

2025:PHHC:072684-DB

CWP-15584-2025 (O&M)
Date of Decision: 27.05.2025

Union of India and others

...Petitioners

Vs.

Ranbiri and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA**

Present: Ms. Geeta Singhwal, Sr. Panel Counsel for the petitioners.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The order dated 12.01.2024, passed by respondent No.2 - Armed Forces Tribunal, Chandigarh (for short 'AFT'), is under challenge before us in the present writ-petition whereby respondent No.2 – AFT held the widow (respondent No.1) to be entitled for the grant of Special Family Pension.

2. Learned counsel for the petitioners submits that the husband of respondent No.1 expired while in service due to heart attack and the cause of death is neither attributable to or aggravated by the military service and therefore, Special Family Pension could not have been awarded to respondent No.1.

3. Learned counsel for the petitioners has invited our attention to the Rules of Pension Regulations for Air Force, 1961, Part I which lays down the provisions for grant of the Special Family Pension as under:-

“Special Family Pension may be granted to the family of an individual if his death was due to or hastened by:-

(a) A wound, injury or disease which was attributable to Air Force service.

Or

(b) The aggravation by air force service of a wound, injury or disease which existed before or arose during Air Force service.”

4. Further, he has also invited our attention to the para 6 of Entitlement Rules for Causality Pensionary Awards to the Armed Forces Personnel, 2008 which reflects similar provisions as above. The Guide to Medical Officer (MP) 2002 amended 2008, provides Entitlement of Special Family Pension to Ischemic heart disease as under:-

“(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service. Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g infective endocarditis, exposure to HAA, extreme heat.

(b) Aggravation will be conceded in cases in which there is evidence of:-

IHD occurring in a setting of hypertension, diabetes and

vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions. There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g smoking.”

5. We find that the learned AFT has examined the aspect in terms of Rules 14 & 15 of the Entitlement Rules or Causality Pensionary Awards 1982 and proceeded to hold that as the service conditions led to stress and strain and thus death due to myocardial infraction has to be held to be attributable and aggravated by military service. The aspect as highlighted by the respondents relating to the Guide to the Medical Officer 2002 amended 2008 (*supra*) is concerned, we find that the afore-said aspects were required to be detailed by the Medical Officers who can state that the death was treated as not attributed nor aggravated by military service and the discussion relating to the myocardial infarction (heart attack) ought to have been mentioned by the concerned Medical Officer in terms of the Manual up to 2008. We are also supported by the view taken by the Apex Court recently in the case of ***Bijender Singh v. Union of India and others, 2025 INSC 549***, wherein after considering the judgments in ***Dharamvir Singh v. Union of India (2013) 7 SCC 316*** and ***Union of India vs. Rajbir Singh (2015) 12 SCC***

264, and dealing with Rules 5, 9 and 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982, held as under:-

“45.1. Thus, this Court held that essence of the Rules is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into the service if there is no note or record to the contrary made at the time of such entry. In the event of subsequent discharge from service on medical ground, any deterioration in health would be presumed to be due to military service. The burden would be on the employer to rebut the presumption that the disability suffered by the member was neither attributable to nor aggravated by military service. If the Medical Board is of the opinion that the disease suffered by the member could not have been detected at the time of entry into service, the Medical Board has to give reasons for saying so. This Court highlighted that the provision for payment of disability pension is a beneficial one which ought to be interpreted liberally. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that upon proper physical and other tests, the member was found fit to serve in the army would give rise to a presumption that he was disease free at the time of his entry into service. For the employer to say that such a disease was neither attributable to nor aggravated by military service, the least that is required to be done is to furnish reasons for taking such a view.

46. Referring back to the impugned order dated 26.02.2016, we find that the Tribunal simply went by the remarks of the Invaliding Medical Board and Re-Survey Medical Boards to hold that since the disability of the appellant was less than 20%, he would not be entitled to the disability element of the disability pension. Tribunal did not examine the issue as to whether the disability was attributable to or aggravated by military service. In the instant case neither has it been mentioned by the Invaliding Medical Board nor by the Re-Survey Medical Boards that the disease for which the appellant was invalided out of service could not be detected at the time of entry into military service. As a matter of fact, the Invaliding Medical Board was quite categorical that no disability of the appellant existed before entering service. As would be evident from the aforesaid decisions of this Court, the law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the member suffered from any particular disease, the presumption would be that the member got afflicted by the said disease because of military service. Therefore the burden of proving that the disease is not attributable to or aggravated by military service rest entirely on the employer. Further, any disease or disability for which a member of the armed forces is invalided out of service would have to be assumed to be above 20% and attract grant of 50% disability pension.

47. Thus having regard to the discussions made above, we are of the considered view that the impugned orders of the Tribunal are wholly unsustainable in law. That being the position, impugned orders dated 22.01.2018 and 26.02.2016 are hereby set aside. Consequently, respondents are directed to grant the disability element of disability pension to the appellant at the rate of 50% with effect from 01.01.1996 onwards for life. The arrears shall carry interest at the rate of 6% per annum till payment. The above directions shall be carried out by the respondents within three months from today.”

6. In view of above, we find that the order passed by respondent No.2 - AFT does not warrant any interference. The writ-petition is devoid of merit and the same is, accordingly, dismissed.

7. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(DEEPINDER SINGH NALWA)
JUDGE

27.05.2025
rajesh

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