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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-15492-2024

Reserved on: 28.11.2024

Pronounced on: 07.01.2025

UNION OF INDIA AND ORS.

.....Petitioners

Versus

No. 2958692 EX SEPOY RAM NARAIN AND ANR.Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Parvesh K. Saini, Sr. Panel Counsel
for the petitioner/UOI.

Mr. Arshit Goel, Advocate and
Mr. Ajay Sheoran, Advocate
for respondent No. 1.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-Union of India, prays for the setting aside of the order dated 15.02.2022 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, whereby, the claim of respondent No. 1 for the grant of disability pension was allowed.

Factual Background

2. Respondent No. 1 was enrolled in the Indian Army on 03.06.1965 and was discharged on 17.06.1972 under Item III (iii)(a)(i)

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of Army Rule 13 (3) III (V) after having rendered 7 years and 14 days of service. He was not in receipt of any kind of pension.

3. It has been averred in paragraph No. 5 of the writ petition that in accordance with Para 592-596 of the Defence Service Regulation for the Army (Revised Edition), 1987, the service documents in respect of the pensioners are required to be retained for a period of 50 years and the service documents in respect of non-pensioners are required to be retained for a period of 25 years from date of discharge. Accordingly, service documents of respondent No. 1 were destroyed after the expiry of 25 years, being a non-pensioner after entering relevant details in the Long Roll.

4. Thereafter, respondent No. 1 after a delay of about 47 years from the date of discharge filed O.A. No. 800 of 2020, before the learned Armed Forces Tribunal concerned, thus for the grant of disability pension. The said O.A., became allowed vide order dated 15.02.2022. The operative part of the said order is extracted hereinafter.

“7. As a matter of fact, the case of Bhoom Singh is identical to the present one because in that case also service record/medical record of the applicant was not available with the respondents. However, irrespective of it he having been found to have discharged from service after being placed in low medical category (EEE), was held entitled to the grant of disability pension relying upon the discharge certificate he placed on record. In the case in hand also relevant extract of the discharge certificate (Annexure A-1) has been placed on record. Otherwise also, there is no denial to the applicant having been invalided

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out of military service on medical ground. In Sukhvinder Singh's case (supra) the Hon'ble Apex Court has held that as and when a member of Armed Forces personnel is invalided out of military service it has to be presumed perforce that his disability was above 20 % and as per Rules/Regulations he is entitled to the grant of disability pension. The disability leading to invaliding the applicant out of service would attract the grant of pension treating the disability as 50 %.

5. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioners.

6. (a) The learned counsel for the petitioners submits, that respondent No. 1 was not entitled to file O.A., before the Tribunal concerned, after a delay of about 47 years from the date of his discharge, more especially after the happening of an elongated elapse of about 25 years, since the destruction of his service documents, thus after the expiry of the apposite retention period.

(b) The learned Tribunal failed to appreciate, that owing to an inordinate delay by respondent No. 1, in preferring his claim for grant of disability pension, his service documents including medical board proceedings were destroyed as per the relevant provisions regarding retention of documents. Consequently, there was no evidence regarding the disability being either attributable to or becoming

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aggravated by rendition of military service or the same having been assessed @ 20 % or more.

7. The Hon'ble Delhi High Court in case titled as ***Hans Ram Vs. Union of India and Ors.***, reported in ***1995 SCC Online Del 496*** when has dismissed the claim of the petitioner therein, who raised his claim after the destruction of his service documents, thus after the expiry of their apposite retention period. The relevant part of the said order is extracted hereinafter.

“In the present case the petitioner has on account of culpable delay and laches extending over a period of 25 years himself created a situation which disentitles him to any relief. The service record of the petitioner is not available. It is not known as to why and in what circumstances the petitioner was paid merely gratuity and yet felt satisfied therewith though no pension was allowed. If only the petitioner would have approached the Court within a reasonable time, the respondents could have been directed to search and produce the relevant service record of the petitioner enabling a just decision of the petitioner's claim, which is not possible in the present case. The entire fault is of the petitioner. Howsoever sympathetic we may be with the petitioner, sitting as a writ Court, we cannot grant relief of pension, to the petitioner merely as a charity or bounty in the absence of relevant facts being determinable and relevant documents available.”

8. Therefore, it is argued that in terms of the said judgment, the instant O.A., was required to be also likewise dismissed.

9. The learned counsel for the petitioner further submits, that the learned Tribunal failed to appreciate that OA 1651 of 2017 titled as Bhoom Singh Vs. Union of India, is contrary to law as the same was decided on surmises and conjectures and was not based on evidence.

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Inferences of this Court.

10. Though in the instant case there is ex facie an elongated delay of 47 years, since the present respondent becoming discharged from the Army and his preferring the instant O.A. However, apparently the said discharge from Army took place on account of his being placed in low medical category, given his becoming afflicted with '*Neurosis*'. It also appears that since the entailment of the supra disease upon the present respondent, *prima facie*, became not sequel by his rendering military service, wherebys, *prima facie*, the malady supra besetting the present respondent appears to have been declared to be neither attributable to military service nor becoming aggravated by rendition of military service.

