

2024:PHHC:163234-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-6715-2023
Reserved on: 27.11.2024
Pronounced on: 29.11.2024

Manphool SinghPetitioner

Versus

Union of India and othersRespondents

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

Argued by: Mr. Navdeep Singh, Advocate with
Ms. Srishti Sharma, Advocate
for the petitioner.

Mr. Anil Chawla, Sr. Panel Counsel
for the respondent(s)/UOI.

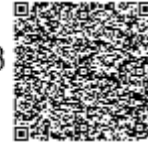
SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside the relevant part of the order dated 16.08.2021 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, whereby the arrears of the grant of disability element of disability pension to the petitioner, have been restricted w.e.f. 29.02.2020.

Factual Background

2. The petitioner was enrolled in the Indian Army on 24.02.1980 in a fit state of health. During the course of service, he incurred a disability namely 'Chronic Obstructive Pulmonary Disease'

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said disability was assessed by the Invaliding Medical Board to be less than 20 % (15% - 19%) for two years besides the same being aggravated by military service.

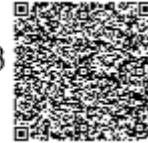
3. Since the disability of the petitioner was assessed as less than 20%, therefore, he was not granted any disability pension and was only granted service element for life.

4. Thereafter, petitioner filed O.A. No. 908 of 2015 before the learned Tribunal concerned, rather for grant of the disability element of disability pension to him. During the course of pendency of the said O.A., a Re-Assessment Medical Board was carried out to assess the current percentage of the disability of the petitioner besides to assess the percentage of disablement for the intervening period.

5. The re-assessment Medical Board, examined the petitioner and assessed his disability to be 50 % for life w.e.f. 29.02.2020 and declared the same to be aggravated by military service. Further, the Medical Board assessed his disability as less than 20 % (15%-19%) for the intervening period i.e. w.e.f. 31.07.1997 till 28.02.2020.

6. The learned Tribunal concerned vide order dated 16.08.2021, partly allowed the O.A. (supra) and held the petitioner entitled to the disability element of disability pension @ 75 % as against 50% with effect from the date of latest Re-survey Medical Board, that is, 29.02.2020.

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7. Aggrieved from the afore part of the relevant order, whereby the petitioner was granted disability pension w.e.f. 29.02.2020, he has filed thereagainst the instant writ petition.

Inferences of this Court.

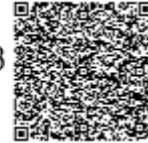
8. For the reasons to be assigned hereinafter, the instant writ petition is allowed.

9. Primarily, since the disability (supra) assessed by the Release Medical Board was less than 20 %, but when became declared to become **aggravated by military service**. Therefore, when, in the verdict rendered by the Apex Court in case titled as **Sukhwinder Singh Vs. Union of India and Ors.**, reported in **(2014) 14 SCC 364**, an expostulation of law is made that if a soldier is invalided from service on account of the release medical board declaring the said entailed disability being less than the required 20 %, therebys, yet on invaliding the soldier from service, the said percentum is deemed to be 20 %.

10. Further, the learned Tribunal concerned in the impugned verdict has held that the **Sukhwinder Singh's case (supra)** is applicable in those cases wherein the assessment of the disability is for life and not for a particular period, therebys, the applicant is not entitled for disability pension for the intervening period.

11. The above reasoning put forth by the learned Tribunal, does not appears to be just and reasonable. The reason for concluding so becomes sparked from the factum that a closest reading of the expostulation of law made in **Sukhwinder Singh's case** reveals that the

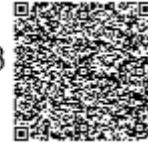
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benefit thereof is to be assigned to the soldier irrespective of the fact that the percentum of disability entailed upon the invalided soldier is less than 20 %. Though, initially the invaliding board assessed the percentum of disability in the range of less than 20 % for two years and asked for a re-survey medical board being conducted two years subsequent theretos. Moreover, though the re-survey medical board as became conducted pursuant to the orders passed by the Tribunal in the O.A. (supra) in February, 2020, thus declared that the health of the petitioner had further deteriorated after his invalidation from service and assessed the disability entailed upon the present petitioner to be 50% for life w.e.f. 29.02.2020, thereby when at the time of discharge, the petitioner incurred a disability which was less than 20% and when the said degree of disablement increased with the passage of time. Therefore, the distinction made by the Tribunal concerned, as to applying the ratio decidendi of the verdict (supra) only to those cases where the disability entailed upon an Army personnel was assessed for life and not for a particular period, does not seem to be correct. Even otherwise, since the degree of disablement entailed upon the petitioner was enhanced with the passage of time, thereby also the expostulation of law in the verdict (supra) is fully applicable to the facts at hand.

12. Moreover, reiteratedly when initially the disability entailed upon the present petitioner was declared to become aggravated by rendition of military service, thereby, the effect of the above, is that, the expostulations of law in Sukhwinder Singh's case (supra)

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whereby, it has been declared that irrespective of the disability being declared by the invaliding board to be less than 20 %, yet it is deemed to be 20 %, were fully applicable to the present petitioner and the benefits thereof were to be endowed to him in the fullest complement.

13. Moreover, since the declaration of law made in verdict (supra) makes the said declaration to be an expostulation of law in rem, therebys, 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.

14. Therefore, the Tribunal concerned had erred in not applying the principles favourably vis-a-vis the petitioner herein, as became propounded in the verdict (supra) rendered by the Apex Court. In sequel, the order made by the Tribunal concerned requires interference.

Final Order of this Court.

15. In aftermath, this Court finds merit in the writ petition, and, with the above observations, the same is allowed.

16. The impugned verdict, as passed by the learned Armed Forces Tribunal concerned, is modified to the extent that the petitioner is entitled to disability pension @ 20 % besides the same to be rounded

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off @ 50 % w.e.f. 01.01.1996 and thereafter @ 50% besides the same rounding off @75% for life w.e.f. 29.02.2020.

17. The arrears of the disability pension be released to the petitioner alongwith interest @ 7 % per annum.

18. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

29.11.2024
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

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