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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-34944-2024

Reserved on: 20.12.2024

Pronounced on: 18.01.2025

Joginder Kaur

.....Petitioner

Versus

Union of India and Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Jashanjot Singh Uppal, Advocate
for the petitioner.

Mr. Bharat Bhushan Sharma, Sr. Panel Counsel
for the respondents – UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside of the order dated 09.08.2024 (Annexure P-3) as passed by the learned Armed Forces Tribunal, Chandigarh, whereby, the application filed by the petitioner for grant of family pension besides the grant of benefit of disability pension of her deceased husband was dismissed.

Factual Background

2. The husband of the petitioner was enrolled in the Army on 18.12.1971 and was invalided out from service on 26.05.1977 on account of the husband of the petitioner suffering from

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'Schizophrenia'. The degree of the disability was assessed @ 40 % for two years.

3. The disability element claim of the husband of the petitioner was rejected by the Competent Authority, thus on the ground that the supra disability was neither attributable to nor being aggravated by rendition of military service.

4. The husband of the petitioner did not prefer any appeal against the rejection of his claim for grant of disability pension.

5. The husband of the petitioner died on 27.08.1994. The petitioner sent representations to the competent authority rather for grant of family pension but the same were rejected respectively vide letter dated 28.11.2019 and vide letter dated 13.12.2020.

6. Aggrieved from the afore, the petitioner filed application before the learned Armed Forces Tribunal concerned, for grant of family pension to her besides to grant disability pension to her deceased husband. The said O.A. was dismissed vide order dated 09.08.2024. The relevant part of the order is extracted hereinafter.

“6. There is unreasonable delay of 26 years in filing the present OA. The Union of India has also raised the plea that the applicant is not entitled to any relief at this belated stage. We find force in the contention of Union of India that there is no sufficient reason shown by the applicant to condone the delay or to consider her case either for disability pension of her husband or for grant of family pension to her at this belated stage because her husband enrolled in the year 1971 and invalided out in 1977. During life time, the husband of the applicant has not made any correspondence for grant of pension and he has expired long back in 1994.”

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7. *On this point there is judgment of Hon'ble Apex Court in Union of India & Ors. Ex Sep. R. Munusamy, Civil Appeal No. 6536 of 2022 decided on July 19, 2022 wherein the Hon'ble Supreme Court has observed that the claim of such like applicant should not have been entertained and that too 20 years after discharge."*

7. Feeling dis-satisfied from the afore order, wherebys, her claim for grant of family pension besides claim for grant of disability pension to her husband was declined, the petitioner has filed thereagainst the instant writ petition.

Submissions of the learned counsel for the petitioner.

8. The learned counsel for the petitioner submits, that as far as the claim for disability pension is concerned, the said claim thus is a recurring and continuous cause of action, therebys, the learned Tribunal ought to have condoned the delay besides ought to have decided the application on merits.

9. Moreover, since the case of the husband of the petitioner, is squarely covered by the judgment of the Apex Court in case titled as ***Dharamvir Singh Vs. Union of India***, reported in ***(2013) 7 SCC 316***, inasmuch as, in terms thereof, with the husband of the petitioner joining the Army in a fit state of health and upon his invalidation, his disability becoming assessed more than 20 %, thereupons, as stated in the verdict (supra), the said disability was to be declared to become encumbered upon him during the course of his rendering service in the Army.

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**Submissions of the learned counsel for the respondents.**

10. On the other hand, the learned counsel for the respondents submits that the impugned order as passed by the Tribunal concerned does not require any interference.

11. The Original Application filed by the petitioner has been rightly dismissed by the Tribunal concerned, being barred by limitation.

Inferences of this Court.

12. Ex facie, the husband of the present petitioner, was invalidated on account of a declaration becoming made by the invaliding medical board, qua the husband of the present petitioner incurring the apposite disability which became assessed @ 40 % for two years. However, the said entailed disability upon the husband of the present petitioner was further declared to be neither attributable to nor the same becoming aggravated by rendition of military service. The said premise also appears to be erected on the count, that it was a congenital impairment.

13. Before proceeding to make an effective adjudication upon the present writ petition, a useful assistance for determining whether the befallment of any disease vis-à-vis any member of the defence personnel, but post his being enrolled in the army, despite at the initial stage, upon his becoming enlisted, as a member of the combatant defence establishment, rather the same remaining undetected, yet the apposite eruption, thus post enlistment hence being construable to be either congenital or being construable to become aggravated or being

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attributable to military service, thus is acquired, from, the principles set forth in the judgment rendered by the Hon'ble Apex Court, in case titled as ***Dharamvir Singh Vs. Union of India***, reported in **(2013) 7 SCC 316**. The relevant paragraphs of the said verdict are extracted hereinafter.

