



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

131

CWP-14244-2025

Date of Decision: 20.08.2025

Union of India and others

....Petitioners

Versus

No.1054112K Ex Swr Rajinder Prasad and another

....Respondents

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

Present: Ms. Jyoti Choudhary, Senior Panel Counsel
for the petitioners.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the impugned order dated 04.05.2023 (Annexure P-1) passed by the Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'the Tribunal'), by which, the benefit of disability pension has been allowed in favour of respondent No.1 by rounding off the disability element @ 50% as against 20% for life.

2. Learned counsel for the petitioners submits that though the disability of 'Un united Fracture Rochepicodyles (Rt) Humerus' was found in respondent No.1 and he was discharged from service on 12.11.1974 after rendering 04 months and 02 days of service under Army Rule 13(3) items III (iii) but the said disability has been held to be "neither attributable nor aggravated by military service", hence, the grant of benefit of disability pension to respondent No.1 @50% by placing reliance upon judgment in



Original Application No.1651 of 2017 titled *Bhoom Singh vs. Union of India and others* as well as *Dharamvir Singh versus Union of India and others, (2013) 7 SCC 316*, 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. Learned counsel for the petitioners further submits that keeping in view Section 22 of the Armed Forces Tribunal Act, 2007, the claim raised by respondent No.1 before the Tribunal was liable to be rejected being barred by limitation.

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

6. It may be noticed that the respondent No.1 was recruited on 11.07.1974 and while training, he suffered the injury i.e. '*Un united Fracture Rochepicodyles (Rt) Humerus Rt N-881 E886*'. Keeping in view the said severe disability suffered during the training, respondent No.1 was weeded out but the benefit of disability pension was not given despite the fact that the injury was suffered by respondent No.1 during the training.

7. Once, it is a conceded position that the injury suffered by



respondent No.1 was during the training and the said injury was so severe that he had to be released out of service, it cannot be said that the injury so suffered is not attributable to the military service. Learned counsel for the petitioners has not been able to show any document so as to prove that the injury suffered by respondent No.1 was not attributable to the military service.

8. Keeping in view the totality of the circumstances, the benefit has been granted to respondent No.1 keeping in view the judgment of the Hon'ble Supreme Court of India in ***Dharamvir Singh's case (supra)***. The relevant para No.32 of the judgment is 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 ”

31. XXXX XXXX XXXX XXXX

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."

9. Further, the rounding off the benefit of disability has also been allowed which is also in consonance with the judgment of the Hon'ble Supreme Court of India in ***Union of India and others vs. Ram Avtar, 2014 SCC Online SC 1761.***

10. 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 mechanically. 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).

11. 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:

“XXX...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.”

12. Learned counsel for the petitioners has not been able to show that the order passed by the Tribunal is perverse in any manner either on facts or on the settled principle of law.

13. Keeping in view the facts and circumstances of the present case as well as the settled principle of law in ***Dharamvir Singh’s case (supra)*** and ***Ram Avtar’s case (supra)*** as well as ***Balbir Singh’s case (supra)*** once, at the time of selection, the respondent was medically examined and was found fit in all aspects and it was only during the continuation of service that the respondent was found suffering from *Un united Fracture Rochepicodyles (Rt) Humerus Rt N-881 E886*. That being so, the said disease has to be attributed to the military service and the report of medical board cannot take away the right of the respondent to claim the benefit of disability pension by rounding it off.

14. No other argument has been raised.

15. Hence, in the absence of any perversity being pointed out in the impugned order dated 04.05.2023 (Annexure P-1) either on the basis of the



CWP-14244-2025

-: 7 :-

facts 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.

16. Accordingly, the writ petition is dismissed.

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

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

August 20, 2025

Varinder

Whether speaking/reasoned : Yes

Whether reportable : No