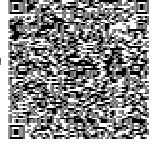


2025:PHHC:018360-DB

CWP-3461-2025 (O&M)  
Date of Decision: 07.02.2025

Union of India and others

...Petitioners

Vs.

Ex JWO Nagar Mal Sharma and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. S.K. Sharma, Senior Panel Counsel for the petitioners.

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**SANJEEV PRAKASH SHARMA, J. (Oral)**

1. This writ petition assails the order dated 10.10.2024, passed by the Armed Forces Tribunal, Regional Bench, Chandigarh, whereby the Tribunal directed to release the disability pension to the officer, who had rendered 38 years and 12 days of qualifying service from 20.10.1984 to 31.10.2022 as while in service he had suffered serious ailments including : (i) CVA (RT) middle cerebral artery stroke (old), (ii) dyslipidemia (old) and (iii) primary hypertension (old).

2. Learned counsel submits that since he has continued to serve with the forces, the disability pension ought not be released and the disability would not be treated as attributable and aggravated due to military service. The medical board has not given its opinion that the disease was caused on account of military service.

3. We have carefully considered the submissions in the light of averments which were on record before the Tribunal and the judgment passed

by it and find that the medical board has assessed the disability @ 66.75% for life for the following disease:-

- (i) CVA (RT) middle cerebral artery stroke (old),
- (ii) dyslipidemia (old) and
- (iii) primary hypertension (old).

4. It is to be noticed that the Hon'ble Supreme Court in the case of **Dharamvir Singh vs. Union of India (2013) 7 SCC 316**, has observed 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...*

*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 causal connection with the service conditions."*

5. We find that while an official is recruited in the armed forces only when he is found to be completely fit to perform his duties strenuously

and on account of such stress, respondent No.1 develops several ailments which cannot be said to be not attributable to the military services. Further, since the respondent No.1 has continuously performed his duties even after having been detected of the said disease, the aggravation would also be on account of the military service.

6. In the circumstances, a vague assessment done by the medical board at the time of release only for the purpose of depriving him of the entitlement to disability element of disability pension, cannot be allowed to be entertained and the Tribunal has, therefore, rightly allowed the OA considering the judgment passed by the Hon'ble Supreme Court in **Union of India and others vs. Ram Avtar 2014 SCC Online SC 1761**, by rounding off the disability element of disability pension @ 75% w.e.f 01.11.2022 for life. Accordingly, the order passed by the Tribunal does not suffer from any illegality. The writ petition is, therefore, found to be without merits and is accordingly dismissed.

7. All pending misc. application(s) also stand disposed of.

**(SANJEEV PRAKASH SHARMA)**  
**JUDGE**

**(MEENAKSHI I. MEHTA)**  
**JUDGE**

07.02.2025  
rajesh

1. Whether speaking/reasoned? : Yes/No  
2. Whether reportable? : Yes/No