

W.P.(C) No.24696/2026 : 1 :

CNR : KLHC010508952026



2026:KER:63807

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. NATARAJAN

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

WEDNESDAY, THE 19TH DAY OF AUGUST 2026 / 28TH SRAVANA, 1948

WP(C) NO. 24696 OF 2026

PETITIONERS:-

- 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, AMC RECORDS C/O 56 APO, PIN – 900 450.
- 4 PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS) OFFICE OF THE PCDA (P). DRAUPATI GHAT, PRAYAGRAJ, PIN – 211 014.

BY ADV SRI.C.DINESH

RESPONDENTS:-

EX HAVILDAR BINU C., AGED 49 YEARS,
NO 13986570, S/O LATE CHELLAPPAN, BINU BHAVAN, MUTHUKULAM
SOUTH P.O. ALAPPUZHA DISTRICT, KERALA, PIN – 690 506.

BY ADVS.
SRI.T.R.JAGADEESH
SHRI.ADI NARAYANAN
SMT.MANASI JAGADEESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.08.2026, THE COURT ON 19.08.2026 DELIVERED THE FOLLOWING:

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K. NATARAJAN & JOHNSON JOHN, JJ.

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Dated this the 19th day of August, 2026

JUDGMENT

Johnson John, J.

The order of the Armed Forces Tribunal, Regional Bench, Kochi, dated 23.08.2023 in O. A. No. 242 of 2021 is under challenge in this writ petition filed by the Union of India.

2. As per the impugned order, the Tribunal directed the respondents to issue a corrigendum PPO granting disability element of pension to the applicant for the disability 'Primary Hypertension' at 30% for life with the benefit of rounding off to 50% from his date of discharge.

3. The respondent/applicant was recruited in the Indian army on 30.06.1993 and he was discharged from service on 30.06.2019 after 26 years of service and the Release Medical Board assessed the disability 'Primary Hypertension' at 30% for life and Dyslipidemia at 1-5% with a

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composite disability at 30% for life.

4. At the time of discharge, even though the applicant was in low medical category, the Release Medical Board considered his disabilities as neither attributable to nor aggravated by military service and therefore, he was not granted disability element of pension. After the rejection of the statutory appeals, the respondent filed the Original Application before the Tribunal for grant of disability pension and the Tribunal found that the disease 'Primary Hypertension' is aggravated by service conditions and therefore, the applicant is entitled to the disability element of pension for the disability 'Primary Hypertension' at 30% for life with the benefit of rounding off to 50% from his date of discharge.

5. Heard Sri. C. Dinesh, the learned Central Government Counsel appearing for the petitioners and Sri. Adi Narayanan, the learned counsel for the respondent.

6. The learned Central Government 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. But, the learned

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counsel for the respondent argued that in view of Regulation 423 of the Regulation for Medical Services for Armed Forces, 1983 ('Regulations, 1983' for short) and as per 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], 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 and 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 employee and that it is for the employer to prove that the disability is not attributable to or aggravated by military service.

7. Part V of the Release Medical Board opinion is extracted below for convenient reference:

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PART V OPINION OF THE MEDICAL BOARD
(Not to be communicated to the individual)

Cause/Relationship of the Disability with Service conditions or otherwise				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reason/Cause/ Specific condition and period in service
1. PRIMARY HYPERTENSION (I-10)	No	No	Yes	The onset of ID was in Feb 2016. As per service profile ID is detected in peace station and Ranchi (JH). Hence, ID is concluded neither attributable nor aggravated by military service
2. DYSLIPIDEMIA (E-78.4)	No	No	Yes	The ID is lifestyle metabolic disease not related to military service. Hence, ID is concluded neither attributable or aggravated by military service
Note: A disability "Not connected with service" would be neither Attributable nor Aggravated by service. (This is in accordance with instructions contained in 'Guide to Medical Officers (Mil Pension)-2008')				

8. The Honourable Supreme Court, in ***Sukhvinder Singh*** (*supra*), held that 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 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. ”

9. 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:

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).

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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).”

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 and that mere fact that at the time of onset of the disease, military service was being rendered in peace locations or that the

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disease is a lifestyle disorder would not by itself be a sufficient reason to deny the attributability of the disease to military service.

11. In the present case, there is no dispute that no note of any disease has been recorded at the time when the respondent enrolled for military service and 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.

12. In the Medical Board opinion, the reasons stated for the conclusion that the disability is neither attributable to nor aggravated by military service is that the onset of the ID was in peace station and that the ID is a lifestyle metabolic disease. But, Regulation 423(a) of the Regulations, 1983 and the decision of the Honourable Supreme Court in **Rajumon T.M.** (supra) would show that only because the onset of the disease was in a peace station or that the disease is a lifestyle disorder,

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the same cannot be accepted as sufficient reason to deny the attributability of disease to military service.

13. It is pertinent to note that the impugned order of the Tribunal is dated 23.08.2023 and the writ petition was filed only on 27.05.2024 and subsequently, the same was numbered only after condoning the representation delay of 606 days. Though there is no prescribed period of limitation for filing the writ petition under Article 226 of the constitution of India, it is well settled that the parties have to approach the court within a reasonable period. Unlike a statutory appeal, there is no strict statutory period of limitation for filing a writ petition. But, the exercise of courts' powers are entirely discretionary and therefore, it will be for the Court to decide, in the peculiar facts and circumstances of each case, whether it should exercise its extraordinary writ jurisdiction.

