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

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CWP-24631-2025

Date of Decision :25.08.2025

Union of India and others

..Petitioners

Versus

Ex. Signalman Rajesh & another

...Respondents

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

Present: Mr. Rohit Verma, Senior Panel Counsel
for petitioners-UOI.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the impugned order dated 09.05.2022 (Annexure P-1) passed by respondent No.2-Armed Forces Tribunal, Regional Bench, Chandigarh (for short, '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.

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 '*Recurrent Giant Cell Tumor Distal Femur (LT) OPTD (ICD No.96.2*' has been found in respondent No.1, but the said disability has been *assessed* to be 'neither attributable to nor aggravated by the Military service'. Hence, the grant of benefit of disability pension to respondent No.1 @ 50% for life by the Tribunal by placing reliance upon the judgment of in



Dharamvir Singh vs. Union of India and others, (2013) 7 SCC 316 for the purpose of vitiating the assessment made in medical report so as to grant benefit of disability pension and *Union of India and others vs. Ram Avtar, 2014 SCC Online SC 1761* for the purpose of granting benefit to rounding off of disability pension is incorrect.

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

4. It transpires from the file for perusal and from the submission of the learned counsel for the petitioners that the grievance of the petitioners is twin fold; firstly that the respondent No.1 has been given the benefit of disability pension despite there being medical report of respondent No.1 on record where assessment has been made that the disability incurred during the service period is neither attributable to nor aggravated by military service and still the benefit of disability pension has been given to respondent No,1; and second that even though the after assessment states that disability is of 40% yet the same has been rounded off to 50%.

5. These grievances of the petitioners will be dealt accordingly hereinafter by taking into notice the facts of present case as well as settled principles of law governing the said issue.

6. It is conceded fact that at the time when respondent No.1 was discharged from service on 31.03.2020, he had already rendered 17 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, he was medically examined and was found not to be suffering from any such disease. This had been made the basis by the Tribunal while granting benefit to the respondent



No.1 by placing reliance upon *Dharamvir Singh (supra)*. 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 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 "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.

"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."

7. It should be noted that as per *Dharamvir Singh's* case (supra), the entitlement Rules 5 and 9, the presumption is in favour of the army personnel who has suffered disability that same is attributable to and aggravated by military service, and the onus of proof is upon the employer to disprove the same by bringing on record the evidence and substantial



medical report which could prove the fact that the disability is neither attributable to nor aggravated by military service, which concededly has not been done by the petitioners hence, the claim of the respondent No.1 is rightly adjudicated by the Tribunal.

8. Further, with regard to the grievance of petitioners qua the 'rounding off of disability pension' 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 any officer serving in the 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.”

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) and ***Ram Avtar’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*** case (supra) and ***Ram Avtar’s case*** (supra), once at the time of enrolment, respondent No. 1 was medically examined and was found to be fit in all respects and it was only during his service period that respondent No.1 was found to be suffering from “*Recurrent Giant Cell Tumor Distal Femur (LT) OPTD (ICD No.96.2*”. That being so, the said disability has to be attributed by 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 by rounding off the disability as per the settled principle



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of law settled in *Ram Avtar's case (supra)*.

11. Hence, in the absence of any perversity being pointed out in the impugned order dated 09.05.2022 (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 and the writ petition is accordingly dismissed.

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

(HARSIMRAN SINGH SETHI)
JUDGE

August 25, 2025
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No