

CWP-33759-2024

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

(226)

CWP-33759-2024

Date of Decision : November 20, 2025

Union of India and others

.. Petitioners

Versus

Ex. Naik Sawarn Singh and another

.. Respondents

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

Present: Ms. Neha Jain, Senior Panel Counsel, for the petitioners.

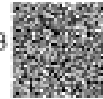
Mr. Suresh Kumar Boodh, Advocate, for the respondent No.1.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 30.09.2022 (Annexure P-5) passed by the respondent No.2-Armed Force Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'the Tribunal') by which, by considering the disability @ 20%, the petitioners have been directed to continue the grant of disability pension for two years from day next to discharge from military service i.e. 01.01.2002 and also grant the benefit of rounding off by rounding the disability of 20% to 50%.

2. Learned counsel for the petitioners argues that though, initially the disability of '*Affective Psychosis Depressed Type 296*' was assessed at less than 20% for two years but as the respondent No.1 was not able to discharge the duties, he was discharged from service but the said disability was only for a period of two years and therefore, after a period of two years, the claim of disability pension does not subsist, which fact has been ignored by the Tribunal while passing the impugned order dated 30.09.2022

(Annexure P-5).



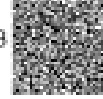
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3. We have heard learned counsel for the parties and have gone through the record with their able assistance.

4. It is a conceded fact that respondent No.1 was enrolled in the Army on 26.12.1984 and discharged from service on 31.12.2001 under the provisions of Army Rules after rendering 17 years of service. It is also a conceded fact that at the time when respondent No.1 joined the service, he was medically examined and was found not to be suffering from any such disease on the basis of which he has been allowed the benefit of disability pension and the said fact has been made the basis by the Tribunal while granting the benefit to respondent No.1 by placing reliance upon ***Dharamvir Singh vs. Union of India and others, (2013) 7 SCC 316***. It should be noted that as per judgment in ***Dharamvir Singh's case (supra)*** 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/disability, same is presumed to have been aggravated by and attributable to Military service as per Rule 5 and 9 of Entitlement Rules. 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

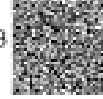


examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, 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



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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."

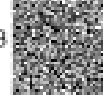
5. As per the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.5605 of 2010 decided on 25.06.2014 titled Sukhvinder Singh vs. Union of India and others**, in case the disability is less than 20% but the Soldier is being discharged on the basis of low medical category, the disability has to be presumed @ 20% to grant the disability pension. The relevant paragraph of the judgment is as under:

"Thirdly, there appear to be no provisions authorising the discharge of invaliding out of service where the disability is below 20 percent and seems to us to be logically so.

Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above 20%.

Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension."

6. The same settled principle of law will apply in case, after the grant of disability pension, the disability is reduced less than 20%. Once, such officer who has been discharged on the basis of low medical category is not being reinstated even if the disability is less than 20% and continues



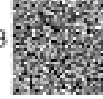
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to be out of service his disability pension cannot be stopped. The disability once assessed has to continue for the grant of disability pension and the same cannot be stopped and the order passed by the Tribunal is in consonance with the facts of the present case coupled with the settled principle of law.

7. Further, with regard to the grievance of petitioners qua the benefit of 'rounding off of disability pension' that has been granted to respondent No.1, the same issue has been settled by the Hon'ble Supreme Court of India in ***Union of India and others vs. Ram Avtar, 2014 SCC Online SC 1761***, wherein it has been held that any officer serving in the Armed Forces, who had undergone the medical examination at the time of his/her enrolment and was found fit, is subsequently found to be suffering with a disability, is entitled to the benefit of disability pension by rounding off the same as the presumption would be in favour of such employee, that the disability suffered during the service 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.

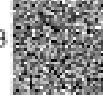
5. We have heard learned counsel for the parties to the lis.

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. Further, in a recent judgment in ***Civil Appeal No.11311 of 2025 titled as Union of India and others vs. Reet MP Singh and another, decided on 01.09.2025***, the Hon’ble Supreme Court of India by placing reliance upon ***Union of India and others vs. Ram Avtar, 2014 SCC Online SC 1761*** as well as ***Bijender Singh vs. Union of India and others, 2025 SCC Online SC 895***, has again reiterated that the benefit of rounding off the disability element cannot be denied.

9. Keeping in view the facts and circumstance of the present case as well as the settled principle of law settled in ***Dharamvir Singh’s case (supra)***, ***Ram Avtar’s case (supra)*** and ***Reet M.P. Singh’s case (supra)***, once at the time of enrolment, respondent No. 1 was medically examined and was found to be fit in all respects and it was only during his service period that respondent No.1 was found to be suffering from ‘Affective



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Psychosis Depressed Type 296'. That being so, the said disability has to be attributed to the military service and the unsubstantiated report of Medical Board cannot take away the right of respondent No.1 to claim the benefit of disability pension and that too, by rounding off the disability as per the settled principle of law settled in ***Ram Avtar's case (supra)***.

10. As the impugned order of the Tribunal dated 30.09.2022 (Annexure P-5) has not been shown to be perverse either on facts or on law, no ground is made out for any interference by this Court in the present case.

11. Accordingly, the writ petition is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

November 20, 2025
harsha

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No