14. 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

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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.

15. There is a specific provision in the Armed Forces Tribunal Act, 2007 ('Act, 2007' for short) for filing appeal against the order of the Tribunal. Section 30 of the Act, 2007 reads thus:

“30. Appeal to Supreme Court.—(1) Subject to the provisions of section 31, an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal (other than an order passed under section 19):

Provided that such appeal is preferred within a period of ninety days of the said decision or order:

Provided further that there shall be no appeal against an interlocutory order of the Tribunal.

(2) An appeal shall lie to the Supreme Court as of right from any order or decision of the Tribunal in the exercise of its jurisdiction to punish for contempt:

Provided that an appeal under this sub-section shall be filed in the Supreme Court within sixty days from the date of the order appealed against.

(3) Pending any appeal under sub-section (2), the Supreme Court may order that—

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(a) the execution of the punishment or the order appealed against be suspended; or

(b) if the appellant is in confinement, he be released on bail:

Provided that where an appellant satisfies the Tribunal that he intends to prefer an appeal, the Tribunal may also exercise any of the powers conferred under clause (a) or clause (b), as the case may be.”

16. The period prescribed for preferring an appeal is ninety days from the date of the decision or order and admittedly, in this case, the petitioners have not preferred any appeal as provided under Section 30 of the Act. Therefore, it can be seen that the present writ petition was filed after the expiry of the statutory period prescribed for filing an appeal.

17. In **A. V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani and another** [AIR 1961 SC 1506 = 1961 KLT OnLine 1276 (SC)], the Hon’ble Supreme Court held thus:

“11. ...we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Art. 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted

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to urge that as a ground for the Court dealing with his petition under Art. 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the Judgment of the learned C. J. in Mohammad Nooh's case 1958 SCR 595 at pp. 605-607 : (AIR 1958 SC 86 at p. 93) with its reference to the right to appeal being lost "through no fault of his own" emphasizes this aspect of the rule."

18. In ***Rikhab Chand Jain v. Union of India*** [2025 (6) KLT 562 (SC)], the Honourable Supreme Court held that if a petitioner has disabled himself from availing a statutory remedy, the discretionary remedy under Article 226 of the Constitution of India cannot be exercised in his favour. In the said decision, it was also held as follows in paragraph 13:

"13. Although there is no period of limitation for invoking the writ jurisdiction of a High Court under Article 226, all that the courts insist is invocation of its jurisdiction with utmost expedition and, at any rate, within a "reasonable period". What would constitute "reasonable period" cannot be put in a straight-jacket, and it must invariably depend on the facts and circumstances of each particular case. Nonetheless, the period of limitation prescribed by an enactment for availing the alternative remedy provided thereunder in certain cases does provide indication as to what should be the "reasonable period" within which the writ jurisdiction has to be invoked."

19. In ***Lt Col K. C. Chandra Bhanu v. Union of India*** [2026 KHC OnLine 572], a Division Bench of this Court held that when the

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issue is finally decided by a competent forum and attained finality, the maxim 'interest reipublicae ut sit finis litium' would apply.

20. The Honourable Supreme Court in ***Assistant Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd.*** (2020

(3) KLT OnLine 1120 (SC), held as follows in para 15:

“15. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. v. Union of India & Ors. (2015 (3) KLT SN 30 (C.No.40) Guj. = AIR 2015 Guj. 97) and also of the Karnataka High Court in Phoenix Plasts Company v. Commissioner of Central Excise (Appeal), Bangalore (2013 (298) ELT 481 (Kar.)). The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also nonsuit the petitioner on the ground that alternative efficacious remedy is available and that be

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invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a threeJudge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.”

21. We find that the petitioners cannot reagitate an issue finally decided by a competent forum and attained finality, by filing an inordinately belated writ petition and that the discretionary jurisdiction under Article 226 of the Constitution of India cannot be exercised to resurrect a cause of action which has become unenforceable on account of law of limitation. We have no doubt that entertaining such a belated writ petition would be contrary to public policy that it is for the public good that there be an end to litigation and that the maxim *interest reipublicae ut sit finis litium* would apply and therefore, we are of the

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opinion that the writ petition is devoid of merit and 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. 24696 OF 2026

PETITIONER'S EXHIBITS:

Exhibit P1	TRUE COPY OF O.A 242/2021 ALONG WITH ANNEXURES FILED BY THE APPLICANT, BEFORE THE AFT KOCHI
Exhibit P2	TRUE COPY OF THE REPLY FILED BY THE RESPONDENTS IN THAT O.A.
Exhibit P3	TRUE COPY OF THE PENSION POLICY DATED 23/01/2018 ISSUED BY THE MINISTRY OF DEFENCE
Exhibit P4	TRUE COPY OF THE ORDER IN O.A 242/2021 DATED 23.08.2023

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P. S to Judge.

Rv