

2024:PHHC:158868-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-31940-2024

Reserved on: 27.11.2024

Pronounced on: 29.11.2024

UNION OF INDIA AND ORS.

.....Petitioners

Versus

EX HAV SADHU RAM AND ANR.

....Respondents

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

Argued by: Mr. Dharm Chand Mittal, Advocate
for the petitioners/UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for the setting aside of the order dated 04.01.2023
(Annexure P-6), as passed by the learned Armed Forces Tribunal
concerned, wherebys, the claim of respondent No. 1 for the grant of
disability pension was allowed.

Factual Background

2. Respondent No. 1 was enrolled in the Indian Army on
12.02.1978 in a fit state of health and was discharged from service on
30.09.1996 having being placed in lower medical category BEE
(permanent) as he was found to be suffering from *Irritable Bowel*

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Syndrome – 563 (b) V-67” which was assessed by the Release Medical Board as less than 20% (15-19%) and was also declared to become aggravated by rendition of military service.

3. The disability element claim of the respondent was rejected by the Competent Authority, thus on the ground that the supra disability was assessed as less than 20% besides stating that the said disability was constitutional in nature and not related to service.

4. Thereafter, after a lapse of twenty one years from the date of rejection of his claim for disability element of disability pension, 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 04.01.2023. The operative part of the said order is extracted hereinafter.

“In view of the above, the orders under challenge in this application are neither legally nor factually sustainable. The same is accordingly quashed and set aside. Consequently, the applicant is held entitled to the disability element of disability pension from the day next to the date of discharge @ 20 % along with the benefit of rounding off @ 50 % treating the disability he incurred as 20%, as per the law laid down by the Supreme Court in C.A. No. 418 of 2012, titled Union of India and Others Vs. Ram Avtar, decided on 10.12.2014 for life.....”

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.

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Submissions of the learned counsel for the petitioners.

6. The learned counsel for the petitioners 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, 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.

7. 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.

Inferences of this Court.

8. For the reasons to be assigned hereinafter, the above argument does not appeal to the judicial conscience of this Court and is

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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 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.

9. 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**

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(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.

10. 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, 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 Army, whereupons, on the said disability becoming entailed upon him during his rendering service in the Army, 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 Army has released him from service, even merely on having being placed in low medical category, thus, not on account of

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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.

11. 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 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

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respondent the disability pension, which otherwise in terms of the supra expostulation of law, he became entitled to become so endowed.

12. Even otherwise since the declaration of law made in verdict made by the Apex Court in Sukhwinder Singh's case (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.

Final Order of this Court.

13. In aftermath, this Court finds no merit in the writ petition and with the observation(s) aforesaid, the same is dismissed.

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

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

29.11.2024
kavneet singh

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