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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-15151-2024
Date of Decision : 20.11.2024

UNION OF INDIA AND ORS.Petitioners

Versus

EX NK RAJ PAL AND ANR.Respondents

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

Argued by: Mr. Amit Arora, Advocate (Senior Panel Counsel)
for the petitioners/UOI.

Mr. Arshit Goel, Advocate
for respondent No. 1.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for the setting aside of the order dated 16.08.2021
(Annexure P-1), as passed by the learned Armed Forces Tribunal
concerned, whereby the claim of respondent No. 1 for the grant of
disability pension was allowed.

Factual Background

2. Respondent No. 1 was initially enrolled in the Parachute
Regiment on 17.08.1971 and was discharged from service on
31.05.1991. Thereafter respondent No. 1 was re-enrolled into the
Defence Services Corps (DSC) on 29.07.1991 and was discharged

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therefrom w.e.f. 31.07.2006 under the provisions of Army Rule 13 (3) item III (i), after rendering 15 years and 3 days qualifying service owing to permanent low medical category. At the time of discharge, respondent No. 1 was brought before the Release Medical Board, which declared his disability 'CATARACT BOTH EYES (OPTD)' as neither attributable to nor aggravated by military service and the degree of disablement was assessed @ less than 20 % (15% to 19% for two years).

3. The disability element claim of the respondent was rejected by the Competent Authority, thus on the ground that the supra disability was neither attributable to nor being aggravated by rendition of military service.

4. After a lapse of around twelve years, respondent No. 1 filed O.A., before the learned Armed Forces Tribunal concerned, wherebys he cast a challenge to the afore said rejection order. The said O.A., became allowed vide order dated 16.08.2021 (Annexure P-1). The operative part of the said order is extracted hereinafter.

*“9. The question has been answered by the Hon'ble Supreme Court in **Civil Appeal No. 5605 of 2010, Sukhwinder Singh Vs. UOI and Others**” decided on **25.06.2014**.....*

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10. 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 Medical Board at less than 20 % (i.e. 15-19%) can be deemed to be 20% and rounded off to 50 %. But in the instant case, the applicant

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discharged from service on 31.07.2006 and, thus, he is entitled to disability pension w.e.f. 25.06.2014 being the date of pronouncement of Sukhwinder's case (supra). The applicant shall be entitled to disability pension @ 50% in future.”

5. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Inferences of this Court.

6. Before proceeding to make an effective adjudication upon the present writ petition, a useful assistance for determining whether the befallment of any disease vis-à-vis any member of the defence personnel, but post his being enrolled in the army, despite at the initial stage, upon his becoming enlisted, as a member of the combatant defence establishment, rather the same remaining undetected, yet the apposite eruption, thus post enlistment hence being construable to be either congenital or being construable to become aggravated or being attributable to military service, thus is acquired, from, the principles set forth in the judgment rendered by the Hon'ble Apex Court, in case titled as ***Dharamvir Singh Vs. Union of India***, reported in ***(2013) 7 SCC 316***. The relevant paragraphs of the said verdict are extracted hereinafter.

29. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is

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assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

30. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

7. An incisive reading(s) of the above extracted principles, though pointedly declare, that when a disability becomes entailed upon any member of the combatant defence establishment, and which is to the extent of 20 % or over, thereupon, though any such disabled member is required to be invalided from the Army, but yet he is required to be assigned the benefit of disability pension.

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8. Nonetheless, the assignment of disability pension to any member of the combatant defence establishment, who becomes entailed with a disability in a quantum of 20 % or more, but imperatively requires a declaration from the Medical Board, rather candidly pronouncing that the said attained disability being attributable to or becoming aggravated by military service. The said declaration becomes enjoined by the *"Entitlement Rules for Casualty Pensionary Awards, 1982"* of Appendix-II (Regulation 173).

