IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110

CWP-35754-2025
Date of Decision: 02.12.2025

UNION OF INDIA AND OTHERS

...Petitioners

Versus

NARESH KUMAR AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Vikas Sharma, Senior Panel Counsel,
for the petitioners.

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HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, the challenge is to the impugned order dated 31.01.2024 (Annexure P-1) passed by respondent No. 2-Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'Tribunal'), by which, respondent No.1 has been allowed the benefit of disability element of disability pension by rounding off the disability element from 20 % to 50 % for life w.e.f. 01.05.2020 keeping in view the facts and circumstances of the present case, on the ground that the same is perverse.

2. Learned counsel for the petitioners places reliance upon the report of Release Medical Board of respondent No. 1 to hold that though the disability of "Cad Single Vessel Disease Post PCI to Lad (Des)" assessed @ 20% for life has been found in respondent No.1, but the same has been held by the Release Medical Board to be 'neither attributable to Military Service

nor aggravated by the Military service'. Hence, the grant of benefit of disability pension to respondent No.1 by the learned Tribunal vide order dated 31.01.2024 (Annexure P-1) by placing reliance upon the judgment of Hon'ble Supreme Court of India in ***Dharamvir Singh versus Union of India and others*, (2013) 7 SCC 316,** is incorrect.

3. We have heard Learned counsel for the petitioner and have gone through the case file with her able assistance.

4. It is a conceded fact that respondent No.1 enrolled in Indian Army service of petitioner-UOI on 30.04.1994 and was discharged on 30.04.2020 after completing 26 years of service. It is also a conceded fact that at the time when respondent No. 1 joined the armed forces i.e. 30.04.1994, he was medically examined and was not found suffering from any such disease, on the basis of which, respondent No. 1 was ultimately discharged from service.

5. As per the principle settled by Hon'ble Supreme Court of India in ***Dharamvir Singh's*** case (supra), which has also been considered by the Tribunal in the impugned order dated 31.01.2024 (Annexure P-1), any officer serving in the Armed Forces, who had undergone the medical examination at the time of his/her selection and was not found suffering from any such disease at that time on the basis of which, he/she has been discharged from service, such an employee is entitled for the benefit of presumption in his/her favour as per Rule 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982' that the said disability has been contracted by the employee during his service career and is, thus, entitled for the benefit of disability pension. The relevant para Nos. 30 and 32 of the

judgment in ***Dharamvir Singh's*** case (supra) are as under:-

> "30. In the present case it is undisputed that no note of any disease has been recorded at the time of 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 absence of any note in the service record at the time of acceptance of joining of 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 paragraph 2 of the opinion of the Medical Board, which is as follows:
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> "(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 mil service"
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> 32. 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 'Entitlement Rules for Casualty Pensionary Awards, 1982', the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Genrealised 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."

6. Further, as per the settled principle of law settled by Hon'ble Supreme Court of India in ***Union of India and others vs. Ram Avtar***, **2014 SCC Online SC 1761**, any officer serving in the Armed Forces, who had undergone the medical examination at the time of his/her selection and was found fit, subsequently upon suffering a disability, is entitled to the benefit of disability pension by rounding off the same to 50% as the presumption would be that the disability suffered is attributable to the Military service. Relevant paras of the judgment in ***Ram Avtar's*** case (supra) are as under:-

> "4. By the present set of appeals the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No. 1(2)/97/D(Pen-C) issued by the Ministry of Defence,

Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard learned counsel for the parties to the lis.

6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of rounding-off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension."

7. Further, as per the recent judgment of the Hon'ble Supreme Court of India in ***Bijender Singh versus Union of India and others, 2025 SSC OnLine SC 895,*** the same issue has been considered again and it has been held that proving that disability is not attributed to military service is upon employer and report of Medical Board cannot be accepted especially when no disability was detected at the time of entry into service, relevant paras are as under

> ***"46.*** *Referring back to the impugned order dated 26.02.2016, we find that the Tribunal simply went by the remarks of the Invaliding Medical Board and Re-Survey Medical Boards to hold that since the disability of the appellant was less than 20%, he would not be entitled to the disability element of the disability pension. Tribunal did not examine the issue as to whether the disability was attributable to or*

> *aggravated by military service. In the instant case neither has it been mentioned by the Invaliding Medical Board nor by the Re-Survey Medical Boards that the disease for which the appellant was invalided out of service could not be detected at the time of entry into military service. As a matter of fact, the Invaliding Medical Board was quite categorical that no disability of the appellant existed before entering service. As would be evident from the aforesaid decisions of this Court, the law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the member suffered from any particular disease, the presumption would be that the member got afflicted by the said disease because of military service. Therefore the burden of proving that the disease is not attributable to or aggravated by military service rest entirely on the employer. Further, any disease or disability for which a member of the armed forces is invalided out of service would have to be assumed to be above 20% and attract grant of 50% disability pension.*
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> ***47.*** *Thus having regard to the discussions made above, we are of the considered view that the impugned orders of the Tribunal are wholly unsustainable in law. That being the position, impugned orders dated 22.01.2018 and 26.02.2016 are hereby set aside. Consequently, respondents are directed to grant the disability element of disability pension to the appellant at the rate of 50% with effect from 01.01.1996 onwards for life. The arrears shall carry interest at the rate of 6% per annum till payment. The above directions shall be carried out by the respondents within three months from today."*

8. Learned counsel for the petitioner has not been able to dispute the said proposition of law having been settled by the Hon'ble Supreme Court of India in ***Dharamvir Singh's*** case (supra), ***Ram Avtar's*** case (supra) as well as ***Bijender Singh's*** case (supra).

9. Keeping in view the settled principle of law settled in ***Dharamvir Singh's*** case (supra), ***Ram Avtar's*** case (supra) and ***Bijender***

Singh's case (supra) as well as the facts and circumstances of the present case that at the time of selection, respondent No. 1 was medically examined and was found fit in all respects and it was only after respondent No. 1 rendered service for 26 years with the petitioner-UOI, he was found to be suffering from the "Cad Single Vessel Disease Post PCI to Lad (Des)*"* along with the fact that no cogent evidence/material or detailed medical record has been brought on record to show this Court that the disability is not attributable to military service. That being so, the said disability has to be attributed to the military service and the report of Medical Board cannot take away the right of respondent No.1 to claim the benefit of disability pension.

10. No other argument has been raised.

11. Hence, in the absence of any perversity being pointed out in the impugned order dated 31.01.2024 (Annexure P-1) either on the basis of the facts or the settled principle of law, no ground is made out for any interference by this Court in the facts and circumstances of the present case.

12. Accordingly, the writ petition is dismissed.

13. Pending application(s), if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

December 02, 2025
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Whether speaking/reasoned Yes
Whether reportable No