



232 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-650-2024 (O&M)

Date of Decision : 28-01-2026

UNION OF INDIA AND OTHERS

.....Petitioner(s)

VERSUS

EX SEP SITA RAM AND ANOTHER

.....Respondent(s)

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

Present: Mr. Rohit Verma, Advocate for the petitioners.
Mr. R.L. Bhardwaj, Advocate for the respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, challenge is to the impugned order dated 25.02.2019 (Annexure P-1) passed by respondent No.2-Armed Forces Tribunal, Regional Bench Chandigarh (in short, 'the 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 two years, from the day next to the date of his discharge from service i.e. from 01.09.1999 to 31.08.2001.

2. Learned counsel for the petitioners places reliance upon the report of medical examination of respondent No.1 to hold that though the disability of "**CARDIAL ARRHYTHMIA ICD 427**" assessed @ 20% for two years has been found in respondent No.1, but he said disability has been held to be 'neither attributable to nor aggravated by the Military service'. Hence, the grant of benefit of disability pension to respondent No.1 @ 50% as against 20% for two years by the Tribunal by placing reliance upon the

judgment of in *Union of India and others vs. Ram Avtar*, 2014 SCC Online SC 1761 and *Dharamvir Singh vs. Union of India and ors*, (2013) 7 SCC 316, is incorrect.

3. The learned counsel for the petitioner submits that in the Defence Security Corps (DSC) Service, a minimum service of 15 years was required to earn service pension as per Regulation 271 of Pension Regulation for Army 1961 whereas the learned Tribunal has granted the benefit of service element to respondent No.1 inspite of the fact that he has not completed pensionable service of 15 years and he himself has been unwilling for further extension.

4. Learned counsel for the petitioner further submits that the ld. Tribunal was not correct in directing to conduct a Re-survey Medical Board (RSMB) after 20 years of discharge.

5. Learned counsel for the respondents submits that the petitioners are misreading the “service element” with “service pension” which is entirely different.

6. Learned counsel for the respondents further submits that the disability pension alongwith the “service element” is to be given under the Regulations 183 of the Pension Regulation for the Army Act, 1961 which provision has been interpreted more than once not only by this Court but also by the Hon’ble Supreme Court of India and it has been categorically held that “service element” has no relation with “service pension” and the disability pension is to be calculated only by taking into consideration the “service element”.

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

8. It is conceded fact that at the time when respondent No.1 was discharged from Defence Security Corps on 31.08.1999, he had already rendered 10 years and 23 days of service with the DSC, petitioners-Union of India. It is also a conceded fact that at the time when respondent No.1 was re-enrolled in DSC on 09.08.1989, 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 benefit to the respondent No.1 by placing reliance upon ***Dharamvir Singh's case (supra)***.

9. 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, same is presumed to have been aggravated by and 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”

31. XXX XXX XXXXX XXXX

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 "Genrealised 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."

10. It may be noticed that the Union of India has raised the claim that the officer concerned did not had 15 years service in his credit to get the benefit of service element while fixing the disability pension, but, the said question of law is no longer res integra as, the same has already been decided by Hon'ble Supreme Court of India in Civil Appeal No. 4714-4715 of 2012 titled as **Union of India and others versus V. R. Nanukuttan Nair,** ***decided on 07.11.2019*** wherein the Hon'ble Supreme Court of India was dealing with the similar service regulations of Navy. The regulation 107 of the Navy (Pension) Regulations, 1964 which was mentioned in the said judgment is the pari materia to the service regulations No. 183 of the Pension Regulation for the Army Act, 1961, which is applicable in the present case. After considering the said regulations, the findings which have

been recorded by the Hon'ble Supreme Court of India in paragraph No. 19 is as under:

19) In view of the principles of interpretation relating to Casus Omissus, we find that a reading of the Regulations does not lead to an inference that the service element should be limited to an individual who has completed minimum 15 years of engagement. Regulation 78 cannot be read into Regulation 105B when no such qualification is provided in Regulation 105B.