29. 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

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Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

30. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

14. An incisive reading(s) of the above extracted principles, though pointedly declare, that when a disability becomes entailed upon any member of the combatant defence establishment, and which is to the extent of 20 % or over, thereupon, though any such disabled member is required to be invalided from the Army, but yet he is required to be assigned the benefit of disability pension.

15. Nonetheless, the assignment of disability pension to any member of the combatant defence establishment, who becomes entailed with a disability in a quantum of 20 % or more, but imperatively requires a declaration from the Medical Board, rather candidly pronouncing that the said attained disability being attributable to or becoming aggravated by military service. The said declaration becomes enjoined by the "*Entitlement Rules for Casualty Pensionary Awards, 1982*" of Appendix-II (Regulation 173).

16. Furthermore, though thereins a presumption is assigned vis-à-vis the sound physical and mental health of any member of the defence establishment concerned, especially when at the stage of his becoming enrolled, there is no note or record about his becoming beset with any disease. Moreover, though thereins there is also a further presumption, that when any deterioration theretos, thus occurs subsequently, thereby the said happening of deterioration(s) or onsettings of any disease, rather is to be presumed to be a sequel of his

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rendering service as a member of the defence establishment. Imperatively, the onus for proving the non endowments qua benefits (supra) vis-à-vis the concerned, but is rested on the employer, and in case, the said onus remains un-discharged, thereupon, the claimant becomes entitled to receive disability pension. Moreover, all the facts and circumstances attendant to the rendition of service by the concerned, are to be closely scrutinized, thus for declaring whether the onset of any disease vis-à-vis the concerned, is a sequel qua renditions of military service and/or the same being aggravated by or being attributable to military service.

17. Be that as it may, therein becomes also set forth a further principle(s) that yet there can be denial of disability pension to the concerned, but only upon :

- a) At the time of acceptance of the concerned in military service, some notings becoming recorded by the Medical Board vis-a-vis his being beset with a disease which however, becomes concluded to be yet not rendering him unfit to become enlisted.
- b) Any further deterioration thereof, may also subsequently become concluded by the Medical Board, to not arise from rendition of military service nor being attributable to military service, rather the same being a congenital disease.

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18. Further, if the medical opinion holds that the disease could not have been detected on medical examination of the concerned being made, thus prior to his becoming enlisted in service, thereupons, the same will not be deemed to have arisen during service, yet in the situation (supra), the Medical Board is required to state the reasons for so concluding.

19. Moreover, it is also declared in supra, that 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".

20. Therefore, it has to be now determined whether in terms of the above principles, whether at the time of enlistment of the present soldier in the Army, thus after a preliminary medical examination being made vis-a-vis his health, thus a note became recorded about some disease besetting him and/or whether some note became appended that the said disease was in a dormant stage. Moreover, it is also required to be determined, from the facts at hand, whether there is a causal nexus inter-se the eruption of the disease, and/or the onsettings thereof, on to his person, thus post the enrollment of the present soldier taking place, vis-a-vis the active renditions by him of military service, whereby, this Court may conclude that the onset of the disease but rather was a sequel of his rendering service in the Army and as such was attributable or became aggravated by his rendering military service.

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21. In addition, it is also required to be gathered from the records, whether the Medical Board, did initially proceed to make a detailed incisive antecedental check, particularly appertaining to the advent of the disease, through employments of State of Art medical techniques, thus unveiling the block chain genetic connection, wherefroms, rather the disease became sourced. Moreover, if the said employment fails. Resultantly, therebys it may become concluded qua eruptions thereof, thus subsequent to the apposite enlistment taking place, rather was not congenital but owed its origin to rendition of military service besides it being attributable to or becoming aggravated by performance of military service. Contrarily, if the supra employed techniques at the stage of apposite enlistment taking place, thus by the Medical Board concerned, leads to a conclusion, that there are rather dormant incidences of any disease, but yet the said dormant disease not prohibiting the enlistment of any personnel in the army, navy or air force. Resultantly the subsequent active detection/eruption thereof, during the course of rendition of military service, but would naturally lead to a well conclusion by the Medical Board, that its active eruption but became sourced from an effective causal genetic connection wherebys there would be denial of disability pension.

