



122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9960-2025 (O&M)

Date of Decision : 28-08-2025

UNION OF INDIA AND ORS.

.....Petitioner(s)

VERSUS

JC 248574N EX NB RIS TINTHIANKHAI AND ANR.

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI

Present: Ms. Neha Jain, Senior Panel Counsel
for the petitioners-Union of India.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the impugned order dated 13.10.2023 (Annexure P-1) passed by respondent No.2-Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'the Tribunal'), by which, respondent No.1 has been held entitled to disability pension by rounding off disability element from 30% to 50% on the ground that the same is perverse.

2. Learned counsel for the petitioners places reliance upon the report of medical examination of the respondent No.1 to contend that though the disability of "*Primary Hypertension*" as assessed @30% has been found to be existing in respondent No.1, but the same has been held to be 'neither attributable to nor aggravated by the Military service' and hence, the grant of benefit of disability pension by rounding off from 30% to 50% to respondent No.1 by the Tribunal by placing reliance upon the judgment of the Hon'ble Supreme Court of India in *Dharamvir Singh versus Union of India and*

others, (2013) 7 SCC 316 and *Union of India and others vs. Ram Avtar*, 2014 SCC Online SC 1761, is incorrect.

3. Learned counsel for the petitioners has also placed reliance upon the judgment passed by Hon'ble Supreme Court of India in *Narsingh Yadav vs. Union of India and others*, (2019) 9 SCC 667, to contend that any disorder not detected at the time of enrollment, cannot be mechanically attributed to military service. He further contends that, as per the said judgment, the presumption that a personnel who was found to be fit at the time of enrollment and was further detected with a disability, such a disability cannot be mechanically presumed to be attributed to and aggravated by military service.

4. We have heard learned counsel for the petitioners and have gone through the case file with her able assistance.

5. It is conceded fact that at the time when respondent No.1 discharged from service i.e. on 28.02.2022 on rendering the qualifying service, he had rendered 26 years and 3 days of service with the petitioner-Union of India. Further, it is also a conceded fact that at the time when respondent No.1 joined the armed forces i.e. on 27.02.1996 and was medically examined, and he was not found to be suffering from any disease on the basis of which, respondent No.1 has been granted the benefit of disability pension by the Tribunal vide order dated 13.10.2023 (Annexure P-1).

6. As far the contention of the petitioners qua the aspect that the medical report of respondent No.1 stipulates that the disability incurred by him is neither attributable nor aggravated by the military service and hence, grant of benefit of disability pension by ignoring the medical report is

incorrect, qua the said contention, it shall be noted that as per ***Dharamvir Singh's case (supra)*** the presumption as per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982, is in favour of an employee concerned, that the disability he has incurred with is to be attributed to military service, especially when it has come on record that at time of enrollment the employee concerned was fit and contracted with a disease/disability during service period, which is concededly the situation in present case. Hence, the contention raised by the petitioners stands defeated. The relevant paragraphs of the said judgment are as under:

30. 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. In fact, non-application of mind of Medical Board is apparent from Clause (d) of paragraph 2 of the opinion of the Medical Board, which is as follows:

“(d) In the case of a disability under C the board should state what exactly in their opinion is the cause thereof. YES Disability is not related to mil service”

32. In spite 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.

33. 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 casual connection with the service conditions.”

7. Further, with regard to the grievance of petitioners qua the ‘rounding off of disability pension’ the same issue has been settled by the Hon’ble Supreme Court of India in ***Union of India and others vs. Ram Avtar***, 2014 SCC Online SC 1761, wherein it has been held that any officer serving in the Armed Forces, who had undergone the medical examination at the time of his/her enrolment and was found fit, is subsequently found to be suffering with a disability, is entitled to the benefit of disability pension by rounding off the same as the presumption would be in favour of such employee, that the disability suffered during the service is attributable to the Military service. Relevant paras of the judgment in ***Ram Avtar***’s case (supra) are as under:-

“4. By the present set of appeals the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No. 1(2)/97/D(Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other

category of Armed Forces Personnel mentioned hereinabove.

5. We have heard learned counsel for the parties to the lis.

6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of rounding-off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.”

8. Learned counsel for the petitioners has not been able to dispute the said proposition of law having been settled by the Hon'ble Supreme Court of India in **Ram Avtar's case (supra)** to the effect that percentage of disability is to be rounded off and when applied in the present case, disability of 30% is to be rounded off to 50%.

9. Learned counsel for the petitioner has placed reliance on the judgment in **Narsingh Yadav's case (supra)** to contend that in case a person is found to be fit at time and is at later stage in service found to be suffering from a disability, the presumption that such a disability is attributed to military service cannot be applied technically. Qua the said aspect, it shall be noted that to rebut such a presumption, which is in favour of a disabled employee, sufficient material has to be brought on record to show that neither the service conditions nor the duties assigned to the employee concerned were of such a nature which could establish that disability is not

attributable to the military service, such onus has not been discharged by the employer in the present case to show that the respondent No.1-employee's case is covered by *Narsingh Yadav's* case (supra).

10. Keeping in view the facts and circumstances of the present case as well as the settled principle of law in *Ram Avtar's case (supra)* and *Dharamvir Singh's case (supra)* once, at the time of selection, respondent No.1 was medically examined and was found fit in all aspects and it was only during the continuation of service that respondent No.1 was found suffering from *Primary Hypertension @30%*. That being so, the said disease has to be attributed to the military service and the unsubstantiated report of medical board cannot take away the right of respondent No.1 to claim the benefit of disability pension @ 50% by rounding it off.

11. Hence, in the absence of any perversity being pointed out in the impugned order dated 13.10.2023 (Annexure P-1) either on the basis of the facts on record or the settled principle of law, no ground is made out for any interference by this Court in the facts and circumstances of the present case.

12. Accordingly, the writ petition is dismissed.

13. Pending application(s), if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

28-08-2025
Sapna Goyal

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No