

2024:PHHC:146100-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-594-2024
Reserved on: 25.09.2024
Pronounced on: 08.11.2024

Rashem SinghPetitioner

Versus

Union of India and OthersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Rajesh Sehgal, Advocate
for the petitioner.

Mr. Maneesh Bali, Senior Panel Counsel
for the respondent – UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside the relevant part of the order dated 29.01.2019 (Annexure P-1) as passed by the learned Armed Forces Tribunal concerned, whereby, the benefit of disability pension has been restricted to 25.06.2014 instead of the date of his discharge from service i.e. 10.03.2002.

Factual Background

2. The petitioner was enrolled in the Army on 03.01.2001 in a fit medical condition and was invalided out from service on 10.03.2002 in low medical category P(5) under Rule 13 (3) item (iv) of Army Rule 1954. During the course of his service, he incurred the disability of

2024:PHHC:146100-DB



“Generalized Seizure (345) Neuro Cysticercosis” which was assessed as less than 20% (i.e. 15-19%) for life by the Invaliding Medical Board held on 31.12.2001.

3. The disability element claim of the petitioner was rejected by the Competent Authority vide letter dated 01.02.2004, thus on the ground that the supra disability was neither attributable to nor being aggravated by rendition of military service and the degree of disablement was assessed as less than 20% (i.e. 15-19%). Thereafter, the petitioner filed first appeal against the rejection of his disability pension claim. The said appeal was rejected by the respondents vide order dated 23.02.2007. Further, the petitioner filed second appeal before the authorities, which was also rejected vide letter dated 07.05.2008.

4. Feeling aggrieved, the petitioner filed Original Application No. 1453 of 2016 before the Armed Forces Tribunal concerned for the grant of disability pension from the date of his discharge from service i.e. 10.03.2002. The said O.A. became disposed of vide order dated 29.01.2019. The operative part of the order is extracted hereinafter.

*It is undisputedly proved that at the time the applicant entered into military service, this type of disease/disability did not exist. The disability accrued to him during the course of military service. So by virtue of the principle laid down in **Dharamvir Singh's case (Supra)**, the said disability can be attributed/aggravated by military service.*

Now a question arises whether a personnel suffering from the disability of less than 20% is entitled to the disability pension or not.

The question has been answered by the Hon'ble Supreme Court in Civil Appeal No 5605 of 2010, Sukhwinder Singh Vs UOI and

2024:PHHC:146100-DB



others” decided on 25.06.2014. In para 11 whereof, the following observations were made :-

“Thirdly, there appear to be no provisions authorising the discharge or invaliding out of service where the disability is below 20 percent and seems to us to be logically so.

Fourthly, whenever 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 20%.

Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of 50 percent disability pension.”

On the basis of the above case law of the Hon’ble Supreme Court, we are of the opinion that the disability which has been assessed by the RMB at less than 20% (i.e. 15.-19%) can be deemed to be 20% and rounded off to 50%.

Now the question arises as to from which date the applicant is entitled to the disability pension on the basis of the above rate. In this reference it is to be seen as to on which date his right to get disability pension @ at less than 20% was recognized. His right was recognized or accrued on the date pronouncement of judgement by the Hon’ble Supreme Court in Sukhwinder Singh’s case (supra).

5. Aggrieved from the afore part of the relevant order, whereby the benefit of disability pension has been restricted from the date of pronouncement of the verdict by the Apex Court in **Sukhwinder Singh's case (supra)**, the petitioner has filed the instant writ petition.

Inferences of this Court.

6. Though the judgment passed by the Hon'ble Apex Court in case titled as **Sukhwinder Singh Vs. UOI and others** (supra) was passed on 25.06.2014. However, the benefits thereof cannot be denied to the present petitioner merely on the ground that it has only prospective effect and that it has no retrospective effect. The reason being that even if assumingly no explicit retrospective effect became assigned to the verdict (supra), wherein, in para No. 11 thereof, para

2024:PHHC:146100-DB



whereof has been extracted above, a declaration of law is made to the effect, that even if the soldier is discharged on account of the assessed percentage of disability being below 20 %, yet the said percentage of disability being construable to be @20% and further the same being rounded off to 50%. Resultantly the beneficent effect of the said declaration of law, thus is also to be endowed to the soldiers, irrespective of the date of pronouncement of the said judgment. If the said endowment is not made, thereupon, to the considered mind of this Court, an arbitrary cut off date would become employed inter-se those soldiers who became discharged prior to the making of the verdict (supra) thus with those soldiers who became discharged subsequent to the passing of the verdict (supra).

7. It appears that it was even not the intrinsic tenor and spirit of the supra declaration of law passed by the Apex Court in the verdict (supra), as such, the declaration of law is required to be employed even vis-a-vis the present petitioner.

8. Even otherwise since the declaration of law made in verdict (supra) makes the said declaration to be an expostulation of law in rem, thereby, the expostulation of law in rem, as made in verdict (supra) also makes the thereunders conferred benefits vis-a-vis the defence personnel concerned, to, *prima facie*, also entitle the concerned, thus to at any time seek the granting of the endowments as made thereunders, and that too, in the fullest complement, as spelt thereunders, besides irrespective of the bar, if any, of delay and laches.

2024:PHHC:146100-DB



Final Order of this Court.

9. In aftermath, this Court finds merit in the writ petition, and, with the above observations, the same is allowed.
10. The impugned order, as passed by the learned Armed Forces Tribunal concerned, is modified to the extent that the petitioner in terms of the verdict rendered in **Sukhwinder Singh's case** (supra) is entitled to disability pension from the date of his discharge i.e. 10.03.2002 alongwith the benefits of rounding off to 50 % against 20%.
11. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

08.11.2024
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No