22. However, now in the said endeavour, this Court is required to be extracting the contents of the opinion, as became recorded by the release medical board.

Opinion of the Medical Board

1. Did the disability/ies exist before entering service ? No

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2. a) xxxx

b) xxxx

c) xxxx

d) *In the case of a disability under C, the board should state what exactly in their opinion is the cause thereof.*

“The disability is of constitutional in origin and not connected with military service.”

23. A reading of the records, discloses that at the time of the apposite enlistment taking place rather no note became made in terms of the principles (supra) declared by the Hon'ble Apex Court in case titled as ***Dharamvir Singh Vs. Union of India (supra)*** by the Medical Board, that some disease which however, did not forbid the present soldier, to become enlisted in the Army, did make its preliminary onsettings. Contrarily, a note was made that no disability then became entailed upon the present deceased soldier. If so, the declaration of law in judgment (supra) that therebys there is a presumption that the incurring of the said disease was a sequel of rendition of service, is required to be favourably endowed vis-a-vis the present soldier. Though the said presumption is rebuttable but the onus to lead evidence to rebut the said presumption became cast upon the respondents. However, the said cast evidence adducing discharging onus vis-a-vis the respondents, rather for cogently rebutting the said presumption, but naturally also did cast an onerous duty also upon the Medical Board, to engage itself in the endeavour of unearthing, through employments of the State of Art block chain genetic causal connection technique(s), wherebys it may became unraveled that the onsetting of the disease onto the army personnel, became sourced from antecedental genetic family history.

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Moreover, therebys it was also required to be stated in the medical opinion, that the disease but for a well formed reason rather was a congenital disease and became neither aggravated by nor became attributable to military service.

24. However, a reading of supra opinion, discloses that it has been recorded in a stereo typed form and no reasons have been recorded to the extent (supra). Reiteratedly, since no evidence to rebut the presumption (supra), thus has been led by the respondents, therebys, this Court is constrained to give no weightage to the opinion of the medical board, as enclosed in Annexure A-2. Conspicuously, no credence can be assigned to the supra ill informed reason, besides therebys the onsetting of the disease cannot be said to be a sequel of antecedental genetic family history. Contrarily, it is required to be declared to arise from rendition of military service. In addition, it is required to be declared to be attributable or becoming aggravated by rendition of military service by the present soldier.

Reasons for rejecting the arguments, to the extent that the O.A. filed by the petitioner before the Tribunal concerned being barred by limitation.

25. Though, the husband of the petitioner during his life time did not made any correspondence with the authorities concerned rather for grant of disability pension but yet when the medical records of the husband of the petitioner reveal, that in terms of the expostulations of law made in the verdict rendered by the Apex Court in case titled as

Dharamvir Singh Vs. Union of India (supra), an indefeasible right

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became conferred upon the husband of the petitioner, to, thus seek endowment of the benefits thereof. Therefore, in the wake of the above, the ill effects, if any, of any delayed claim being made, thus concomitantly gets effaced. Reiteratedly so, since the expostulations of law made in the verdict (supra) conferred an indefeasible right vis-a-vis the deceased soldier, besides was also a recurring and continuous cause of action, irrespective of no claim being made by the deceased soldier and now the present delayed claim being made by his surviving widow.

26. Consequently, the further effect thereof, is reiteratedly that, even if there is some delay in the making of the instant espousal, yet the said delay was not required to be incapacitating either the husband of the present petitioner nor on his demise the present petitioner became incapacitated, to become a valid recipient of a recurring and continuous right, as otherwise became conferred upon the soldier through the verdict (supra).

Final Order of this Court.

27. In aftermath, this Court finds merit in the writ petition and with observations above, the same is allowed.

28. The impugned order (Annexure P-3) is quashed and set aside but with a direction to the respondents concerned, to process the disability pension case of the husband of the petitioner, besides grant him the benefits of roundings off as pronounced in a judgment rendered by the Hon'ble Apex Court in case titled as '**Union of India Vs. Ram Avtar**', reported in **2014 SCC Online 1761**, besides to further process

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the case for grant of family pension to the petitioner from the date of death of her husband.

29. The above exercise may be done within a period of three months from today.

30. Disposed of alongwith all pending application(s), if any

(SURESHWAR THAKUR)
JUDGE

18.01.2025
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No