



CWP-18533-2024

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-18533-2024**Reserved on: 18.11.2024****Pronounced on: 29.11.2024**

UNION OF INDIA AND OTHERS

.....Petitioners

Versus

NO.4444207M EX NK DALIP SINGH AND ANOTHER

...Respondents

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

Argued by: Mr. Ashish Chaudhary, Senior Panel Counsel
for the petitioners/UOI.

Mr. Sarwan Singh in person (son of respondent No.1.).

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner(s)/Union of India, prays for quashing/setting aside of the order dated 08.07.2019 (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. The facts in a nutshell are that respondent No.1 initially joined Indian Army (Corps of Signals) on 17.06.1965 and discharged from service on 31.01.1986 after rendering 20 years 07 months and 15 days of service. Thereafter, respondent No.1 was re-enrolled into the Defence Security Corps (DSC) on 18.12.1990 for a term of 10 years and he did not opt to count his former service towards DSC service.

3. After completion of his initial contractual term, he was granted an extension of service from 18.12.2000 to 19.08.2002 i.e. till



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the age of 55 years, thereafter, he was granted two years of enhanced service extension from 20.08.2002 till 19.08.2004. Respondent No.1 was placed below in low medical category P2 (Permanent) for diagnosis of ***“CATRACT RT EYE (OPTD.) 366”*** therefore, he was ineligible for being retained in enhanced service as per the conditions, therefore, Respondent No.1 was discharged from service w.e.f. 05.01.2023 upon completion of terms of his engagement after rendering 12 years and 194 days of qualifying service.

4. At the time of his discharge, respondent No.1 was brought before the Release Medical Board, which regarded his disability as *“Neither Attributable to nor Aggravated by Military Service”* and degree of disablement at 15-19% i.e. less than 20% for two years.

5. Thereafter, the claim of the disability pension was processed with PCDA(P). Since the disease was not connected with service and the degree of disablement was assessed at less than 20% by the Release Medical Board, the claim of disability pension in respect of respondent No.1 was rejected and the same was intimated to respondent No.1 with due intimation that he may prefer an appeal if he is not satisfied with the said decision.

6. Later on, respondent No.1 filed his first appeal on 02.03.2004, however, the said appeal was rejected by the competent authority vide order dated 29.06.2005.

7. Feeling aggrieved, respondent No.1 filed O.A., before the learned Armed Forces Tribunal concerned, wherebys he cast a challenge to the afore said rejection order(s). The said O.A., became



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allowed vide order dated 08.07.2019. The operative part of the said order is extracted hereinafter:-

*“The question has been answered by the Hon’ble Supreme Court in Civil Appeal No.5605 of 2010, **“Sukhwinder Singh Vs. UOI and others”**. The relevant Para 11 of which are as follows :-*

“Thirdly, there appear to be no provisions authorising the discharge or invaliding out of service where the disability is below 20 percent and seems to us to be logically so.

Fourthly, whenever 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 20%. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of 50 percent disability pension.”

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 RMB at less than 20% (i.e 15-19%) can be deemed to be 20% and rounded off to 50%.

*Now the question arises as to from which date the applicant is entitled to the disability pension on the basis of the above rate. In this reference it is to be seen as to on which date his right to get disability pension @ at less than 20% was recognized. His right was recognized or accrued on the date pronouncement of judgement by the Hon’ble Supreme Court in **Sukhwinder Singh’s case (supra)** which was decided on 25.06.2014.*

*Therefore, in our view, the applicant is entitled to the arrears of disability pension @ 50% w.e.f. 25.06.2014 on which date right was accrued to him by virtue of the pronouncement made by the Hon’ble Supreme Court in the case of **Sukhwinder Singh’s case (supra)**. ”*

8. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the



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petitioner(s)-Union of India has filed thereagainst the instant writ petition before this Court.

Inferences of this Court.

9. 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 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."

10. 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.

11. 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)*.

12. 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.

13. 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.

14. 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.

15. Moreover, it is also declared in supra, that 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".

16. 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



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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.

17. 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



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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.

18. 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.

OPINION OF THE MEDICAL BOARD

1. Casual Relationship of the Disability with Service Conditions or otherwise.				
<i>Disability</i>	<i>Attributable to service (Y/N)</i>	<i>Aggravated by service (Y/N)</i>	<i>Not connected with service.</i>	<i>Reason/Cause/Specific Condition and period in service.</i>
(a) CATRACT (RT.) EYE OPTD. 366	NO	NO	YES	Constitutional Disorder.

19. 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 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



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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), whereby it may become unraveled that the onset of the disease onto the army personnel, became sourced from antecedental genetic family history. Moreover, thereby 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.

20. 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, thereby, this Court is constrained to give no weightage to the opinion of the medical board, as extracted (supra). Conspicuously, thereby no credence can be assigned to the supra ill informed reason, besides thereby the onset 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 submissions of the learned counsel for the petitioners

21. 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



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discharged from service, as having being placed in low medical category, and/or was discharged in enhanced service as per the conditions of the policy, 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.”

22. 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 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.

23. 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 %, but when became declared to become aggravated by military service. 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



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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.

24. 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 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 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.

25. 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 discharged in enhanced service, therebys, the said release from service, rather than his being invalided from service perforce, yet does not render the



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(supra), to be inapplicable to him, as upon making the supra expostulation of law, to be ineffective to the present soldier, thereby 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, thereby, 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, whereupon, on the said disability becoming entailed upon him during 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 released. 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 in his enhanced service period, thus, not on account of his not being an able soldier, rather has so done, upon the Army/DSC untenably accepting his release merely on low medical category, thereby, 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.

26. 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



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therebys, despite his entailing supra disability, which is declared 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 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.

27. Furthermore, a perusal of impugned order reveals, that the applicant was held entitled to the arrears of disability pension @ 50 % 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)**.

28. 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



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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 above, 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 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, thereupon, *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).

29. 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 petitioner.

30. Even otherwise since the declaration of law made in verdict (supra) makes the said declaration to be an expostulation of law in rem, thereby, 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



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made thereunders, and that too, in the fullest complement, as spelt thereunders, besides irrespective of the bar, if any, of delay and laches.

31. 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.

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

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

29.11.2024
Anjal

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