

2024:PHHC:166638-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-16171 of 2024
Reserved on: 13.11.2024
Pronounced on:29.11.2024

UNION OF INDIA AND ORS.Petitioners

Versus

ARMED FORCES TRIBUNAL AND ANOTHER ...Respondents

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

Argued by: Dr. Anju Sharma, Advocate,
for the petitioners-UI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for the setting aside of the order dated 12.09.2019
(Annexure P-1), as passed by the learned Armed Forces Tribunal
concerned, whereby the claim of respondent No. 2 for the grant of
disability pension was allowed.

Factual Background

2. Respondent No. 2 joined Army on 30.04.1982 in a fit state
of health and was discharged from service with effect from 31.08.2000.
Thereafter, respondent No.2 was re-enrolled into DSC on 20.02.2004
and was discharged therefrom on 31.12.2016 post rendering 12 years
and 315 days of service. During the course of his service, he incurred
the disability of CARCINOMA ORAL CAVITY-FLOOR OF MOUTH

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(OPTD). The said disability was assessed @ 30 % for life, by the release medical board.

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. Respondent No. 2 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 12.09.2019. The operative part of the said order is extracted hereinafter.

“The question now arises as to whether the applicant is entitled to the benefit of rounding off in this case by virtue of the judgment of the Hon’ble Supreme Court in Civil Appeal 418/2012 Union of India Vs Ram Avtar decided on 10-12-2014 and according to this judgment, the applicant is entitled to the benefit of rounding off. So, he is entitled to the benefit of disability pension @ 50% as against 30% for life.

The Original Application is, accordingly, allowed. The respondents are directed to calculate the arrears accordingly and to pay the same to the applicant within a period of three months from the date of receipt of a certified copy of this order by the learned counsel for the respondents/OIC, Legal Cell, failing which the arrears shall carry an interest @8% p.a. from the date of this order.”

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 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

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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

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member is required to be invalided from the Army, but yet he is required to be assigned the benefit of disability pension.

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

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onset of any disease vis-à-vis the concerned, is a sequel qua renditions of military service and/or the same being aggravated by or being attributable to military service.

10. Be that as it may, thereins 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, thereupons, 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

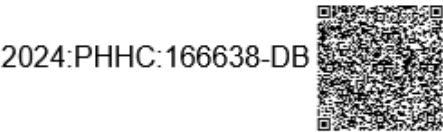
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of the "Guide to Medical (Military Pension), 2002 – "Entitlement: General Principles".

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 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 wherebys 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, the said is extracted hereinafter: -

Sr. No.	Disability	Relationship with service conditions	Reason for rejection
(a)	CARCINOM A ORAL CAVITY-FLOOR OF MOUTH	Not connected with military service.	Not related to military service due to onset of disease while on peace station. There is no close time association with field/HAA/active operational area. (ref Para 9-12, Chapter VI of GTMO 2008).

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

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Board, that some disease which however, did not forbid the present respondent, to become enlisted in the Army, did make its preliminary 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

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assigned to the supra ill informed reason, besides therebys the onsetting 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.

18. Moreover, though it is stated therein that the disease(s) occurred while service became performed by the defence personnel rather in a peace area, but since there is no express mandate in the relevant regulations, which makes the onsettings of the disease(s) in a peace area, to not beget a further sequel that as such, it's onsettings did not arise from the rendition of military service nor it became aggravated by rendition of the military service. In consequence, the lack of the said express mandate in the regulations, does constrain this Court to conclude, that even if the onsettings of the said disease(s) upon the present respondent thus occurred in a peace area, thereby, the said onsettings are to be declared to become aggravated by or being attributable to rendition of military service.

19. Further, 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 present respondent for his seeking qua the apposite roundings off being made in his favour.

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20. 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.

21. Therefore, the granting of the benefit of the apposite roundings off, in terms of the verdict (supra) rendered by the Tribunal concerned, also does not suffer from any illegality and is required to be upheld.

Further submissions of the learned counsel for the petitioners

22 The learned counsel for the petitioners submit that the learned Tribunal has failed to harmoniously interpret the relevant pension regulations, as the same are only applicable to calculate pension in case of personnel who are invalided out and not to those who are discharged on completion of terms of engagement or on some other grounds. The said Regulations do not mandate payment of both disability element and service element, as both are independent of each other and are separately granted on completion of respective conditions necessary to earn the same.

The relevant pension regulations are extracted hereinafter.

Pension Regulations for Army, 1961

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132. The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years.”

266. The grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same general rules as are applicable to combatants of the Army, except where they are inconsistent with the provisions of the regulations in this Chapter.”

