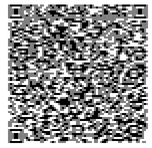
 

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

134

CWP-24970-2025
Date of Decision: 27.08.2025

UNION OF INDIA AND OTHERS
...Petitioners

Versus

EX HAV. NARESH KUMAR AND ANOTHER
...Respondents

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

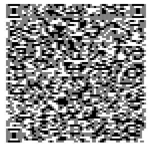
Present:- Mr. Harmanjot Singh Gill, Senior Panel Counsel,
for the petitioners.

*****

HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, the challenge is to the impugned order dated 20.11.2023 (Annexure P-1) passed by respondent No. 2-Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'Tribunal') by which, respondent No.1 has been allowed the benefit of disability pension by rounding off the disability element from 40% to 50% for life, 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 hold that though the disability of "*Diabetes Mellitus Type-2*" has been found in respondent No.1, but the same has been held to be 'neither attributable to Military Service nor aggravated by the Military service'. Hence, the grant of benefit of disability pension to respondent No.1 from 40% to 50% for life by placing reliance

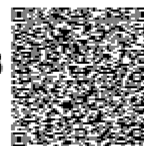
upon the judgment of Hon'ble Supreme Court of India in ***Dharamvir Singh versus Union of India and others,*** **(2013) 7 SCC 316** and ***Union of India and others vs. Ram Avtar***, **2014 SCC Online SC 1761,** is incorrect.

3. Learned counsel for the petitioners further submits that once, the report of the Medical Board clearly states that the disability suffered by respondent No.1 is neither attributed to military service nor aggravated by the military service, the grant of benefit of disability pension to respondent No. 1 by rounding off the disability from 40% to 50% for life is incorrect and the facts of the present case have not been appreciated in correct perspective by the Tribunal while passing the impugned order dated 20.11.2023 (Annexure P-1).

4. 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.

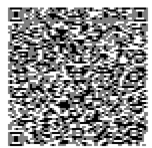
5. We have heard learned counsel for both the petitioners and have gone through the case file with his able assistance.

6. It is conceded fact that at the time when respondent No.1 retired from service on 30.06.2020, he had already rendered more than 26 years of service with the petitioners-Union of India. It is also a conceded fact that at

the time when respondent No. 1 joined the armed forces i.e. on 30.06.1994, he was medically examined and was not found suffering from any such disease, on the basis of which, respondent No. 1 has been granted the benefit of disability pension. The claim of respondent No.1 is covered in his favour for the grant of disability pension as per the judgment of Hon'ble Supreme of India in ***Dharamvir Singh's*** case (supra). The relevant para Nos.30, 32 and 33 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 Disability is not related to mil service"
>
> 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."

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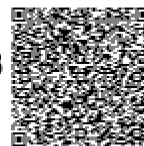
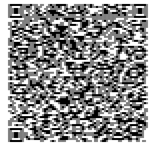


7. Further, as per the settled principle of law settled by Hon'ble Supreme Court of India in ***Union of India and others vs. Ram Avtar***, **2014 SCC Online SC 1761**, any officer serving in the Armed Forces, who had undergone the medical examination at the time of his/her selection and was found fit, subsequently upon suffering a disability, is entitled to the benefit of disability pension by rounding off the same as the presumption would be that the disability suffered 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."

8. 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 ***Ram Avtar's*** case (supra) to the effect that percentage of disability to be rounded off and when applied in the present case disability of 40% is to be rounded off to 50%.

9. Learned counsel for the petitioner 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).

10. Keeping in view the facts and circumstance of the present case as well as the settled principle of law settled in ***Dharamvir Singh's*** and ***Ram Avtar's*** case (supra), once at the time of selection, respondent No. 1 was medically examined and was found fit in all respects and it was only during the service, respondent No.1 was found suffering from the *Diabetes Mellitus*

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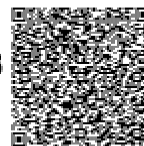

Type-2. That being so, the said disabilities have to be attributed to the military service and the report of Medical Board cannot take away the right of respondent No.1 to claim the benefit of disability pension and that too, by rounding off the disability from 40% to 50% as per the settled principle of law settled in ***Ram Avtar's*** case (supra).

11. No other argument has been raised.

12. Hence, in the absence of any perversity being pointed out in the impugned order dated 20.11.2023 (Annexure P-1) 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 27, 2025
harish

Whether speaking/reasoned	Yes
Whether reportable	No