11. Further, with regards to the grievance raised that respondent No.1 had served in the DSC for 10 years and 23 days and is not entitled for the disability pension. It is relevant to refer to a verdict rendered by the learned Tribunal concerned in case Original Application No.324 of 2016 titled **Om Parkash Guleria Vs. Union of India and others, decided on 10.08.2018**, wherein a similar question was put forth before the Tribunal concerned, that ***whether the applicant who was in receipt of army pension at the time of his re-enrolment in the DSC, is entitled to the disability pension in the DSC service also?*** The learned Tribunal concerned after considering the relevant regulations observed that in terms of Regulation 179 of the Pension Regulations for the Army, 1961, the applicant was entitled to disability pension consisting of service element as well as disability element. Further, the Tribunal also observed that the mere fact that the appellant was in receipt of pension of his first spell of Army service does not disentitle him to become an able recipient of the component of disability pension thus for the second spell of service in the DSC. The said verdict was challenged by the Union of India before the Hon'ble Supreme Court of India and the same was upheld by the Apex Court in its verdict rendered in case titled as ***Union of India and ors. Vs. Om Parkash Guleria, decided on 27.08.2021***, to which Civil Appeal No. (Diary No.9346) became assigned.

The relevant paragraphs, as occur in the said verdict are extracted hereinafter.

“2. Besides the delay of 515 days in filing the appeal, which has not been satisfactorily explained, even on merits, we find no error in the judgment dated 10 August, 2021 of the Armed Forces Tribunal. **The Tribunal has correctly construed the provisions of the pension regulations and the ultimate conclusion, entitling the respondent to the service element of the disability pension and the benefit of rounding off, does not suffer from any error.**

3. The Civil Appeal is, therefore, dismissed on the ground of delay as well as on merits.”

12. Learned counsel for the petitioners has not been able to rebut the settled principle of law.

13. Not only this, the similar issue was raised by the Union of India in CWP No. 2412 of 2025, titled as “ Union of India and others versus No. 763665 Ex Cpl Kishor Chandra Mohanty and another”, decided on 29.01.2025 and after imposing the cost of Rs. 25, 000/- , the Co-ordinate Bench of this Court, dismissed the said writ petition by recording the findings that despite settled principle of law, the writ petitions are being filed by the Union of India by ignoring the provisions of law.

14. Once again, the Coordinate Bench of this Court while dismissing three writ petitions filed by the Union of India i.e. CWP-1947 2025 on the same cause by recording the findings that the "service element" is being confused with the "service pension", which is incorrect and similar writ petitions were dismissed.

15. Further, with regard to the grievance of petitioners qua the benefit of ‘rounding off of disability pension’ 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 an 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.”

16. 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)*** & ***Ram Avtar's case (supra)*** to the effect that percentage of disability is to be rounded off and in the present case, the disability of 20% is to be rounded off to 50%.

17. 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 *Ram Avtar's case (supra)* 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 so as to grant the disability pension cannot be denied.

18. 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)*, *Reet MP Singh case (supra)* and *Om Parkash Guleria's case (supra)*, once at the time of enrolment, respondent No.1 was medically examined and was found to be fit in all aspects and it was only during his service period that respondent No.1 was found to be suffering from disability of "*CARDIAL ARRHYTHMIA ICD 427*", 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)*.

19. A bare perusal of the order dated 25.02.2019 passed by the Tribunal shows that direction has been given to constitute Re-survey Medical Board (RSMB), since the disability of the respondent No.1 was assessed for two years only and thereafter, grant the benefit in case he is found entitled for the same. No perversity has been found in the order dated 25.02.2019 (Annexure P-1) passed by the Tribunal so as to set aside the same especially after a period of more than four years of passing of the said order by the Tribunal.

20. No ground is made out for any interference by this Court in the facts and circumstances of the present case and the writ petition is accordingly dismissed.
21. Pending application(s), if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

28-01-2026
Sapna Goyal

(VIKAS SURI)
JUDGE

NOTE:

Whether speaking: YES
Whether reportable: NO