11. Though *prima facie*, in the face of the above, the discharge of the present respondent from military service, did not entitle him to become a valid recipient of disability pension, as for the present respondent earning disability pension, he was required to be invalided from service, but on the release medical board declaring, that the onsetting of the said malady, thus was a sequel of his rendering military service. However, any decision declaring the opinion of the medical board to be a well informed reason, rather for the present respondent becoming simpliciter well discharged from service, thus without his becoming bestowed with disability pension, but required that the said opinion became well armed. The said opinion of the release medical board would become well armed only when it would fell within the

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expostulations of law as set forth by the Apex Court in case titled as ***Dharamvir Singh Vs. Union of India***, reported in **(2013) 7 SCC 316**, relevant paragraphs whereof become extracted hereinafter.

29. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

30. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

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12. An incisive reading(s) of the above extracted principles, though pointedly declare, that when a disability becomes entailed upon any member of the combatant defence establishment, and which is to the extent of 20 % or over, thereupon, though any such disabled member is required to be invalided from the Army, but yet he is required to be assigned the benefit of disability pension.

13. Nonetheless, the assignment of disability pension to any member of the combatant defence establishment, who becomes entailed with a disability in a quantum of 20 % or more, but imperatively requires a declaration from the Medical Board, rather candidly pronouncing that the said attained disability being attributable to or becoming aggravated by military service. The said declaration becomes enjoined by the *"Entitlement Rules for Casualty Pensionary Awards, 1982"* of Appendix-II (Regulation 173).

14. Furthermore, though thereins a presumption is assigned vis-à-vis the sound physical and mental health of any member of the defence establishment concerned, especially when at the stage of his becoming enrolled, there is no note or record about his becoming beset with any disease. Moreover, though thereins there is also a further presumption, that when any deterioration theretos, thus occurs subsequently, thereby the said happening of deterioration(s) or onsettings of any disease, rather is to be presumed to be a sequel of his rendering service as a member of the defence establishment.

Imperatively, the onus for proving the non endowments qua benefits

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(supra) vis-à-vis the concerned, but is rested on the employer, and in case, the said onus remains un-discharged, thereupon, the claimant becomes entitled to receive disability pension. Moreover, all the facts and circumstances attendant to the rendition of service by the concerned, are to be closely scrutinized, thus for declaring whether the onset of any disease vis-à-vis the concerned, is a sequel qua renditions of military service and/or the same being aggravated by or being attributable to military service.

15. Be that as it may, therein becomes also set forth a further principle(s) that yet there can be denial of disability pension to the concerned, but only upon :

a) At the time of acceptance of the concerned in military service, some notings becoming recorded by the Medical Board vis-a-vis his being beset with a disease which however, becomes concluded to be yet not rendering him unfit to become enlisted.

b) Any further deterioration thereof, may also subsequently become concluded by the Medical Board, to not arise from rendition of military service nor being attributable to military service, rather the same being a congenital disease.

16. Further, if the medical opinion holds that the disease could not have been detected on medical examination of the concerned being made, thus prior to his becoming enlisted in service, thereupons, the

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same will not be deemed to have arisen during service, yet in the situation (supra), the Medical Board is required to state the reasons for so concluding.

17. In addition, it is also declared in supra, that it is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles".

18. Moreover, also the opinion of the medical board declaring the present respondent, to become not entitled to disability pension, thus on account of the malady entailed upon him, rather being not a sequel of rendition of military service, but necessarily also required that the said opinion satiates the supra expositied touchstone. Moreover, the said medical opinion was required to make graphic expressions, that the same became well banked, upon qua the medical board, rather initially proceeding to make a detailed incisive antecedental check, particularly appertaining to the advent of the disease, through employments of State of Art medical techniques, thus unveiling the block chain genetic connection, wherefroms, rather the disease became sourced. Moreover, if the said employment fails. Resultantly, therebys it may become concluded qua eruptions thereof, thus subsequent to the apposite enlistment taking place, rather was not congenital, but owed its origin to rendition of military service, besides it being attributable to or becoming aggravated by performance of military service. Contrarily, if the supra employed techniques at the stage of apposite enlistment

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taking place, thus by the Medical Board concerned, leads to a conclusion, that there are rather dormant incidences of any disease, but yet the said dormant disease not prohibiting the enlistment of any personnel in the army, navy or air force. Resultantly the subsequent active detection/eruption thereof, during the course of rendition of military service, but would naturally lead to a well conclusion by the medical board, that its active eruption but became sourced from an effective apposite causal genetic connection whereby there would be denial of disability pension.