9. Furthermore, though thereins a presumption is assigned vis-à-vis the sound physical and mental health of any member of the defence establishment concerned, especially when at the stage of his becoming enrolled, there is no note or record about his becoming beset with any disease. Moreover, though thereins there is also a further presumption, that when any deterioration theretos, thus occurs subsequently, thereby the said happening of deterioration(s) or onsettings of any disease, rather is to be presumed to be a sequel of his rendering service as a member of the defence establishment. Imperatively, the onus for proving the non endowments qua benefits (supra) vis-à-vis the concerned, but is rested on the employer, and in case, the said onus remains un-discharged, thereupon, the claimant becomes entitled to receive disability pension. Moreover, all the facts and circumstances attendant to the rendition of service by the concerned, are to be closely scrutinized, thus for declaring whether the onset of any disease vis-à-vis the concerned, is a sequel qua renditions

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of military service and/or the same being aggravated by or being attributable to military service.

10. Be that as it may, therein becomes also set forth a further principle(s) that yet there can be denial of disability pension to the concerned, but only upon :

a) At the time of acceptance of the concerned in military service, some notings becoming recorded by the Medical Board vis-a-vis his being beset with a disease which however, becomes concluded to be yet not rendering him unfit to become enlisted.

b) Any further deterioration thereof, may also subsequently become concluded by the Medical Board, to not arise from rendition of military service nor being attributable to military service, rather the same being a congenital disease.

11. Further, if the medical opinion holds that the disease could not have been detected on medical examination of the concerned being made, thus prior to his becoming enlisted in service, thereupon, the same will not be deemed to have arisen during service, yet in the situation (supra), the Medical Board is required to state the reasons for so concluding.

12. Moreover, it is also declared in supra, that it is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II

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of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles".

13. Therefore, it has to be now determined whether in terms of the above principles, whether at the time of enlistment of the present respondent in the Army, thus after a preliminary medical examination being made vis-a-vis his health, thus a note became recorded about some disease besetting him and/or whether some note became appended that the said disease was in a dormant stage. Moreover, it is also required to be determined, from the facts at hand, whether there is a causal nexus inter-se the eruption of the disease, and/or the onsettings thereof, on to his person, thus post the enrollment of the present respondent taking place, vis-a-vis the active renditions by him of military service, wherebys, this Court may conclude that the onset of the disease but rather was a sequel of his rendering service in the Army and as such was attributable or became aggravated by his rendering military service.

14. In addition, it is also required to be gathered from the records, whether the Medical Board, did initially proceed to make a detailed incisive antecedental check, particularly appertaining to the advent of the disease, through employments of State of Art medical techniques, thus unveiling the block chain genetic connection, wherefroms, rather the disease became sourced. Moreover, if the said employment fails. Resultantly, therebys it may become concluded qua eruptions thereof, thus subsequent to the apposite enlistment taking

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place, rather was not congenital but owed its origin to rendition of military service besides it being attributable to or becoming aggravated by performance of military service. Contrarily, if the supra employed techniques at the stage of apposite enlistment taking place, thus by the Medical Board concerned, leads to a conclusion, that there are rather dormant incidences of any disease, but yet the said dormant disease not prohibiting the enlistment of any personnel in the army, navy or air force. Resultantly the subsequent active detection/eruption thereof, during the course of rendition of military service, but would naturally lead to a well conclusion by the Medical Board, that its active eruption but became sourced from an effective causal genetic connection whereby there would be denial of disability pension.

15. However, now in the said endeavour, this Court is required to be extracting the contents of the opinion, as became recorded by the release medical board.

Disability	Attributable to service	Aggravated by service	Not connected with service	Reason
'CATARACT BOTH EYES (OPTD)	No	No	Yes	It is a constitutional disorder.

