

2024:PHHC:145570-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-8824-2020
Reserved on: 25.09.2024
Pronounced on: 08.11.2024

Gurcharan SinghPetitioner

Versus

Union of India and OthersRespondents

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

Argued by: Mr. G.S.Ghuman, Advocate
for the petitioner

Mr. Rohit Verma, Advocate
for the respondents.

SURESHWAR THAKUR, J.

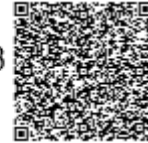
1. Through the instant writ petition, the petitioner herein prays for modifying the order dated 06.12.2018 (Annexure P-1) as passed by the learned Armed Forces Tribunal concerned.

Factual Background

2. The petitioner was enrolled in the Army on 28.01.1971 in a fit medical condition and was invalided out from service on 29.07.1978. During the course of his service, he incurred the disability of “*Neurosis (Depressive Reaction)*” which was assessed @ 20% for two years by the Invaliding Medical Board.

3. The disability element claim of the petitioner was rejected by the Competent Authority thus on the ground that the supra disability

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was neither attributable to nor being aggravated by rendition of military service

4. Feeling aggrieved, the petitioner filed Original Application No. 257 of 2016 before the Armed Forces Tribunal concerned for the grant of disability element of disability pension. The said O.A. became disposed of vide order dated 06.12.2018. The operative part of the order is extracted hereinafter.

Considering the law laid down by the Hon'ble Supreme Court and also the attendant circumstances, the rejection of the claim of the Applicant is set aside and the Applicant is thus held entitled to disability element of disability pension @ 20% from 29.07.1978 to 28.07.1980 subject to verification and the arrears are directed to be released by the Respondents within a period of three months from the receipt of a certified copy of this order by the counsel for the Respondents/OIC Legal Cell, failing which the arrears shall carry an interest @8% from the date of this order.

Since the disability was assessed for two years only, therefore Re-Assessment Medical Board of the applicant shall be held within three months from the date of this order and the applicant shall make himself available. In case he is still found disabled in the Re-Assessment Medical Board to be held now, in that case the arrears, if any, shall be restricted to three years only prior to the filing of the present O.A i.e. 01.02.2016.

5. Thereafter, respondent No. 4 vide PPO No. D001022019 dated 24.07.2019 had granted disability element @ 20 % from 30.07.1978 till 29.07.1980. Further, the re-survey medical board has adjudged the degree of disablement @ 40 % for life w.e.f. 30.07.1980 and accordingly respondent No. 4 vide PPO No. DCORR014462019

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dated 17.01.2020 granted disability element @ 40% w.e.f. 30.07.1980 to 31.12.2015 and @50% w.e.f. 01.01.2016 for life in terms of the law laid down by the Apex Court in its verdict rendered in case titled as **Union of India Vs. Ram Avtar**, reported in **2014 SCC Online 1761**.

Submissions of the learned counsel for the petitioner.

6. At the outset, the learned counsel for the petitioner refers to Regulation No. 183 of Pension Regulation 1961 Part-1, contents whereof are extracted hereinafter.

Amount of disability pension

183. The disability pension consists of two elements viz. service element and disability element, which shall be assessed as under:-

(1) Service element

(a)	Where the individual has rendered sufficient service to earn a service pension i.e. actual service is 15 years or more 20 years or more in the case of NCs (E)	(i)	Equal to normal service pension relevant to the length of qualifying service actually, rendered, plus a weightage of 5 years as given in Regulation 136 (a) or 146.
(b)	Where the individual has not rendered sufficient service to qualify for a service pension	(i)	If the disability was sustained while on flying or parachute jumping duty in an aircraft or while being carried on duty in an aircraft under proper authority: The minimum service pension appropriate to his rank (see regulation 180) and group, if any
		(ii)	In all other cases: Equal to the service pension as determined per Regulation 136 (a) or 146, but it shall in no case, be less

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		<i>than 2/3rd of the minimum service pension admissible to the rank/pay Group. It shall be further subject to a minimum of Rs.375/- p.m.</i>
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Xxxxxxx

(2) Disability element

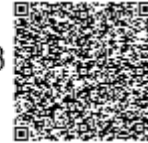
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7. The learned counsel for the petitioner submits that in terms of the above regulation, the petitioner was also entitled to service element of the disability pension w.e.f. 30.07.1978 for life @ 2/3rd qua the rank held by him i.e. of sepoy. Therefore, the PPO (Annexure P-11) is liable to be amended modified, inasmuch as, the service element of disability pension be also granted to the petitioner w.e.f. 30.07.1978 for life.

8. Secondly, he submits that the re-survey medical board has assessed his disability @ 40 % w.e.f. 30.07.1980 for life and in terms of the verdict rendered by the Apex Court in case titled as **Union of India Vs. Ram Avtar (supra)**, he was entitled for roundings off the disability element of disability pension from 40% to 50% w.e.f. 01.01.1996 for life, whereas, the said benefit being granted to him w.e.f. 01.01.2016.

