



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

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CWP-7696-2026

Date of Decision: 13.03.2026

Union of India and others**....Petitioners****Versus****Smt. Mishri Devi and another****....Respondents**

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

Present: Mr. Rohit Verma, Advocate
for the petitioners.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the impugned order dated 04.01.2023 (Annexure P-1) passed by respondent No.2 – The Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as ‘the Tribunal), by which the husband of respondent No.1 has been held to be entitled for grant of special family pension w.e.f. 30.06.2005 instead of ordinary family pension from the date of his death, i.e. 29.06.2005.

2. Learned counsel for the petitioners places reliance upon the report of Release Medical Board of the husband of respondent No.1 to contend that though the disability of ‘*Chronic Myeloid Leukemia in Blast Crisis*’ assessed @ 100% for life has been found to be existing in him, but the same has been assessed by the Release Medical Board to be ‘neither attributable to Military Service nor aggravated by the Military service’. Hence,



the grant of benefit of disability pension to the husband of respondent No.1 by the Tribunal vide order dated 04.01.2023 (Annexure P-1) by placing reliance upon the judgment of Hon'ble Supreme Court of India in ***Dharamvir Singh versus Union of India and others, (2013) 7 SCC 316***, to the effect of granting benefit of special family pension to the husband of respondent No.1, is incorrect.

3. Learned counsel for the petitioner submits that the said ailment of '*Chronic Myeloid Leukemia in Blast Crisis*' suffered by the late husband of respondent No.1 cannot be attributed to or aggravated by the military service as the same relates of the genes of a particular person and any such disease, which relates to the malignancies in genes of a person cannot be said to have been arisen during military service.

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

5. It may be noticed that the husband of respondent No.1 was enrolled in Army on 29.06.1991 in a fit medical condition. Respondent No.1 had rendered 14 years and 01 days of service in the Army and expired while in service on 29.06.2005 at R & R Hospital Delhi Cantt due to '*Chronic Myeloid Leukemia*', and as per the medical certificate, the cause of death is "*Blast Crisis*".

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



could not have said to have been either attributable or aggravated to military service was rejected. The Hon'ble Delhi High Court while dealing with the said contention placed it's 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 neither attributable nor 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:



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- (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 nonentitlement 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."*

7. When the 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 husband of respondent No.1 was found suffering from while in service and ultimately died of, does not surface instantaneously in 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 14 years, the husband of respondent No.1 was serving in the Army and keeping in view the various postings he was posted on and the stress which he encountered during, such posting, it can be safely said that the



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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.

8. Furthermore, as per the Rules governing the employees of petitioners, except for cancer that may develop in a personnel due to smoking, the remaining types of cancer which may arise in a personnel due to any other reason are treated as attributable to the military service. Further, the late husband of respondent No.1 had rendered his service in the Army for a period of 14 years, hence, it cannot be accepted that 'Cancer' from which the late husband of respondent No.1 suffered was existing at the time of recruitment in service but remained undetected so as to deny the benefit of special Family Pension to respondent No.1-wife by stating that the same is neither attributable nor aggravated by military service, especially when the late husband of respondent No.1 was not only invalidated from service due to the said ailment but had ultimately died of the same. Even otherwise, Rule 213 states that the benefit of special family pension is to be granted even if the disease was existing and same was aggravated by military service which aggravation led to death.

9. Further, the late husband of respondent No.1 had served the military service for around 14 years and, keeping in view the various postings and the different types of food ingested by him during service, it is quite likely that these factors contributed to the disease suffered by the husband of the respondent No. 1, which ultimately lead to his death.

10. Moreover, it cannot be said that all types of cancer are to be treated as neither attributed to nor aggravated by the military service. It is only



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in cases such as lung cancer or other such similar cancers, where the officer concerned was a habitual smoker, that the same may be treated as an exception. In the present case, however, the disease suffered by the late husband of respondent No. 1 was '*Chronic Myeloid Leukemia in Blast Crisis*', which cannot be held to be neither attributed to or nor aggravated by the military service.

11. No other arguments have been raised.

12. Keeping in view the totality of facts and circumstances and as the learned counsel for the petitioners has not been able to prove that the impugned order dated 04.01.2023 (Annexure P-1) is perverse, either on the basis of the facts 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.

13. Accordingly, the writ petition is dismissed.

14. Pending application(s), if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

March 13, 2026
Varinder

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No