19. Therefore, a solemn duty became encumbered upon the present **petitioner-Union of India**, to place on record documents suggestive, that at the time of the apposite enlistment taking place, rather some note became made in terms of the principles (supra) declared by the Hon'ble Apex Court in case titled as ***Dharamvir Singh Vs. Union of India (supra)***, thus by the Medical Board, and to the extent that some disease which however, did not forbid the present respondent, to become enlisted in the Army, did make its preliminary onsettings.

20. However, it appears that since the service records of the present respondent have been destroyed, thereby, the present petitioner becomes disabled to adduce them, for thereby this Court drawing an inference whether the hereinabove parameters rather becoming or not becoming satisfied. Resultantly, obviously, this Court becomes disabled to fathom whether the supra parameters, do respectively acquire

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favourable strength vis-a-vis the respondent or they invalidate the claim of the respondent.

21. Be that as it may, since it becomes hereinabove exposted that there is a presumption that the entailment of a malady by a serving soldier was a sequel of his rendering military service. Moreover, since it is also hereinabove exposted, that the said entailment is presumed to become attributed to military service or to become aggravated by rendition of military service. Therefore, unless the records were retained, whereupons, at the time of makings of the initial enlistment of the present respondent, in the Army, the medical board did make a note, that the disease which ultimately led to the discharge of the present respondent, rather was in a dormant stage. Resultantly thereupons alone, the judicial conscience of this Court, thus would have been satisfied that the discharge of the present respondent rather was not on account of his rendering military service but it was a congenital disease. Naturally in the said event, this Court would have refrained to grant disability pension to the present respondent rather would have been constrained to uphold the order of discharge, despite his being placed in a low medical category.

22. Evidently since the records have been destroyed, therebys, the present petitioner become incapacitated to rebut the presumption (supra) as created in the judgment pronounced in case titled as ***Dharamvir Singh Vs. Union of India (supra)***. As such, an adverse

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inference is required to be drawn against the present petitioner-Union of India.

23. Moreover, the further effect of the above inference but is that, since only on adduction of the supra records, the supra presumption working towards the present respondent would have been eroded, whereas, the records remaining un-adduced. In sequel, with supra presumption remaining un-rebutted, therebys, it is to be concluded that the discharge of the present respondent in service, that too, without his being endowed with the benefit of disability pension, rather was most ideally and perfunctorily made.

Arguments as to delay in filing of the Original Application by the respondent before the Tribunal concerned.

24. For the reasons to be assigned hereinafter, the above argument raised by the counsel for the petitioner are rejected.

25. Primarily for the reason that the Hon'ble Apex Court in its verdicts recorded in case titled as **Civil Appeal No. 5151-5152 of 2008 (Arising out of SLP (C) Nos. 3820-3821 of 2008 titled as Union of India and Others Vs. Tarsem Singh** and in case titled as **Civil Appeal No. 274 of 2007 (Arising out of SLP (Civil) No. 881 of 2006) titled as Shiv Dass Vs. Union of India and Others, decided on 18.01.2007**, has held that in case an indefeasible right becomes vested in the aggrieved, thereupon, the said vestment of an indefeasible right in the aggrieved, thus would fuel a recurring or a continuous cause of action vis-a-vis the aggrieved. Resultantly, therebys the delayed raising of a claim, thus would not attract theretos rather the bar of limitation nor therebys any

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purported vice of delays and laches would effectively function, as a stumbling block against the granting of the fullest relief to the aggrieved. Therebys also the verdict of the Hon'ble Delhi High Court in case titled as ***Hans Ram Vs. Union of India and Ors. (supra)*** is not applicable to the facts at hand.

26. Consequently, the further effect thereof, is that, even if there is some delay on the part of the respondent to make the instant espousal, yet the said delay was not required to be incapacitating, the present respondent to become a valid recipient of a recurring and continuous right, as became conferred upon him through the verdicts (supra).

27. Though the said inference would have been eroded in case the service records would have been retained but since the service records have been destroyed. Moreover, particularly when the record of the present respondent appertaining to his initial enlistment in the Army rather has also been destroyed, whereas, only on its adduction it may have revealed that there was a note appended by the survey medical board, that a dormant disease has made its preliminary onsettings, vis-a-vis the present respondent. Moreover, since therebys alone the placement of the present respondent in a low medical category, thus leading to his simpliciter discharge, without his being granted disability pension hence could be validated by this Court. However, since the said record is destroyed thereupon, reiteratedly therebys the supra adverse inference is drawable against the present petitioner-Union of India.

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28. In addition, reiteratedly, when therebys the supra presumption created in favour of the respondent remains unrebutted. In sequel, therebys too, it is to be declared that as such there was a recurring and continuous cause of action inhering in the present respondent and/or the present respondent, thus had an indefeasible right to at any time rather claim the endowing qua him the benefits of disability pension. As such, the plea of limitation does not work against the respondent.

Final Order of this Court.

29. In aftermath, this Court finds no merit in the writ petition and with the observation(s) aforesaid, the same is dismissed.
30. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.
31. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

07.01.2025
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No