dormant, hereditary and congenital diseases may not be detected in the medical test.

43. Another significant change is in the matter of onus of proof. Under the Rules of 1982, by virtue of Rule 9, it was emphatically provided that the claimant shall not be called upon to prove the conditions of entitlement. However, Rule 7 under the 2008 Rules is couched in a totally different fashion. (See paragraph 13). Plain reading of the provisions of Rule 7 reveals that the onus is now not entirely on the establishment. The employment of the word 'ordinarily' in the opening part of the Rule is very significant. The Hon'ble Supreme Court explained the meaning of the word 'ordinarily' as follows in *State of A.P. v. V.Sarma Rao and others [(2007) 2 SCC 159]* :-

> *"19.……..*
> *The expression "ordinarily" may mean "normally", as has been held by this Court in Kailash Chandra v. Union of India and Krishan Gopal v. Prakashchandra but, the said expression must be understood in the context in which it has been used. "Ordinarily" may not mean "solely" or "in the name", and thus, if under no circumstance an appeal would lie to the Principal District Judge, the court would not be subordinate to it. When in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a case where there is no exception. It never means "primarily". In Kailash Chandra v. Union of India it is stated: (SCR p. 379).*

> *"This intention is made even more clear and beyond doubt by the use of the word 'ordinarily'. 'Ordinarily' means 'in the large majority of cases but not invariably'."*

44. In *Union of India and another v. Hemraj Singh Chauhan and others [(2010) 4 SCC 290]* the Hon'ble Supreme Court explained the meaning of the word 'ordinarily' thus: -

> *"41. The word "ordinarily", of course, means that it does not promote a cast-iron rule, it is flexible (see Jasbhai Motibhai Desai v. Roshan Kumar at SCC p. 682, para 35). It excludes something which is extraordinary or special (Eicher Tractors Ltd. v. Commr. of Customs at SCC p. 319, para 6). The word "ordinarily" would convey the idea of something which is done "normally" (Krishan Gopal v. Prakashchandra at SCC p. 134, para 12) and "generally" subject to special provision (Mohan Baitha v. State of Bihar at SCC p. 354)."*

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 Hon'ble Supreme Court in *Union of India and others v. 3989606 P, Ex-Naik Vijay Kumar* (supra) 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.

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.

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 Hon'ble 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

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 Hon'ble Supreme Court dealing with the opinions of Medical Boards.

50. On a detailed analysis of the factual aspects, approach adopted by the Hon'ble Apex Court in the cases referred to above and principles laid down, we are of the view that the following conclusions can be arrived at:-

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 the 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.

51. In view of the above conclusions, we are of the view that the AFT will not be justified in rejecting the opinion of the Medical Board in a casual manner in any case. Unless the Tribunal is satisfied that the procedure adopted by the Board was not in accordance with the Rules or binding Guidelines or that the Board failed to take into account any relevant materials or facts or has not given reasons for its conclusions, the Tribunal will not be justified in rejecting the opinion of the Board. If the Tribunal finds the opinion of the Board unacceptable for any such reasons it will be proper on the part of the Tribunal, except in

cases where there is long delay, to refer the applicant seeking disability pension for examination by a Review Medical Board. Substituting the opinion of the Medical Board with its own conclusions by the Tribunal may not be a proper approach. It is also be noted by the Tribunal that the opinion of the Medical Board is only recommendatory and is subject to acceptance by Pension Sanctioning Authority. Therefore, the Tribunal shall bear in mind that the opinion of the Medical Board does not confer any indefeasible right on the employee to claim disability pension.

Conclusion regarding the case at hand

52. Coming to the facts of the case at hand the learned Tribunal proceeded to grant the relief disagreeing with the opinion of the Release Medical Board. The Tribunal has rejected the opinion of the Board which was accepted by the authorities and upheld concurrently by the appellate authorities without any specific finding regarding any flaw with respect to the procedure followed by the Board or non-consideration of any relevant aspects. The Tribunal after referring to its own earlier order in a case proceeded to hold that the applicant is entitled to the relief. The Tribunal has relied on Regulation 423(a) of the Regulations for the Medical Services of the Armed Forces also in

this regard. The Respondent herein retired from service on 31 April 2016. His case is therefore governed by Regulations and Rules of 2008. We notice that the Tribunal has not analysed the case keeping in mind the significant changes incorporated in the Entitlement Rules of 2008. We do not find any specific reference to the opinion given by the Release Medical Board in the case of the Respondent in the impugned order. Reasons specific to the facts of the case for differing with the views of the Medical Board as well as appellate authorities are also wanting in the impugned order. We are therefore of the view that the matter requires fresh consideration by the Tribunal. We therefore set aside the impugned order and remit the O.A. for fresh consideration by the AFT in the light of the discussions and findings in this judgment. As the case is of the year 2018, the Tribunal may endeavor to dispose it as early as possible.

53. W.P.(C) is disposed of as above.

Sd/-

NITIN JAMDAR
CHIEF JUSTICE

Sd/-

S.MANU
JUDGE

skj

APPENDIX OF WP(C) 8414/2024

PETITIONERS' EXHIBITS

Exhibit P1	**TRUE COPY OF THE O.A.457/2018 FILED BY THE APPLICANT, BEFORE THE AFT KOCHI ALONG WITH ITS ANNEXURES.**
Exhibit P2	**TRUE COPY OF THE REPLY FILED BY THE RESPONDENTS IN THE ABOVE O.A.**
Exhibit P3	**TRUE COPY OF THE ORDER DATED 04.08.2022 OF THE ARMED FORCES TRIBUNAL, REGIONAL BENCH AT KOCHI IN O.A.457/2018.**