

W.P.(C). No. 19501/2026

: 1 : CNR : KLHC010113252026



2026:KER:52646

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. NATARAJAN

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

THURSDAY, THE 16TH DAY OF JULY 2026 / 25TH ASHADHA, 1948

WP(C) NO. 19501 OF 2026

AGAINST THE ORDER DATED 12.01.2024 IN OA NO.1 OF 2023 OF ARMED
FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

PETITIONERS/RESPONDENTS IN OA:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF DEFENCE, SOUTH
BLOCK, NEW DELHI, PIN – 110 011.
- 2 THE CHIEF OF THE ARMY STAFF, INTEGRATED HEAD QUARTERS (ARMY),
SOUTH BLOCK, NEW DELHI, PIN – 110 011.
- 3 OIC RECORDS, MADRAS ENGINEER GROUP, C/O 56 APO, PIN – 900 493.
- 4 PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS)
OFFICE OF THE PCDA (P), DRAUPATI GARH, ALLAHABAD,
PIN – 211 014.

BY ADV SMT.M.S.KIRAN, SENIOR PANEL COUNSEL

RESPONDENTS/APPLICANTS IN OA:

K SUB MAJ (HONY CAPT) MOHANRAJ TK
AGED 56 YEARS
S/O. LATE M.K. KUTTAN PILLAI, THAMARASSERIL HOUSE, MULAKUZHA,
KARAKAD P.O., CHENGANNUR, KERALA, PIN – 689 504

BY ADV SHRI.RATHEESH B.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14.07.2026, THE COURT ON 16.07.2026 DELIVERED THE FOLLOWING:

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'C.R'

K. NATARAJAN & JOHNSON JOHN, JJ.

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Dated this the 16th day of July, 2026

JUDGMENT

Johnson John, J.

This writ petition is filed by the Union of India and its officials challenging the order dated 12.01.2024 of the Armed Forces Tribunal, Regional Bench, Kochi, in O. A. No 1 of 2023.

2. The above Original Application was filed by the respondent against the rejection of his claim for disability pension and as per the impugned order, the Tribunal directed petitioners 3 and 4/respondents 3 and 4 to obtain composite degree of disability of the applicant's diseases: (1) Type II Diabetes Mellitus at 20%; and (2) Primary Hypertension at 30% 'assessed from a competent Medical Board/authority/advisor at the earliest and at any rate within three months from date of receipt of a copy of the order and also to issue a Corrigendum PPO granting disability element of pension to the respondent/applicant for his invaliding diseases as per the composite disability to be quantified by the competent Medical Board/authority from the date of his discharge and pay arrears within six months from

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the date of receipt of a copy of the order, and failing which it was directed that unpaid amounts would carry interest at the rate of 9% per annum.

3. Heard Sri. M. S. Kiran, the learned Senior Panel Counsel appearing for the petitioners and Sri. Ratheesh B., the learned counsel for the respondent.

4. The learned Senior Panel Counsel appearing for the petitioners argued that the Tribunal was not justified in recording a finding against the Medical Board opinion that disability is neither attributable to nor aggravated by military service.

5. But, the learned counsel for the respondent cited the decisions of the Honourable Supreme Court in ***Sukhvinder Singh v. Union of India*** [(2014) 14 SCC 364], ***Bijender Singh v. Union of India and Ors.*** [2025 SCC OnLine SC 895] and ***Dharamvir Singh v. Union of India*** [(2013) 7 SCC 316] and argued that 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 and that the onus of proof is not on the claimant (employee), the corollary is that

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onus of proof that the condition for non-entitlement is with the employer.

6. Part VII of the Release Medical Board opinion is extracted below for convenient reference:

“PART VII

OPINION OF THE MEDICAL BOARD

1. Please endorse diseases/disabilities in chronological order of occurrence

Disability	Attributable to Service (Y/N)	Aggravated by service (Y/N)	DETAILED JUSTIFICATION
(a) TYPE-II DIABETES MELLITUS (E 11.9)	No	No	Disability denied attributable/aggravated to mil. service due to lifestyle modification as per Para 26 CH VI of GMO (MP) 2008.
(b) PRIMARY HYPERTENSION (I 10.0)	No	No	Disability denied attributable/aggravated to mil. service due to lifestyle modification as per Para 43 CH VI of GMO (MP) 2008.
(c) CVA EMBOLIC INFRACT (RT) TEMPORAL LOBE (I 63.53)	No	No	Disability denied attributable/aggravated to mil. service as per 14 days charter duties dated 23 Oct 2020 and as per Para 14 CH VI of GMO (MP) 2008.
(d) GRADE I SPONDYLOLISTHEISI L5 OVER S1 WITH UNDISPLACED FRACTURE OF SPONOUS PROCESS OF L4-L5 & SACRAL ALA (RT) (M 43.16)	No	No	Disability denied attributable/aggravated to mil. service as per injury Report (IAFY-2006) dt. 21 Oct 2019 and C of I dt. 05 Oct 2019
(e) FRACTURE SACRAL ALA (RT) (S 32.10)	No	No	Disability denied attributable/aggravated to mil. service as per injury Report (IAFY-2006) dt. 21

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			Oct. 2019 and C of I dt. 05 Oct. 2019
(f) ACUTE SHOULDER DISLOCATION (LT) S 43.00)	No	No	Disability denied attributable/aggravated to mil. service as per injury Report (IAFY-2006) dt. 21 Oct 2019 and C of I dt. 05 Oct 2019
(g) PUBIC DIASTASIS (M62.08)	No	No	Disability denied attributable/aggravated to mil. service as per injury Report (IAFY-2006) dt. 21 Oct. 2019 and C of I dt. 05 Oct. 2019

7. The Tribunal passed the impugned order after analysing Regulation 423 of the Regulation for Medical Services for Armed Forces, 1983, wherein it is *inter alia* stated that a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for 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 arisen during service.

