

2025:PHHC:007546-DB



CWP-34328-2024 (O&M)

Date of Decision: 20.01.2025

Union of India & others

...Petitioners

Vs.

Ex Sapper Ranjit Singh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present Ms. Jyoti Choudhary, Sr. Panel Counsel for the petitioners.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The Union of India in this writ petition is assailing the order passed by the Armed Forces Tribunal dated 03.12.2021, whereby the AFT directed as under:-

“Considering the law laid down by the Hon’ble Supreme Court and also the attending circumstances, the rejection of the claim of the application is set aside and the applicant is thus held entitled to disability pension @ 50% as against 44% for life after being rounded off as per judgment of the Hon’ble Supreme Court in Civil Appeal No.418/2012, Union of India vs. Ram Avtar decided on 10.12.2014 and the arrears are directed to be released by the respondents within a period of three months from the receipt of a certified copy of this order by the counsel for the respondents/OIC Legal Cell, failing which the arrears shall carry an interest @ 8% from the date of this order.

It is made clear that in case the applicant is already in receipt of the service pension or service element for the said spell of service in that case he shall be entitled only to the disability element of disability pension only.”

2. Apart from the fact that no reason is coming forward for not challenging the order dated 03.12.2021 for almost four years, the challenge is now essentially made on the ground that the respondent No.1 had been found to be suffering from hypertension initially after three years of service and thereafter he has served in Army continuously. Learned counsel therefore, submits that the disability of 44% which has arisen after having completed full period of service, cannot result in releasing disability pension. She has vehemently argued that the judgment passed by the Hon’ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others (2013) 7 SCC 316**, would have no application to the facts of the present case.

3. We have carefully considered the judgment.

4. The writ petition is highly belated and suffers from laches and on this count alone, we could have dismissed the same but we have proceeded to examine the matter on merits and find that at the time of release, the Medical Board had declared that disability is aggravated by military service and Release Medical Board, however, did not accept the said report of the Medical Board and released him without giving disability pension.

5. In Dharamvir Singh’s case (supra), the Hon’ble Apex Court has held as under:-

“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.”

6. The said judgment was followed by the Hon’ble Apex Court in **Union of India v. Rajbir Singh, 2015 (12) SCC 264** and subsequently in **Ex Gnr Laxmanram Poonia vs. Union of India (2017) 4 SCC 697**. A consistent view has, thus, been taken by the Hon’ble Apex Court with regard to grant of disability element of pension with reference to the injury which may have aggravated during military service. The element of disability has been assessed by the Medical Board @ 44%.

7. In view thereto and taking into consideration the judgment of the Hon’ble Apex Court in **Union of India and others vs. Ram Avtar Civil Appeal No.418/2012, decided on 10.12.2024**, the same has been rounded off

already taken by the AFT. No illegality can be said to have been committed by the learned AFT while passing the order impugned. The writ petition is accordingly dismissed.

8. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

20.01.2025
rajesh

1. Whether speaking/reasoned?

:

Yes/No
2. Whether reportable?

:

Yes/No