



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

239

CWP-597-2024 (O&amp;M)

Date of Decision: 02.09.2025

UNION OF INDIA AND OTHERS

...Petitioners

Versus

ARMY No.3169847-M, EX. RECT RAM PHAL SINGH AND ANOTHER

...Respondents

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

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

Mr. Akash Kundu, Advocate  
for respondent No.1.

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

1. In the present petition, the challenge is to the impugned order dated 30.03.2023 (Annexure P-1) passed by respondent No.2-Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'Tribunal') by which, the disability element of the pension declined to respondent No.1 after conduction of RSMB of respondent No.1 on 03.04.1984, whereby disability was assessed at less than 20%, has been restored by the Tribunal.

2. It may be noticed that respondent No.1 was enrolled in the Army on 20.07.1978 and was invalidated out on 11.04.1980 on medical grounds as the officer was found to be suffering from 'Tubercular Pleural Effusion RT (IMB) (RT). The Medical Board at that time assessed the disability as 40% for a period of two years i.e. 1980 to 1982 and the



disability pension @ 40% was granted to respondent No.1 for the said period and thereafter, disability pension @ 20% was granted for another period of two years after 06.04.1982. Thereafter, the disability element of the pension was stopped after conduction of RSMB of respondent No.1 on the ground that the disability has been rendered as 'Nil', as the same was assessed at less than 20%. The said stoppage of the disability element of the pension has been restored by the Tribunal by passing of the impugned order. Learned counsel argues that once the disability has been found to be no longer in existence, the action of the authority of withdrawing the benefit of disability element of pension is perfectly valid and legal and without appreciating the said fact, the said benefit has been restored by the Tribunal, which is liable to be set aside.

3. We have heard the learned counsel for the parties and have gone through the record with their able assistance.

4. It may be noticed that once an officer has been invalidated out of service on the ground of the disability, the benefit of disability pension cannot be stopped or reduced at later stage only on the ground that the disability which was the reason for invalidation, has been either assessed or reduced or, the same has become nil. Once, an officer is not to be taken back in service in case after assessment, the disability is reduced to less than 20%, which is the minimum percentage to invalidate a personnel out of service, the disability element of the pension can also not be stopped. The same has to be granted for life irrespective of the fact that whether the disability which was the reason for invalidating the personnel out of service is in existence or



not, otherwise the same will cause prejudice to a soldier.

5. Learned counsel for the petitioners submits that once there are two elements for consideration while granting the disability pension, one is disability and the other is service element, and in case the service element continues while the former is discontinued, no prejudice would be caused to the soldier concerned.

6. It may be noticed that the minimum period of service required for grant of benefit of pension under ordinary circumstances is 15 years and the said benefit is to be granted on the basis of the said period of service. But in case, an officer becomes disabled during the service, which disability is assessed as attributed to or aggravated by military service and is consequently invalidated out of service within a period of 2 to 3 years of service, there will be hardly any service element to be taken into consideration for grant of pension so as to survive and lead a dignified life.

7. Once, upon the reduction/absence of the disability, the soldier is not taken back in service after being invalidated out of service qua said disability, it does not give a right to the army authorities to withdraw the disability pension so as to cause prejudice to the soldier.

8. As per the judgement of the Hon'ble Supreme Court of India in ***Sukhvinder Singh vs. Union of India and others, (2014) 14 SCC 364***, it has been held that where, the disability has been assessed as less than 20% but the officer is invalidated out of service due to said disability, presumption has to be drawn that the disability of 20% so as to grant such army personnel the benefit of disability pension. The same jurisprudence will also come into play in present case, where the disability has been



reduced to less than 20%, the same has to be presumed @ 20% for the reason that the army personnel is not taken back in service after reduction/absence of disability and remains invalidated out for all intents and purposes. The relevant paras of the judgment in **Sukhvinder Singh's** case (supra) are as under:-

*“6 We think that it is beyond cavil that a combatant soldier is liable to be invalidated out of service only if his disability is 20 per cent or above and there is a further finding that he cannot discharge duties even after being placed in a lower medical category. We are indeed satisfied to note that Rule 173 Appendix-II (10) postulates and permits preferment of claims even “where a disease did not actually lead to the member’s discharge from service but arose within ten years thereafter.” We, just as every other citizen of India, would be extremely disturbed if the Authorities are perceived as being impervious or unsympathetic towards members of the Armed Forces who have suffered disabilities, without receiving any form of recompense or source of sustenance, since these are inextricably germane to their source of livelihood. Learned Counsel for the respondents has failed to disclose any provision empowering the invaliding out of service of any person whose disability is below 20 per cent. Indeed, this would tantamount to dismissal of a member of the Armed Forces without recourse to a court-martial which would automatically entitle him to reinstatement. Regulation 143 envisages the ‘Re-Enrolment of Ex-Servicemen Medically Boarded Out’, where the disability is reassessed to be below 20 per cent. It is, therefore, self contradictory to contend that the invaliding out of service of the Appellant was justified despite his disability being of trivial proportions having been adjudged between 6 to 10 per cent only. We shall presume, albeit fortuitously for the Respondents, that re-assessment of the Appellant’s disability was not required to be performed because it was found to be permanent. Otherwise, there*