9. Further, in support of his arguments, he has placed reliance upon a verdict rendered by the Apex Court in case titled as **Davinder Singh Vs. Union of India and Others**, to which **Civil Appeal No.9946 of 2016** is assigned. The relevant paragraphs of the said verdict are extracted hereinafter.

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“This appeal arises out of an Order dated 04.11.2011 passed by the Armed Forces Tribunal, Regional Bench, Chandigarh whereby O.A. No. 1289 of 2011 has been allowed in part and the appellant held entitled to the benefit of rounding off w.e.f. 01.01.1996. The Tribunal has however directed that the appellant shall be entitled to claim arrears subject to adjustment of the amount already paid to him only for a period of three years prior to the filing of the application moved by him before the Tribunal. It is that part of the order only which has been assailed before us in the present appeal.

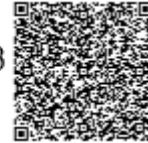
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We accordingly allow this appeal and modify the order passed by the Tribunal to the extent that the appellant shall also on the analogy of the order passed by the Tribunal in Jai Singh's case supra be entitled to arrears payable to him by reason of rounding off of disability pension w.e.f. 01.01.1996 with interest @ 8% p.a. subject to adjustment of any amount already received by him for the said period. We are told by learned counsel for the respondent that the appellant has already received the benefit of arrears w.e.f. 01.01.1996 to 01.07.2009. If that be so, arrears will be confined only to the period that has not already been paid for. No costs.”

10. For the reasons to be assigned hereinafter, the arguments addressed by the learned counsel for the petitioner, are accepted and the writ petition is allowed.

11. A perusal of Regulation No. 183 of Pension Regulation 1961, regulation whereof have been extracted above, would reveal that the disability pension consists of two elements viz. service element and

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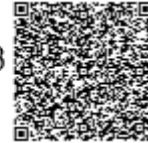


disability element and also prescribes the procedure for calculation of the same. Initially the invaliding medical board adjudged the disability of the petitioner for two years and held the disability of the petitioner as being neither attributable to nor aggravated by rendition of military service. However, the learned Tribunal concerned in terms of the law laid down by the Apex Court in judgment rendered in case titled as ***Dharamvir Singh Vs. Union of India***, reported in **(2013) 7 SCC 316**, held the disability of the petitioner as being attributable to or being aggravated by rendition of military service and further ordered for conducting of re-survey medical board of the petitioner. Thereafter, the re-survey medical board held the disability of the petitioner @ 40 % for life and the respondent concerned granted disability pension to him.

12. Since the verdict (supra), as passed by the learned Tribunal concerned, remains un-assailed on the part of the Union of India, therebys, the verdict (supra) acquires binding and conclusive effect, therebys, the argument raised by the respondent, that the present petitioner was invalidated on account of his showing his unwillingness to serve in the Armed Forces, but necessarily also requires rejection.

13. Moreover, once the petitioner after making of the binding and conclusive verdict (supra) has been declared to become entitled to disability pension on the grounds (supra), therebys, in terms of the regulations (supra), the petitioner was also required to be endowed the benefit of service element of the disability pension, whereas, the same

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has been untenably denied to him. Therefore, the said denial warrants annulment.

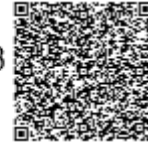
14. Secondly, since in terms of the judgment rendered by the Apex Court, in case titled as '**Union of India Vs. Ram Avtar**', reported in **2014 SCC Online 1761**, wherein, a declaration is made to the extent, that the benefit of rounding off, rather has to become endowed to the concerned. Resultantly also thereunders an indefeasible right became vested in the petitioner for his seeking qua the apposite roundings off being made in his favour. The relevant paragraphs as occur in the verdict (supra) are extracted hereinafter.

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.

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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.

15. Further, in a judgment rendered by the Apex Court in case titled as **Davinder Singh Vs. Union of India and Others**, (supra) relevant paragraphs whereof have been extracted above, therein the order passed by the learned Armed Forces Tribunal restricting the arrears of rounding off to three years prior to the filing of the application, was set aside by the Hon'ble Supreme Court and the applicant therein was held entitled to the arrear of rounding off the disability pension w.e.f. 01.01.1996.

16. Thereby also since the legal issue already stands settled. Thereby, the respondent concerned, should have granted the disability pension @40% w.e.f. 30.07.1980 till 31.12.1995 and @ 50% for life w.e.f. 01.01.1996 instead of @ 40% w.e.f. 30.07.1980 to 31.12.2015 and @ 50% w.e.f. 01.01.2016 for life.

Final Order of this Court.

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

18. The impugned order, as passed by the learned Armed Forces Tribunal concerned, is modified to the extent that the petitioner is also entitled to the service element of the disability pension, thus for the period rendered by him in military service besides the petitioner is

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also granted the benefit of roundings off of his disability pension @50% for life w.e.f. 01.01.1996.

19. 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