2025:PHHC:069945-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.14842 of 2025
Date of Decision: 22.05.2025

Union of India and others

…Petitioners

Versus

Gp Capt Sajan Sethi (19585) (Retd.) and another

…Respondents

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

Present:- Mr. Narender Kumar Vashist, Advocate,
for the petitioners.

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SANJEEV PRAKASH SHARMA J.(Oral)

It is contended that the disability suffered by respondent No.1 is neither attributable nor aggravated by military service.

2. We find that the Armed Forces Tribunal vide its order dated 08.11.2024 (Annexure P-1), held that the disability of primary hypertension and diabetes mellitus is attributed and aggravated by military service.

3. The issue raised in the present writ-petition is no more *res-integra* in view of the judgment passed by the Hon'ble Supreme Court in the case of ***Bijender Singh vs. Union of India and others, 2025 INSC 549,*** wherein after considering the judgments in ***Dharamvir Singh vs. Union of India (2013) 7 SCC 316*** and ***Union of India vs. Rajbir Singh (2015) 12 SCC 264***, and dealing with Rules 5, 9 and 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982, held as under:-

"45.1. Thus, this Court held that essence of the Rules is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into the service if there is no note or record to the contrary made at the time of such entry. In the event of subsequent discharge from service on medical ground, any deterioration in health would be presumed to be due to military service. The burden would be on the employer to rebut the presumption that the disability suffered by the member was neither attributable to nor aggravated by military service. If the Medical Board is of the opinion that the disease suffered by the member could not have been detected at the time of entry into service, the Medical Board has to give reasons for saying so. This Court highlighted that the provision for payment of disability pension is a beneficial one which ought to be interpreted liberally. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that upon proper physical and other tests, the member was found fit to serve in the army would give rise to a presumption that he was disease free at the time of his entry into service. For the employer to say that such a disease was neither attributable to nor aggravated by military service, the least that is required to be done is to furnish reasons for taking such a view.

46. Referring back to the impugned order dated 26.02.2016, we find that the Tribunal simply went by the remarks of the Invaliding Medical Board and Re-Survey Medical Boards to hold that since the disability of the appellant was less than 20%, he would not be entitled to

the disability element of the disability pension. Tribunal did not examine the issue as to whether the disability was attributable to or aggravated by military service. In the instant case neither has it been mentioned by the Invaliding Medical Board nor by the Re-Survey Medical Boards that the disease for which the appellant was invalided out of service could not be detected at the time of entry into military service. As a matter of fact, the Invaliding Medical Board was quite categorical that no disability of the appellant existed before entering service. As would be evident from the aforesaid decisions of this Court, the law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the member suffered from any particular disease, the presumption would be that the member got afflicted by the said disease because of military service. Therefore the burden of proving that the disease is not attributable to or aggravated by military service rest entirely on the employer. Further, any disease or disability for which a member of the armed forces is invalided out of service would have to be assumed to be above 20% and attract grant of 50% disability pension.

47. Thus having regard to the discussions made above, we are of the considered view that the impugned orders of the Tribunal are wholly unsustainable in law. That being the position, impugned orders dated 22.01.2018 and 26.02.2016 are hereby set aside. Consequently, respondents are directed to grant the disability element of disability pension to the appellant at the rate of 50% with effect from 01.01.1996 onwards for life. The arrears shall carry interest at the rate of 6% per annum till payment. The above directions shall be carried out by the

respondents within three months from today."

4. In view thereof, we do not find any merit in the present writ-petition and the same is, accordingly, dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

May 22, 2025 **(MEENAKSHI I. MEHTA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No