



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

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CWP-25953-2025

Date of Decision: 02.09.2025

UNION OF INDIA AND OTHERS

...Petitioners

Versus

MAJ. RAJEESH K. AND ANOTHER

...Respondents

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

Present:- Mr.. Narender Kumar Vashist, Senior Panel Counsel,
for the petitioners.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, the challenge is to the impugned order dated 14.05.2024 (Annexure P-1) passed by respondent No.2-Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'Tribunal') by which, respondent No.1 has been allowed the benefit of disability pension by rounding off the disability element from 20 % to 50 % for life, on the ground that the same is perverse.

2. Learned counsel for the petitioners places reliance upon the report of Release Medical Board of respondent No. 1 to hold that though the disability of 'CARCINOMA ASCENDING COLON (OPTD) P2T2NA[C-18]' assessed @ 20% for life has been found in respondent No.1, but the same has been held by the Release Medical Board to be 'neither attributable



to Military Service nor aggravated by the Military service'. Hence, the grant of benefit of disability pension to respondent No.1 @ 50% by the tribunal vide order dated 14.05.2024 (Annexure P-1) by placing reliance upon the judgment of Hon'ble Supreme Court of India in **Dharamvir Singh versus Union of India and others, (2013) 7 SCC 316**, as well as **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 enrolment, 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 enrolment 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 his able assistance.

5. It is conceded fact that at the time when respondent No. 1 was relieved from service, i.e. 09.04.2022 on medical ground, he had already rendered more than 18 years of service with the petitioner-Union of India. It is also a conceded fact that at the time when respondent No. 1 joined the armed forces i.e. 01.08.2003, he was medically examined and was not found suffering from any such disease, on the basis of which, respondent No. 1 was ultimately discharged from service.

6. As per the settled principle of law settled by Hon'ble Supreme



Court of India in ***Dharamvir Singh vs. Union of India and others, (2013) 7 SCC 316***, which has also been considered by the Tribunal in the impugned order dated 14.05.2024 (Annexure P-1), any officer serving in the Armed Forces, who had undergone the medical examination at the time of his/her selection and was not found suffering from any such disability/disease at that time on the basis of which, he/she died, such an employee is entitled for the benefit of presumption in his/her favour as per Rule 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982' that the said disease has been contracted by the employee during his service career and thus, his/her heirs are entitled for the benefit of pension. The relevant para No.30, 32 and 33 of the judgment in ***Dharamvir Singh's*** case (supra) 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 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, as per the settled principle of law settled by Hon’ble Supreme Court of India in ***Union of India and others vs. Ram Avtar*, 2014 SCC Online SC 1761**, 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. 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 ***Dharamvir Singh’s*** case (supra) as well as ***Ram Avtar’s*** case (supra).

9. Learned counsel for the petitioners 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).

10. Further, as per the judgment of Delhi High Court in ***Sneh Lata Vs. Union of India and others***, 2014 SCC OnLine Del 6396, wherein, contention raised by the counsel for the UOI, by placing reliance upon Guide



to Medical Officers, 2002 (amended by 2008 Act), that since the late husband of the respondent No.1 was never posted in hard/non-peaceful condition, the said disability could not have been aggravated by or attributable to military service by later husband of respondent No.1. The Hon'ble Delhi High Court while dealing with the said contention placed its reliance upon judgment of ***Dharamvir Singh***' case (supra), to decide the CWP in favour of claimants, by holding that since, presumption is in favour of claimant, that disability in question must have arisen during service if same was not detected at time of enrolment, and the onus is upon the employer to prove that said disability has not been contracted during service period, which has concededly not done as even the medical report on record, assessing that disability is not attributable or aggravated by military service is unreasoned, along with the fact that clause 12 of Chapter VI has no applicability in the present case; hence, it can be safely presumed from the said judgment that ailment of Cancer can also surface in a personnel keeping in view the service conditions in which he/she rendered his/her service and the stress, which he/she may have encountered during service period has to be attributed to the military service, which judgment has not been rebutted by the learned counsel for the petitioners. Relevant paragraphs 6 and 7 of the said judgment are as under :-

“6. It is not in dispute between the parties that at the time of entering into the service, the petitioner was not suffering from any disease much less from the said disease to which he ultimately succumbed. Without carrying on the discussion any further, we are of the view that the issue in hand has been authoritatively decided by the Supreme Court in the case of *Dharamvir Singh v. Union of India and Ors.* (supra) and the following paras of the said judgment would be of significance:



28. 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.

29. We, accordingly, answer both the questions in affirmative in favour of the Appellant and against the Respondents.

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.'

7. The medical report which has been produced by the respondent during the course of the hearing in the present matter is an opinion given by the medical officer taking a view that the son of the petitioner had a case of 'malignant mesothelioma' and the said disease is not attributable to and aggravated by the military service. We find that the said Medical Officer has not given any reasons as to how the said disease cannot be held to be attributable to and or aggravated by the military service, considering the fact that there was no note of any kind of such disability at the time of his entering into the Army. We also find non applicability of Clause 12 of the Chapter VI, Guide to Medical Officers, 2002 and the Amendments of 2008, which primarily deals with the type of cancers due to the consumption of tobacco and from the medical documents placed on record by the respondent, the case of the petitioner's son is not of that kind."

11. Keeping in view the settled principle of law settled in ***Dharamvir Singh's*** case (supra) as well as ***Ram Avtar's*** case (supra) and the facts and circumstances of the present case that at the time of selection, respondent No. 1 was medically examined and was found fit in all respects



and it was only after respondent No. 1 rendered service for more than 18 years with the petitioner-UOI, he was found to be suffering from the ‘CARCINOMA ASCENDING COLON (OPTD) P2T2NA[C-18]’ along with the fact that no cogent evidence/material or detailed medical record has been brought on record to show this Court that the disability is not attributable to military service. That being so, the said disability has to be attributed to the military service and the report of Medical Board cannot take away the right of respondent No.1 to claim the benefit of disability pension.

12. No other argument has been raised.

13. Hence, in the absence of any perversity being pointed out in the impugned order dated 14.05.2024 (Annexure P-1) either on the basis of the 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.

14. Accordingly, the writ petition is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

September 02, 2025
harish

Whether speaking/reasoned	Yes
Whether reportable	No