Pension Regulations for Army, 2008

47. Unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years.”

173. The grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same Regulations as are applicable to Personnel below Officer Rank of the Army, except where they are inconsistent with the provisions of the Regulations in this Chapter.”

23. The learned Counsel for the petitioners submit that the Tribunal while allowing the O.A. (supra) had wrongly interpreted the provisions (supra) by taking Regulation 179 of the Pension Regulations for the Army, 1961 in isolation. The said regulation 179 is extracted hereinafter.

179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the

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accepted degree of disability is 20 percent or more, and service element if the degree of disability is less than 20 percent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

24. In the said regard, it is relevant to refer to a verdict rendered by the learned Tribunal concerned in case O.A. No. 324 of 2016 titled as **Om Parkash Guleria Vs. Union of India & Ors,** decided on 10.08.2018, wherein a similar question was put forth before the Tribunal concerned, that ***'whether the applicant who was in receipt of army pension at the time of his re-enrollment in the DSC, is entitled to the disability pension in the DSC service also?'*** The learned Tribunal concerned after considering the relevant regulations observed that in terms of Regulation 179 of the Pension Regulations for the Army, 1961, *the applicant was entitled to disability pension consisting of service element as well as disability element.* Further, the Tribunal also observed that *the mere fact that the applicant was in receipt of pension of his first spell of Army service does not disentitle him to become an able recipient of the component of disability pension thus for the second spell of service in the DSC.* The said verdict was challenged by the Union of India before the Hon'ble Supreme Court and the same was upheld by the Apex Court in its verdict rendered in case titled as **Union Of India & Ors. Vs. Om Prakash Guleria,** decided on 27 August, 2021, to which Civil Appeal No. (Diary No. 9346 of 2021) became assigned. The relevant paragraphs, as occur in the said verdict are extracted hereinafter.

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*“2. Besides the delay of 515 days in filing the appeal, which has not been satisfactorily explained, even on merits, we find no error in the judgment dated 10 August 2021 of the Armed Forces Tribunal. **The Tribunal has correctly construed the provisions of the pension regulations and the ultimate conclusion, entitling the respondent to the service element of the disability pension and the benefit of rounding off, does not suffer from any error.***

3. The Civil Appeal is, therefore, dismissed on the ground of delay as well as on merits.”

25. The learned counsel for the petitioners further submits that in the DSC service, a minimum service of 15 years was required rather to earn service pension, whereas, respondent No. 2 had rendered only 12 years and 315 days of service with the DSC whereafter, he was not granted further extension of service.

26. However, yet the said non rendition of the supra qualifying period of service in the DSC but would not dis-entitle the present respondent, to become an able recipient of the component of disability pension, thus consisting of both service element of DSC service as well as of the disability element. The reason being that, though the present respondent for his service in the DSC, thus being construed to be the apposite qualifying service, thereupon, though he was required to be completing the requisite period of 15 years, rather for his becoming entitled for service pension. However, when during the period of his serving in the DSC, he acquired a disability which has been stated to arise from rendition of military service or the same being attributable to or aggravated by military service, thereby the said entailment of a disability, thus during the spell of the present respondent serving in the

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DSC, whereafter he became debarred to become granted any further extension in the DSC service, rather when he was required to be invalided or discharged from service, as aptly done in the instant case.

27. If so, since the above impediment, did well estop the present respondent, rather to earn the requisite period of qualifying service, for therebys his becoming entitled for the apposite service pension. As such, when his service neither became extended nor when he become discharged on ground of some proven mis-conduct. Contrarily, when merely on account of disability (supra), as became entailed upon him, that too, evidently during the phase of his rendering military service, that he became precluded to complete the supra qualifying period, rather for his therebys earning service pension, for his rendering service in the DSC. Resultantly, the inability of the present respondent to complete the qualifying period of service in the DSC, thus cannot stand in the way of his becoming endowed the benefit of service pension, hence even for the term of 12 years and 315 days of service rendered in the DSC, reiteratedly merely on the premise that he had not completed the apposite 15 years of qualifying service in the DSC.

28. Therefore, in terms of the expostulations of law (supra) rendered by the Hon'ble Apex Court in case titled as **Union Of India vs Om Prakash Guleria**, respondent No. 2 was entitled for service element of DSC service besides of the disability element thereof, as aptly done by the Tribunal concerned.

Final Order of this Court.

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- 29. In aftermath, this Court finds no merit in the writ petition and with observations above, the same is dismissed.
- 30. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.
- 31. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

29.11.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No