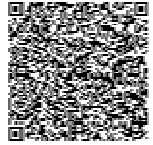


2025:PHHC:009114-DB



CWP-1161-2025 (O&M)

Date of Decision: 22.01.2025

Union of India and others

...Petitioners

v.

No.28992 T. Ex. Wg Cdr Satish Chander Yadav Retd. And another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present Mr. Ramesh Chand Sharma, Advocate for the petitioners.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioners have assailed the order passed by the Armed Forces Tribunal dated 14.05.2024, whereby the AFT has found the concerned respondent to be suffering from 37% for life disability on account of being suffering from CAD/ACS/IWMI/NSR/LVEF-55% CAG-SVD with BVD with RCA Ecstatic PCI to LCX and D1 (revised Diagnosis), ICD 125 Autoimmune Hepatitis (Fresh) ICD: K75.5. The element of disability pension was rejected by the petitioners vide order dated 20.04.2023.

The Tribunal after having taken into consideration the judgment passed by the Hon'ble Supreme Court in **Dharamvir Singh vs. Union of India (2013) 7 SCC 316**, **Union of India vs. Chander Pal (Three Judges Bench) in Civil Appeal No.2337/2009, decided on 18.09.2013**, **Union of India v. Rajbir Singh (2015) 12 SCC 264**, **Union of India v. Angad Singh**

Titaria (2015) 12 SCC 257, Union of India v. Manjeet Singh (2015) 12 SCC 275, Ex. Hav. Mani Ram Bharia v. Union of India, Civil Appeal No.4409/2011, decided on 11.02.2016, Satwinder Singh v. Union of India, Civil Appeal No.1695/2016, decided on 11.02.2016 and Ex. Gnr. Laxmanram Poonia vs. Union of India (2017) 4 SCC 697, allowed the application holding that the disability was occurred during the military service and aggravated on account of the same. The Tribunal has further rounded off the disability pension to 50% in terms of the judgment passed by the Hon'ble Supreme Court in Union of India and others vs. Ram Avtar 2014 SCC Online SC 1761, and directed for releasing the disability element of service in favour of the concerned respondent.

Learned counsel submits that since the Medical Board had not affirmed the same to be attributable, the learned Tribunal has committed an error.

3. We find that in Dharamvir Singh's case (supra), the Hon'ble Supreme Court held as under:-

“In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to

suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service...

Inspite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982', the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Generalised seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service...

As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I;

under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions.”

4. The aforesaid judgment was further reiterated by Three Judges Bench in Chander Pal’s case (supra), and held as under:-

“4. The opinion of the Medical Board to the two questions, (1) Was the disability contracted in service and (2) Was it contracted in circumstances which he had no control ? is in the affirmative. As regard the two other questions (3) and (5), namely, Is it directly attributable to conditions of service and If not directly attributable to service, was it aggravated thereby and if so, by what specific conditions ?, the answer given by the Medical Board is in the negative.

5. However, in the final opinion, no specific funding has been given and it is noted "instruction given to the percentage of disability individual by the 50% (fifty per cent).

6. Having regard to the above, the High Court cannot be said to have erred in observing that the Medical Board has not expressed any specific final opinion.”

5. The respondent No.1 suffered a massive heart attack was detected with two blocked arteries and stents were implanted and he further suffered liver damage. He was also detected with a case of autoimmune hepatitis while in service. It was also pointed out that the liver damage was

because of high dose of medicines given to him while under treatment in the hospital.

6. Taking into consideration the overall aspects, we do not find any error being committed by the Tribunal. Accordingly, the writ petition being devoid of any merit is dismissed.
7. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)

JUDGE

(MEENAKSHI I. MEHTA)

JUDGE

22.01.2025

rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No