



CWP-27285-2025

1

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

(117)

CWP-27285-2025

Date of Decision : September 12, 2025

The Union of India and others**.. Petitioners****Versus****Kumari Salochna Verma and another****.. Respondents**

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

Present: Ms. Shalini Atri, Senior Panel Counsel, for the petitioners.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 29.11.2019 (Annexure P-3) passed by the respondent No.2 -Armed Force Tribunal, Regional Branch, Chandigarh (hereinafter referred to as 'the Tribunal') in *Original Application No.3414 of 2018 titled as Kumari Salochna Verma vs. Union of India and others*, on the ground that the benefit of the special family pension w.e.f. 24.06.2009 keeping in view the fact that the death of son of respondent No.1 had occurred due to "*Retroperitoneal Sarcoma with Widespread Metasis*" has been allowed in her favour.

2. Learned counsel for the petitioners submits that in the present case, while in service, the late son of respondent No.1 was found to be suffering from the disease "*Retroperitoneal Sarcoma with Widespread Metasis*". Learned counsel for the petitioners further submits that the disease from which the late son of respondent No.1 was suffering from and



CWP-27285-2025

2

ultimately died on 24.06.2009 was found to be ‘neither attributable to nor aggravated by the Military service’ by the Medical Board and therefore, the impugned order dated 29.11.2019 (Annexure P-3) passed by the Tribunal recording the finding therein that the death of the son of respondent No.1 due to the disease “*Retroperitoneal Sarcoma with Widespread Metasis*” and the same is to be considered as attributable to the military service by placing reliance upon the judgment of Tribunal in *OA No.327 of 2011 titled as Smt. Seema Devi vs. Union of India*, is wrong and may kindly be set aside.

3. Learned counsel for the petitioners further submits that the disease suffered by son of respondent No.1 is a rare and aggressive form of disease i.e. cancer which disease cannot be said to be attributable to or aggravated by the Military service and that too without there being any casual relationship between the service performed and disease incurred, and assessment by the Medical Board stating that same is attributable to or aggravated by Military service, which concededly is not the case, hence, keeping in view the condition and nature of services respondent No.1 had been subjected to during his service career, which were not of hard and strenuous nature, the impugned order needs to be set aside.

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

5. It may be noticed that the son of respondent No.1 was recruited in the Army on 05.12.2003 and it is a conceded fact that at the time when he got enrolled in the armed forces, son of respondent No.1 was medically examined and was found not to be suffering from any such disease, due to which he died on 24.06.2009.



6. It should be noted that as per the judgment in ***Dharamvir Singh vs. Union of India and others, (2013) 7 SCC 316***, in a case where army personnel is found to be fit at the time of enrolment and has later found to be contracted with a disease, same is presumed to have been aggravated by an attributable to Military service. The relevant para Nos.30, 32 and 33 of the judgment in ***Dharamvir Singh's*** case (supra) 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 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. Learned counsel for the petitioners has also raised the contention that disease of the nature of cancer cannot be attributed to or aggravated by Military service.

8. As per the judgment of Delhi High Court in ***Sneh Lata Vs. Union of India and others***, 2014 SCC OnLine Del 6396, wherein,



CWP-27285-2025

5

contention raised by the counsel for the UOI, by placing reliance upon Guide to Medical Officers, 2002 (amended by 2008 Act), that since the Army personnel concerned was never posted in hard/non-peaceful condition, the said disability of cancer could not have said to have been aggravated by or attributable to military service. 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 Writ Petition 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."

9. When law settled in ***Dharamvir Singh's case (supra)*** is applied in the facts and circumstances of the present case, it may be noticed that the disease from which the son of respondent No.1 was found suffering from while in service and ultimately died of, does not surface instantaneously on one day, rather it is a multi-stage process, wherein normal cells of body transform into malignant tumour cells, which can happen as a result of constant stress suffered by the patient concerned for a prolonged time. For a period of 6 years, the son of respondent No.1 was serving in the Army and keeping in view the various postings he was posted on and the stress which



CWP-27285-2025

8

he encountered during such posting, it can be safely said that the said stress and strain for a prolonged time which resulted into Cancer, was related to the job profile of the son of respondent No.1 and was responsible for the death of the son of respondent No.1.

10. Furthermore, as per the Rules governing the employees of petitioners, except for the disease of Cancer which may form in a personnel due to smoking, rest of the Cancers which may surface in a personnel due to any other reason have been treated to be attributable to the military service. Further, the late son of respondent No. 1 had rendered his service in the Army for a period of 6 years hence, it cannot be accepted that 'Cancer' was not detected at the time of recruitment despite in actuality the said disease existing at that time so as to deny the benefit of special Family Pension to respondent No. 1-mother by stating that the same is neither attributable nor aggravated by military service, especially when the late son of respondent No. 1 was not only invalidated from service due to the said ailment but had ultimately died of the same.

11. Keeping in view the settled principle of law settled in ***Sneh Lata's case (supra)*** and ***Dharamvir Singh's case (supra)*** and the facts and circumstances of the present case that at the time of selection, son of respondent No. 1 was medically examined and was found fit in all respects and it was only after the son of respondent No. 1 rendered service for 6 years with the petitioners-UOI, he was found to be suffering from the "Retroperitoneal Sarcoma with Widespread Metasis" along with the fact that no cogent evidence/material or detailed medical record has been brought on

**CWP-27285-2025****9**

record to show this Court that the disease is not attributable to military service. 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 respondent No.1 to claim the benefit of Special Family Pension.

12. No other argument has been raised.

13. Hence, in the absence of any perversity being pointed out in the impugned order dated 29.11.2019 (Annexure P-3) either on the basis of the facts on record 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

September 12, 2025
harsha

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No