8. The Honourable Supreme Court, in ***Dharamvir Singh*** (supra), after referring to relevant provisions of the Regulations and the Rules, summed up the principles in the following manner:

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

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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)."

9. The Honourable Supreme Court, in ***Sukhvinder Singh v. Union of India*** [(2014) 14 SCC 364], held that any disability not recorded at the time of recruitment must be presumed to have been

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caused subsequently and unless proved to the contrary to be a consequence of military service and held thus in paragraph 11:

“11. We are of the persuasion, therefore, that *firstly*, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the armed forces; any other conclusion would tantamount to granting a premium to the Recruitment Medical Board for their own negligence. *Secondly*, the morale of the armed forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. *Thirdly*, there appear to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. *Fourthly*, wherever a member of the armed forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. *Fifthly*, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

10. The Honourable Supreme Court, in ***Rajumon T.M. v. Union of India and others*** [2025 SCC OnLine SC 1064], held that if the opinion of the medical board is devoid of reasons, the act of the authority based on mere opinion *sans* reasons can certainly be questioned.

11. The Honourable Supreme Court, in ***Maniben Maganbhai Bhariya v. Distt. Development Officer, Dahod*** [(2022) 16 SCC 343], held thus:

“55. When social security legislations are being interpreted, it always has to be interpreted liberally with a beneficial interpretation and has

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to be given the widest possible meaning which the language permits, known as beneficial interpretation. When a statute is meant for the benefit of a particular class and if a word in the statute is capable of two meanings i.e. one which would preserve the benefits and one which would not, then the former is to be adopted.”

12. In the present case, it is undisputed that no note of any disease has been recorded at the time when the respondent enrolled for military service. Therefore, in the absence of any medical opinion or records to indicate that the disease could not have been detected on medical examination prior to acceptance for service, the respondent is entitled for the benefit of the statutory presumptions, especially in view of sub clause (c) of Regulation 423 of the Regulations, 1983.

13. In ***Union of India and others v. Parashotam Dass*** [(2025) 5 SCC 786], the Honourable Supreme Court held that where there is denial of fundamental right or jurisdictional error or error apparent on the face of record, the High Court can interfere by exercising the jurisdiction under Article 226 of the Constitution of India and that self-restraint by High Court in exercise of jurisdiction under Article 226 of the Constitution is distinct from putting embargo on High court in exercising such jurisdiction.

14. Regarding the disability mentioned in column Nos. 1 and 2 in Part VII of the Release Medical Board opinion, the detailed justification shown for not considering the said disability as neither attributable to

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nor aggravated by military service, is that the same is a lifestyle disease.

15. In **Rajumon T.M** (supra), the Honourable Supreme Court held that mere fact that at the time of onset of the disease, military service was being rendered in peace locations or that the disease is a lifestyle disorder would not by itself be a sufficient reason to deny the attributability of the disease to military service.

16. It is a core responsibility of the Government and society to protect the morale of the soldiers, as soldiers are the ones who risk their lives for the country. A soldier is a blank cheque written to the country for any amount up to and including his life. Article 33 of the Constitution of India allows the Government to restrict or abrogate some rights of the members of the armed forces in order to ensure proper discharge of duties and maintenance of discipline and in such a situation, the contention that the disease is a lifestyle disorder cannot be accepted as a sufficient reason to deny the claim for disability element of pension.

17. The extraordinary jurisdiction under Article 226 of the Constitution of India can be invoked only to prevent manifest injustice and the same cannot be used to correct every error or mistake in the order of the Tribunal. Therefore, we find no reason to disagree with the finding of the Tribunal that the respondent is entitled to get disability

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element of pension for his invaliding diseases—Type- II Diabetes Mellitus and Primary Hypertension and that composite disability of the aforesaid diseases has to be assessed by a competent Medical Board. Therefore, in the absence of any illegality or jurisdictional error in the order under challenge, the writ petition is liable to be dismissed

In the result, the writ petition is dismissed.

sd/-

**K. NATARAJAN,
JUDGE.**

sd/-

**JOHNSON JOHN,
JUDGE.**

Rv

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APPENDIX OF WP(C) NO. 19501 OF 2026

PETITIONERS' EXHIBITS:

- | | |
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| Exhibit P1 | A TRUE COPY OF THE ORIGINAL APPLICATION, DATED 21.12.2022, NUMBERED AS O.A.NO.1 OF 2023, FILED BY THE APPLICANT BEFORE THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI. |
| Exhibit P2 | A TRUE COPY OF THE REPLY STATEMENT IN O.A.NO.10F 2023 FILED BY THE PETITIONERS |
| Exhibit P3 | A TRUE COPY OF THE ORDER DATED 12.01.2024 IN O.A. NO.1 OF 2023 ISSUED BY THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI. |

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.S to Judge.

Rv