



CWP-23390-2025

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

(108)

CWP-23390-2025

Date of Decision : August 13, 2025

**The Union of India and others****.. Petitioners****Versus****Smt. Kulwant Kaur and another****.. Respondents**

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

Present: Ms. Shalini Atri, Sr. Panel Counsel, for the petitioners-UOI.

**HARSIMRAN SINGH SETHI J. (ORAL)**

1. In the present writ petition, the challenge is to the order dated 28.02.2023 (Annexure P-3) passed by the respondent No.2-Armed Forces Tribunal, Regional Branch, Chandigarh (hereinafter referred to as 'Tribunal') in *OA No.1637 of 2021 titled as Smt. Kulwant Kaur vs. Union of India and others*, by which the benefit of the special family pension has been allowed in favour of respondent No.1 keeping in view the disability suffered by the son of respondent No.1 on the ground that same is incorrect.

2. Learned counsel for the petitioner submits that son of respondent No.1 joined the Army on 15.03.2003 and was invalidated on 11.07.2005 under Army Rule 13 (3) on the basis of the disease "NON HODGKINS LYMPHOMA".



3. Learned counsel for the petitioner further submits that as per the opinion of the Medical Board, the said injury was not attributable to the Military service, which fact has been ignored by the Tribunal and therefore, the order dated 28.02.2023 (Annexure P-3) is liable to be set aside.

4. We have heard learned counsel for the petitioner and have gone through the record with her able assistance.

5. Certain facts need to be mentioned for proper adjudication of the issue in hand.

6. It may be noticed that before joining the Army Service on 15.03.2003, son of respondent No.1 was medically examined and was found to be fit in all respect. It has also come on record that on 09.06.2003, during the physical training, son of respondent No.1 suffered a severe injury of "STRESS FRACTURE (RT) TIBIA". The said injury was declared to be attributable to the Military Service.

7. Further, it has also come on record that apart from the abovementioned injury, son of respondent No.1 also suffered "DISLOCATION SVI OVER SUBLUXATION SV2" during physical training, which is also declared as attributable to Military service.

8. The son of respondent No.1 invalided out of service on 11.07.2005 being placed in low medical category P-5 (permanent) on account of disability "NON HODGKINS LYMPHOMA STAGE" and ultimately died on 29.11.2005 due to the said injuries.

9. The question which arises for consideration is whether an injury suffered by an Army personnel while undergoing the training can be treated as attributable to the Military Service or not.



10. Once, it is a conceded fact that the injury was suffered while undergoing the training, it cannot be said that the said injury which was made the basis to discharge the son of respondent No.1 is not to be treated attributable to the Military Service.

11. It may be noticed that after the discharge of son of respondent No.1 from services on 11.07.2005, son of respondent No.1, who had suffered severe injury during the training period, unfortunately died on 29.11.2005 because of the said injury, which fact has also gone undisputed at the hands of the learned counsel for the petitioners.

12. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.4949 of 2003 titled as Dharamvir Singh vs. Union of India and others decided on 02.07.2013***, the opinion of the Medical Board, can be deferred by the Court in case good reasons are available. The relevant paragraphs of the said judgment 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. XXXX XXXX XXXX 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 "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 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.”*

13. In the present case, learned counsel for the petitioners has not been able to rebut the facts which have been detailed hereinbefore qua the

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injuries suffered by the son of respondent No.1 during the period of training, due to which son of respondent No.1 was invalidated out of service and ultimately died.

14. No other arguments were raised during the proceedings.

15. Keeping in view the totality of the circumstances, as learned counsel for the petitioners has not been able to prove that the order dated 28.02.2023 (Annexure P-3) passed by the Tribunal is perverse either on facts, rules governing the service or the settled principle of law noticed hereinbefore, no ground is made out for any interference by this Court in the facts and circumstances of the present case.

16. Accordingly, the writ petition is dismissed.

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

**August 13, 2025**  
*harsha*

**(VIKAS SURI)**  
**JUDGE**

Whether speaking/reasoned : Yes  
Whether reportable : No