16. A reading of the records reveals that at the time of the apposite enlistment taking place rather no note became made in terms of the principles (supra) declared by the Hon'ble Apex Court in case titled as *Dharamvir Singh Vs. Union of India (supra)* by the Medical Board, that some disease which however, did not forbid the present respondent, to become enlisted in the Army, did make its preliminary

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onsettings. If so, the declaration of law in judgment (supra) that therebys there is a presumption that the incurring of the said disease was a sequel of rendition of service, is required to be favourably endowed vis-a-vis the respondent. Though the said presumption is rebuttable but the onus to lead evidence to rebut the said presumption became cast upon the petitioner. However, the said cast evidence adducing discharging onus vis-a-vis the respondent, rather for cogently rebutting the said presumption, but naturally also did cast an onerous duty also upon the Medical Board, to engage itself in the endeavour of unearthing, through employments of the State of Art block chain genetic causal connection technique(s), wherebys it may became unraveled that the onsetting of the disease onto the army personnel, became sourced from antecedental genetic family history. Moreover, therebys it was also required to be stated in the medical opinion, that the disease but for a well formed reason rather was a congenital disease and became neither aggravated by nor became attributable to military service.

17. However, a reading of opinion (supra), discloses that it has been recorded in a stereo typed form and no reasons have been recorded to the extent (supra). Reiteratedly, since no evidence to rebut the presumption (supra) has been led by the petitioner, therebys, this Court is constrained to give no weightage to the opinion of the medical board, as extracted (supra). Conspicuously, therebys no credence can be assigned to the supra ill informed reason, besides therebys the onsetting

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of the disease cannot be said to be a sequel of antecedental genetic family history. Contrarily, it is required to be declared to arise from rendition of military service. In addition, it is required to be declared to be attributable or becoming aggravated by rendition of military service by the present respondent.

Further arguments of the learned counsel for the petitioners.

18. The learned counsel for the petitioners further submits, that the learned Tribunal failed to appreciate that respondent No. 1 was never invalided out of service on account of medical disability but was discharged from service, as having being placed in low medical category and on completion of the term of his engagement in the DSC, thus the provisions of Regulation 173 of the Pension Regulation for the Army, 1961 were not favourably attracted and as such, respondent No.1 was not entitled to grant of disability pension.

“173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over.

19. Consequently, it is argued that the reliance placed by the learned Tribunal upon the verdict rendered by the Apex Court in case titled as **Sukhwinder Singh Vs. Union of India and Ors.**, to which **Civil Appeal No. 5605 of 2010** became assigned, was a mis-placed reliance thereons, as the expostulation of law made therein, was

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bestowable only in case the soldier was invalided from service but was not applicable in case the soldier was discharged from service as having being placed in low medical category, besides on completion of the term of his engagement.

20. For the reasons to be assigned hereinafter, the above argument does not appeal to the judicial conscience of this Court and is rejected. Initially, for the reason since the disability (*supra*) assessed by the Release Medical Board was less than 20 %. Therefore, even though, in **Sukhwinder Singh's case (*supra*)** 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 %. Secondly, though therebys, it is imperative that on account of the disability (*supra*) entailed upon the soldier, thus he is unfit for being retained in the Army, wherebys, he is required to be invalided. Resultantly and reiteratedly, thus the invaliding of the soldier from service, but was the pre-requisite for the invalided soldier earning disability pension.

21. Be that as it may, even if the soldier is not invalided from service, but when the entailment of a disability, upon him, has been declared by this Court to become aggravated by rendition of military service, therebys, even though the said disability is less than 20 %. Therefore, as but a natural corollary thereto, the said percentum of disability is deemed to be upto 20 %, but irrespective of no order of

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invaliding the soldier from service being recorded. As such, irrespective of no order of invaliding the soldier from service rather being recorded, yet when the disability entailed upon him has been pronounced by the Release Medical Board to be less than 20 %, whereupon, in terms of the expostulation of law (supra) made in **Sukhwinder Singh's case (supra)**, rather therebys the said disability is deemed to be upto 20 % wherebys, the soldier was required to be imperatively invalided from service, but enigmatically, he has not been so invalided from service.

