

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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2024:PHHC:029458-DB

CWP-4908-2024**Date of Decision:- 01.03.2024**

**Union of India Ministry of Defence, through its Secretary to Government of
India, New Delhi and others**

...Petitioners

Vs.

Ex Subedar Palwinder Singh and another

...Respondents

**CORAM:- HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS.JUSTICE SUDEEPTI SHARMA**

Present: Mr.Rohit Verma, Advocate
for the petitioners.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Heard learned counsel for the petitioner.
2. This writ petition has been preferred by the petitioner assailing the order dated 30.09.2022 (Annexure P-1) passed by the learned Armed Forces Tribunal whereby original application filed by the concerned Ex-Subedar has been allowed and the petitioners have been directed to allow entitlement of disability pension to the respondent from the date of discharge.
3. Learned counsel for the petitioners submits that the disability is granted on the ground of Left MCA Stroke (163.51), Diabetes Mellitus type II (E11.9) and Dyslipidemia (E78.5) which comes to 55% disability as per medical board. Learned counsel for the petitioners submits that the said disease is life style disease and could not be considered for the purpose of grant of disability pension and same cannot be said to be attributed to or

aggravated by military service. He further submits that the judgment passed by Hon'ble Apex Court in case **Dharamvir Singh Vs. Union of India and others, 2013(7), SCC, 316** would have no application to the facts of the present case. Learned counsel also submits that an appeal was preferred, relating to a case where disability pension was granted by the Armed Forces Tribunal to the Hon'ble Apex Court where the concerned persons were discharged with disability of MCA Stroke as well as for Diabetes.

4. We have considered the submissions.

5. The scope of appeal available under the Armed Forces Tribunal Act is different from the scope available of reference under Articles 226 and 227 of the Constitution of India. Firstly, this Court finds that the disability has been found to have occurred in service. It is difficult to lay down the law that the said disease would not have attributable to or aggravated by military service and in Dharamvir's case (supra), the three Judges' Bench of the Supreme Court of India has dealt this issue at length. The aspect relating to the disease which may occur during the course of service in Armed forces which are naturally attributed to and aggravated by the military service. It cannot be said that suffering from heart stoke is not attributable or aggravated by the military service. Learned counsel for the petitioner has not been able to show that in the present case, the said respondent suffered the said stroke on account of any congenital reasons.

6. The scope of Articles 226/227 of the Constitution of India has been well discussed by the Apex Court in **Dharamvir Singh's case (supra)** wherein the Apex Court has held as under:

31. Paragraph 1 of 'Chapter II' – "Entitlement : General Principles" specifically stipulates that certificate of a constituted medical authority vis-à-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.

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 "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.

33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease 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.

"Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions.

34. In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31st July, 2009 in LPA No.26 of 2004 and uphold the decision of the learned Single Judge dated 20th May, 2004. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be liable to pay interest as per order passed by the learned Single Judge. No costs.

7. Keeping in view the above and considering that the judgment passed by the concerned Armed Forces Tribunal cannot be said to be in any manner perverse or it cannot be said to have been passed on account of jurisdictional error. We do not deem it appropriate to interfere with the

same, the writ petition is found to be default of merits and is accordingly, dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

01.03.2024
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(SUDEEPTI SHARMA)
JUDGE

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