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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109)

CWP-23443-2025

Date of Decision : August 13, 2025

Union of India and others

.. Petitioners

Versus

Ex. HAV Jaswinder Singh and another

.. Respondents

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

Present: Mr. Anil Kumar Sharma, Sr. Panel Counsel,
for the petitioners-UOI.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 02.09.2024 (Annexure P-1) passed by the Armed Forces Tribunal, Regional Branch, Chandigarh (hereinafter referred to as 'Tribunal') in ***OA No.411 of 2022 titled as Ex. HAV Jaswinder Singh vs. Union of India and others*** by which, respondent No.1 has been found to be entitled for grant of disability element of disability pension @ 75% against 50% for life.

2. Learned counsel for the petitioners argues that though, it is a conceded fact that respondent No.1 joined in the services on 29.08.1985 and thereafter, worked for a period of approximately 26 years but the disability from which he suffered, was rightly treated not to be attributable to the Military service or aggravated by the Military service in the medical report



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hence, overruling of the said opinion of the Medical Board by the Tribunal so as to grant relief of disability pension to respondent No.1 is incorrect.

3. Learned counsel for the petitioners submits that as per the report of the Medical Board, the disease which led to the discharge of respondent No.1 is due to the “chromosomal anomalies which relate to the genes of a particular person” and is not at all connected with the nature of his duties with the Army and the said duties were not responsible for even aggravating the same hence, the order dated 02.09.2024 (Annexure P-1) may kindly be set aside.

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

5. It is a conceded fact that at the time when respondent No.1 was recruited in service in the year 1985, he was medically fit and was found not to be suffering from the disease which ultimately led to his discharge on medical ground after a period of 26 years of service.

6. The opinion of the Medical Board is that the said disease is suffered due to the “chromosomal anomalies which relate to the genes of a particular person” and hence, cannot be said to be attributable to or aggravated by the Military service.

7. It may be noticed that the service history of respondent No.1 reveals that while serving the petitioners, the respondent No.1 served on various stations in the extreme conditions. There is a likelihood that serving of respondent No.1 in these stations situated at extreme conditions may have aggravated the disease which led to the discharge of respondent No.1.

8. Further, the argument of the learned counsel for the petitioners that the said disease has not been aggravated by the Military service has to



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mean that respondent No.1 was suffering from the same even at the time of initial recruitment.

9. It may be noticed that the disease which led to the discharge of respondent No.1 cannot remain suppressed for a period of more than 20 years. The disease which is known as cancer in the common language cannot remain suppressed without any symptoms being seen qua the said disease for a period of two decades.

10. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.4949 of 2003 titled as Dharamvir Singh vs. Union of India and others decided on 02.07.2013***, the opinion of the Medical Board, can be deferred by the Court in case good reasons are available. 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



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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.”*

11. Keeping in view the above, as respondent No.1 was found to be fit at the time of his initial recruitment in the year 1985 and remained fit for a period of approximately 26 years before the same was detected in the year 2009, the decision of the Medical Board not to treat the said disease as attributable to or aggravated by the Military Service cannot be sustained.



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The judgment of the Tribunal dated 02.09.2024 (Annexure P-1) in the facts and circumstances of the present case is in accordance with the settled principle of law in ***Dharamvir Singh's case (supra)*** as noticed hereinbefore.

12. As learned counsel for the petitioners has not been able to prove to this Court that the order dated 02.09.2024 (Annexure P-1) passed by the Tribunal is perverse either qua facts, rules governing the service or the settled principle of law noticed hereinbefore, no ground is made out for any interference by this Court in the facts and circumstances of the present case.

13. Accordingly, the writ petition is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

August 13, 2025
harsha

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No