IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

142 **CWP-29540-2025 (O&M)**
Decided on : 30.09.2025

UNION OF INDIA AND OTHERS

. .Petitioners

Versus

EX NK SUKHDEV SINGH AND ANOTHER

. . . Respondents

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

PRESENT: Mr. Narender Kumar Vashist, 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 04.01.2023 (Annexure P-1) passed by respondent No.2-Armed Forces Tribunal, Regional Bench, Chandigarh, (for short, 'the Tribunal') by which, the benefit of disability pension has been allowed in favour of respondent No.1 by rounding off the disability @ 50%, which was assessed at less than 20% (11%-14%).

2. Learned counsel for the petitioners submits that the respondent No.1 joined the service on 10.08.1971 as Sepoy and was released from service on 19.07.1987 and since his disability was assessed at less than 20% which is the minimum threshold and condition precedent for the grant of disability pension, the Tribunal exceeded its jurisdiction while granting the said relief to respondent No.1.

3. Learned counsel appearing on behalf of respondent No.1 further submits that the disability of "VOLVULUS STOMACH 537", which was

suffered by respondent No.1 while being in service, though has been held to be neither attributable to nor aggravated by the military service yet the same would not create an impediment in granting the benefit of disability pension to respondent No. 1 since he has been discharged from service on the basis of said disability. Learned counsel for respondent No.1 further submits that as per the settled principle of law settled in ***Civil Appeal No.5605 of 2010 decided on 25.06.2014 titled Sukhvinder Singh vs. Union of India and others***, the disability, even if, assessed at less than 20%, which is the situation in present case leads to the circumstances where personnel concerned cannot discharge the duties assigned to him/her and has to be relieved from duty, such a disability is to be treated at a minimum of 20% so as to grant the benefit of disability pension to personnel concerned and said disability of 20% has rightly been rounded off to 50% keeping in view the judgment of the Hon'ble Supreme Court of India in ***Union of India and others vs. Ram Avtar,*** **2014 SCC Online SC 1761** which has been upheld recently in ***Civil Appeal No.11311 of 2025 titled as Union of India and others vs. Reet MP Singh and another, decided on 01.09.2025***.

4. Learned counsel for the petitioner further submits that even though the disability which was assessed at less than 20 % which disability was the basis for invalidation from service, is to be assessed at 20 % for purpose of grant of disability pension, but the said benefit has to be granted keeping in mind the assessment made by medical board, which assessment in present case concedes that the said disability was assessed as neither attributable to nor aggravated by military service, hence, the grant of benefit of disability pension to respondent No. 1 is incorrect.

5. We have heard learned counsel for the petitioner and have gone through the record with his able assistance.

6. As for the argument of learned counsel for petitioner that assessment has been made that said disability is neither attributable to nor aggravated by the military service by military service so as to deny the benefit of disability pension to respondent No. 1 it shall be noted that said issue has already been settled by Hon'ble Supreme Court of India in ***Dharamvir Singh vs. Union of India and others, (2013) 7 SCC 316.***

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, nonapplication 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"*

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."

7. On being asked that whether, with the disability from which respondent No.1 suffered, the personnel concerned could have continued in service and performed his duties without any hindrance, learned counsel for the petitioners has not been able to rebut that with the said disability, the officer could not have continued in service. Once, it was established that the officer concerned could not continue in service due to the said disability, the

only option was that to invalidate him out of service and relieve him from service. Since, the reason for being relieved from service is the disability incurred during the service period, the claim of the petitioner that the benefit of disability pension could not be granted to respondent No.1, cannot be accepted.

8. As per the judgment in ***Sukhvinder Singh's case (supra)***, the injury, which led to being invalidated of an army personnel from service is assessed at less than 20%, for the purpose of the grant of disability pension, the same has to be treated as a minimum of 20%. The relevant paragraph of the judgment is as under:

> "11. 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.
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> 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.
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> Thirdly, there appear to be no provisions authorizing the discharge of invaliding out of service where the disability is below 20 percent and seems to us to be logically so.
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> Fourthly, whenever 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 20%.
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> Fifthly, as per the extant Rules/Regulations, a disability

leading to invaliding out of service would attract the grant of fifty percent disability pension."

9. Further, as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Ram Avtar's case (supra)***, and **Reet M.P. Singh's case (supra),** any disability of 20%, is to be rounded off to 50%, which is a settled principle of law, and same has not been rebutted by the learned counsel for the petitioners.

10. Keeping in view the totality of the circumstances, the impugned order dated 04.01.2023 (Annexure P-1) passed by the Tribunal, keeping in view the facts and circumstances of the present case coupled with the settled principle of law, has not been shown to be perverse in any manner. Hence, no ground is made out for any interference by this Court in the facts and circumstances of the present case and the present petition is accordingly dismissed.

11. Civil miscellaneous application pending, if any, is also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

30.09.2025
Riya
Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: ~~Yes~~/No