would be a facial non-compliance with Regulation 143, which is extracted below for ease of reference:- “143.Re-Enrolment of Ex-Servicemen Medically Boarded Out. (a) Ex-Servicemen, who are in receipt of disability pension, will not be accepted for re- enrolment in the Army. (b) Ex-Servicemen, medically boarded out without any disability pension or those whose disability pensions have been stopped because of their disability having been re-assessed below 20% by the Re-Survey Boards, will be eligible for re-enrolment, either in combatant or non-combatant (enrolled) capacity in the Army, provided they are re-medically boarded and declared fit by the medical authorities. If such an ex-serviceman applies for re-enrolment and claims that he is entirely free from the disability for which invalided, he will be medically examined by the Rtg MO and if he considers him fit, the applicant will be advised to apply to officer-in-charge, Records Office concerned, through the recruiting officer for getting himself re-medically boarded. The officer-in-charge, Records Office concerned, on receipt of the application, will arrange for his medical examination at a Military Hospital nearest to his place of residence. The individual concerned will have to pay all his expenses, including that on accommodation and journey to and from the place of medical examination. If the individual is found fit and re-enrolled on regular engagement, he will be enlisted for the full period of combined colour and reserve service, subject to the following conditions:- (i) If he had not previously completed the minimum period of colour service after which he could be transferred to the reserve, he will rejoin the colours and his previous colour service will count towards the minimum service required for transfer to the reserve (ii) If he had previously completed the minimum period of colour service required for transfer to the reserve and is fully trained and suitable in all other respects, he may be re-enrolled, provided a vacancy in the reserve exists, and be immediately transferred to the reserve. (c) The counting of former service for pension or gratuity is governed by the



*provisions of Pension Regulations.”*

*7. The next submission on behalf of the respondents is that the injury/disability sustained by the Appellant is neither attributable nor aggravated by Military Service, thereby disentitling him for grant of disability pension. We must draw an adverse presumption against the respondents, inasmuch as no impairment in the Appellant’s hearing had been detected at the time when he was enrolled on 15.3.2001, pursuant to a complete physical check up. In fact, an adverse presumption is postulated in Appendix II (supra). In our opinion, the version of the Appellant that injury was sustained by him as a result of his having been slapped by his Instructor, or for that matter by any other Combatant, has credibility. We had already adverted to the Confidential Medical Report dated 5th August, 2001 which specifically contains a mention of the Appellant having been assaulted. In the circumstances, we cannot but conclude that the injury was ‘either attributable or aggravated by Military Service’. Having undergone a thorough medical examination only one year prior to the incident, had the injury or disability been congenital or been in existence at the time of recruitment, it would have been duly discovered. Therefore, on both counts viz. disability to the extent of less than 20 per cent, as well as it having been occurred in the course of Military Service, the findings have to be in favour of the Appellant. 8 Paragraph 183 of the Pension Regulations for the Army 1961, (Part-I) stipulates as under:-*

*“183. The disability pension consists of two elements viz. Service element and disability element which shall be assessed as under:*

*(1) Service element ..... (2) Disability element .....*

*.....*

*In case where an individual is invalidated out of service before completion of his prescribed engagement/service limit on account of disability which is attributable to or aggravated by military service and is*



*assessed below 20 percent, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulations for the Army Part-I(1961).”*

*9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.*

*10. In view of our analysis, the Appellant would be entitled to the Disability Pension. The Appeal is, accordingly, accepted in the above terms. The pension along with the arrears be disbursed to the Appellant within three months from today.”*

8. Learned counsel for the petitioners has not been able to dispute the aforesaid settled principle of law. Hence, the order passed by the Tribunal is as per the settled principle of law and has not been proved to be perverse either on facts or on law, no ground is made out for any inference.

9. No other argument has been raised.



- 10. Accordingly, the writ petition is dismissed.
- 11. Pending application(s), if any, stands disposed of.

**( HARSIMRAN SINGH SETHI )  
JUDGE**

**( VIKAS SURI )  
JUDGE**

**September 02, 2025**

*harish*

Whether speaking/reasoned Yes

Whether reportable No