22. Nonetheless, in the larger interest of justice, if ultimately he has been permitted to be released/discharged from service, thus on having being placed in low medical category and/or on completion of the term of engagement, therebys, the said release from service, rather than his being invalided from service perforce, yet does not render the expostulation of law (supra) made in **Sukhwinder Singh's case (supra)**, to be inapplicable to him, as upon making the supra expostulation of law, to be ineffective to the present soldier, therebys gross injustice would become perpetuated vis-a-vis the present respondent. The reason for so stating becomes aroused from the factum, that if otherwise the soldier was unfit to be retained in service, therebys, he was naturally required to be bestowed the benefit of disability pension. The further reason for so concluding becomes also sparked, from the factum that since no adverse remarks became awarded to the present respondent, during the term of his serving in the DSC, whereupons, on the said disability becoming entailed upon him during

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his rendering service in the DSC, thus, he would not have been released, but yet merely on having being placed in low medical category, he has been discharged. Contrarily, rather an order qua his being invalided from service, but was required to become rendered. Therefore, when the DSC has released him from service, even merely on having being placed in low medical category, thus, not on account of his not being an able soldier, rather has so done, upon the Army untenably accepting his release merely on low medical category, therebys, the said release on low medical category, is construable to his being invalided from service, even without an order to the said effect becoming recorded.

23. Now, in case the above inference is not recorded thereupon, in the garb of the Army authorities rather releasing the soldier from the Army, merely on his being placed in low medical category besides this Court also validating the same. Resultantly therebys, despite his entailing supra disability, which has been declared by this Court to be attributable to military service and despite the fact that it is less than 20 %, besides despite the fact that the said percentum of disability is required in terms of the supra expostulation of law, to be construable to be upto 20 %, wherebys, an order of his being invalided from service but was required to be passed. Therefore, the Army Authorities have yet ill chosen to untenably seek theirs becoming relieved from the apposite onerous obligation, thus cast upon them, qua upon a soldier becoming entailed with disability (supra), thus his being

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bestowed with disability pension, through theirs rather than proceeding to make the imperative invalidings of the present respondent from service, theirs thus untenably releasing/discharge the soldier from service as having being placed in low medical category. In sequel, it appears that, the supra has ensued from the Army Authorities, reiteratedly untenably escaping the onerous statutory obligation cast upon them, to award to the present respondent the disability pension, which otherwise in terms of the supra expostulation of law, he became entitled to become so endowed.

24. Furthermore, a perusal of impugned order reveals, that the applicant was held entitled to disability pension w.e.f. 25.06.2014, which is date of the pronouncement of the verdict by the Apex Court in **Sukhwinder Singh's case (supra)**.

25. 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, prima facie, though the benefits thereof cannot be denied to the present respondent 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 whereof has been extracted hereinafter, a declaration of law is made to the effect, that even if the soldier is discharged on account of the assessed percentum of disability being below 20 %, yet the said per centum of disability being

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construable to be @20% and further the same being rounded off to 50%. Resultantly the beneficent effect of the said declaration of law, thus though is also *prima facie*, to be endowed to the soldiers, irrespective of the date of pronouncement of the said judgment. If the said endowment is not made, thereupons, *prima facie*, 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*).

*11. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. **Fourthly, wherever 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 twenty per cent.** Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.*

26. 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 respondent.

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27. Even otherwise 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.

28. Be that as it may, owing to the non making of any challenge to the afore at the instance of respondent No. 1, besides his also not seeking a declaration, that in terms of the supra in rem expostulations of law made in **Sukhwinder Singh's case (supra)**, thus he be bestowed the benefits thereof. Resultantly, this Court is constrained to after dismissing the writ petition uphold the verdict made by the Tribunal concerned.

29. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.

30. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

20.11.2024
kavneet singh

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