

Tribunal while passing the impugned order dated 08.10.2024 (Annexure P-1).

3. Further, the counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.1002 of 2006 titled "Union of India and ors Vs. Ajay Wahi", decided on 06.07.2010***, wherein an officer is entitled for disability pension only when he/she is invalided out of service on account of disability attributable to military service or aggravated thereby and shall not be entitled for disability pension in case of voluntary retirement, unless it is found and held that the officer deserved to be invalided out of service on account of disability attributable to military service but the same was not granted to him/her for unjustified reasons and forced to seek voluntary retirement.

4. We have heard the learned counsel for the petitioner and gone through the record with her able assistance.

5. It may be noticed that once the rule and the law is settled, as to under what circumstances the benefit of disability pension can be extended, being a welfare state, it becomes the duty of the Union Govt. to give the said benefit to the officer concerned, who has served the nation with due dedication. Merely that the officer has not claimed the same, cannot be treated that the benefit is to be denied to such officer once the entitlement of such officer qua the benefit claimed is not being disputed.

6. It may be noticed that respondent No.1 joined the Armed forces on 23.08.1972 in a fit medical condition. While in service, he suffered a disability of "*Essential Hypertension (401)*" which was assessed @ 20% for life and ultimately respondent No.1 was discharged from service on

30.06.1992 . Respondent No.1 was granted the benefit of disability element of disability pension @50% for life.

7. As per the settled principle of law settled by Hon'ble Supreme Court of India in ***Ram Avtar's case (supra)***, any officer serving in the Armed Forces, who had undergone the medical examination at the time of his/her selection and was found fit, subsequently upon suffering a disability, is entitled to the benefit of disability pension by rounding off the same as the presumption would be that the disability suffered 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. Further, with regard to the argument of the learned counsel for the petitioners that respondent No.1 has approached the Tribunal after a long delay, it may be noticed that as per the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No.3086 of 2012 titled as ***Balbir Singh vs. Union of India and others***, decided on 08.04.2016, the delay in filing the Original Application is liable to be condoned, since such claims are continuing and recurring in nature and merely that there was a delay it will not defeat the right of claimant nor restrict the arrears. The relevant paragraph of the judgment is as under:-

“The Tribunal was therefore justified in restoring the service element of the pension in favour of the appellant. The question however is whether the arrears could have been restricted to three years only. The Tribunal in our view need not have done so. That is because the appellant had a right to receive service element of the pension in light of Regulation 186 (supra), which right was valuable and ought to have been protected. The fact that the appellant had approached the Tribunal for redress belatedly was in the peculiar circumstances of the case no reason for the Tribunal to reduce the payment of arrears to three years only. We accordingly allow this appeal and modify the order passed by the Tribunal with the direction that the appellant shall be paid service element of the pension with effect from the date the said payment was stopped by the respondents. We however grant to the respondents three months time to calculate and release the arrears in favour of the appellant. In case the needful is not done within the time stipulated, the arrears payable to the appellant shall start earning interest at the rate of 9% from the date the period of three months expires till actual payment of the amount.”

9. Keeping in view the above, the ground taken by the petitioners to challenge the impugned order dated 08.10.2024 (Annexure P-1), cannot be accepted.

10. No other argument has been raised.

11. Hence, in the absence of any perversity being pointed out in the impugned order dated 08.10.2024 (Annexure P-1) either on the basis of the facts or the settled principles of law, no ground is made out for any interference by this Court in the facts and circumstances of the present case.
12. No other argument is raised.
13. Accordingly, the writ petition is dismissed.
14. 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