IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-16244-2025
Date of Decision: 18.08.2025

UNION OF INDIA AND OTHERS

...Petitioners

Versus

EX SEPOY RACHHPAL SINGH AND ANOTHER

...Respondents

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

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

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HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, the challenge is to the impugned order dated 16.01.2025 (Annexure P-3) passed by respondent No.2-Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'Tribunal), by which, petitioners were directed to issue a Pension Payment Order granting invalid pension to respondent No.1 herein from the day following date of discharge along with arrears, on the ground that the same is perverse.

2. Learned counsel for the petitioners places reliance upon the report of medical examination of respondent No. 1 to contend that though the disabilities of "(a) *Primary Hypertension,* (b) 'Diabetes Mellitus 'Type II' and (c) Dyslipidemia*"* have been found in respondent No.1 but the said disabilities are 'neither attributable to Military Service nor aggravated by the Military service hence, the grant of benefit of disability pension to respondent No.1 for life is incorrect.

4. Further, learned counsel for the petitioners has also placed

reliance upon the judgment passed by Hon'ble Supreme Court of India in ***Narsingh Yadav vs. Union of India and others*****, (2019) 9 SCC 667,** to contend that any disorder not detected at the time of enrolment, cannot be mechanically attributed to military service. He further contends that, as per the said judgment, the presumption that a personnel who was found to be fit at the time of enrolment and was further detected with a disability, such a disability cannot be mechanically presumed to be attributed to and aggravated by military service.

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

6. It is conceded fact that at the time when respondent No. 1 was relieved from service on medical ground, he had already rendered more than 04 years and 08 months of service with the petitioner-Union of India. It is also a conceded fact that at the time when respondent No. 1 joined the armed forces, he was medically examined and was not found suffering from any such disease, on the basis of which, respondent No. 1 was ultimately discharged from service i.e. on 31.03.2022.

7. As per the principle settled by Hon'ble Supreme Court of India in ***Dharamvir Singh versus Union of India and others*****, (2013) 7 SCC 316**, any officer serving in the Armed Forces, who had undergone the medical examination at the time of his/her selection and was not found suffering from any such disease at that time on the basis of which, he/she has been discharged from service, such an employee is entitled for the benefit of presumption in his/her favour as per Rule 5 and 9 of 'Entitlement Rules for Casuality Pensionary Awards, 1982' that the said disability has been

contracted by the employee during his service career and is, thus, entitled for the benefit of disability pension. The relevant paras No.30 and 32 of the judgment in ***Dharamvir Singh's*** case (supra) is 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:
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> "(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"
>
> 31. XXXX XXXX
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> 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."

8. Further, as per the recent judgment of the Hon'ble Supreme Court of India in ***Bijender Singh vs. Union of India and others, 2025 SSC OnLine SC 895,*** the same issue has been considered again and it has been held that proving that disability is not attributed to military service is upon employer and report of Medical Board cannot be accepted especially when no disability was detected at the time of entry into service, relevant paras are is as under

> ***"46.*** *Referring back to the impugned order dated 26.02.2016, we find that the Tribunal simply went by the remarks of the Invaliding Medical Board and Re-Survey Medical Boards to hold that since the disability of the appellant was less than 20%, he would not be entitled to the disability element of the disability pension. Tribunal did not examine the issue as to whether the disability was attributable to or aggravated by military service. In the instant case neither has it been mentioned by the Invaliding Medical Board nor by the Re-Survey Medical Boards that the disease for which the appellant was invalided*

> *out of service could not be detected at the time of entry into military service. As a matter of fact, the Invaliding Medical Board was quite categorical that no disability of the appellant existed before entering service. As would be evident from the aforesaid decisions of this Court, the law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the member suffered from any particular disease, the presumption would be that the member got afflicted by the said disease because of military service. Therefore the burden of proving that the disease is not attributable to or aggravated by military service rest entirely on the employer. Further, any disease or disability for which a member of the armed forces is invalided out of service would have to be assumed to be above 20% and attract grant of 50% disability pension.*
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> ***47.*** *Thus having regard to the discussions made above, we are of the considered view that the impugned orders of the Tribunal are wholly unsustainable in law. That being the position, impugned orders dated 22.01.2018 and 26.02.2016 are hereby set aside. Consequently, respondents are directed to grant the disability element of disability pension to the appellant at the rate of 50% with effect from 01.01.1996 onwards for life. The arrears shall carry interest at the rate of 6% per annum till payment. The above directions shall be carried out by the respondents within three months from today."*

9. 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) as well as ***Bijender Singh's*** case (supra).

10. Learned counsel for the petitioners has placed reliance on the judgment in ***Narsingh Yadav's*** case (supra) to contend that in case a person is found to be fit at time and is at later stage in service found to be suffering from a disability, the presumption that such a disability is attributed to

military service cannot be applied mechanically. Qua the said aspect, it shall be noted that to rebut such a presumption, which is in favour of a disabled employee, sufficient material has to be brought on record to show that neither the service conditions nor the duties assigned to the employee concerned were of such a nature which could establish that disability is not attributable to the military service, such onus has not been discharged by the employer in the present case to show that the respondent No.1-employee's case is covered by ***Narsingh Yadav's*** case (supra).

11. Keeping in view the settled principle of law settled in ***Dharamvir Singh's*** case (supra) and ***Bijender Singh's*** case (supra) as well as the facts and circumstances of the present case that at the time of selection, respondent No. 1 was medically examined and was found fit in all respects and it was only after respondent No. 1 rendered service for more than 04 years and 08 months with the petitioner-UOI, he was found to be suffering from the (a) *Primary Hypertension,* (b) 'Diabetes Mellitus 'Type II' and (c) Dyslipidemia along with the fact that no cogent evidence/material or detailed medical record has been brought on record to show this Court that the disability is not attributable to military service. That being so, the said disability has to be attributed to the military service and the report of Medical Board cannot take away the right of respondent No.1 to claim the benefit of disability pension.

12. Hence, in the absence of any perversity being pointed out in the impugned order dated 16.01.2025 (Annexure P-3) 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

(VIKAS SURI)
JUDGE

August 18, 2025
harish

Whether speaking/reasoned Yes
Whether reportable No