IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110 **CWP-25439-2025**
Date of Decision :29.08.2025

Union of India and others **..Petitioners**

Versus

Ex. Cfn Shashikant & another **...Respondents**

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

Present: Mr. Anil Kumar Sharma, Senior Panel Counsel
for the petitioners-UOI.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the impugned order dated 26.05.2023 (Annexure P-1) passed by respondent No.2-Armed Forces Tribunal, Regional Bench, Chandigarh, (for short, 'the Tribunal') by which, respondent No.1 has been granted the benefit of disability pension by rounding off the same from @ 20% to 50% with the restriction that the arrears will only be paid for a period of three years prior to the date of approaching the Tribunal, which was in the year 2020 on the ground that the same is perverse.

2. Learned counsel for the petitioners argues that nothing evident has come on record as to why, the respondent No.1.was invalidated out from service as the record has already been destroyed by burning and hence, the order dated 26.05.2023 (Annexure P-1) passed by the Tribunal by placing

reliance upon the judgment of the Supreme Court of India in ***Dharamvir Singh vs. Union of India and others, (2013) 7 SCC 316*** *&* ***Civil Appeal No.5605 of 2010 decided on 25.06.2014 titled Sukhvinder Singh vs. Union of India and others*** presuming that the disability arose to the respondent No.1 while in service and by rounding of the said disability from 20% to 50%, the benefit has been granted, which is incorrect.

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

4. It may be noticed that respondent No.1 was enrolled in Indian Army on 12.10.1961 and was invalidated out from service on 21.09.1968 i.e. before rendering the minimum service of 15 years required for the grant of pension. It may be further noticed that under the ordinary circumstances, the officer will not be invalidated out from service until and unless there is a medical disability. Once, the respondent No.1 was invalidated out from service even within a period of 06 years, 11 months and 22 days of his joining the service, it is presumed that the same has to be on the medical grounds.

5. It may be noticed that as per the judgment in ***Sukhvinder Singh's case (supra)***, the disability which led the officer concerned to be invalidated out 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:

> *"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."*

6 It should be noted that as per judgment in ***Dharamvir Singh vs. Union of India and others,*** **(2013) 7 SCC 316** in a case where army personnel is found to be fit at the time of enrolment, and has later found to be contracted with a disease, same is presumed to have been aggravated by and attributable to Military service. 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 "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. 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.
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> 5. We have heard learned counsel for the parties to the lis.
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> 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.
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> 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. Keeping in view the totality of the facts and circumstances, once the relief has been granted by the Tribunal by taking a presumption that in ordinary circumstances no officer would be invalidated out of service unless there is a medical disability is correct and as per the settled principle of law settled by the Hon'ble Supreme Court of India in the case of

Sukhwinder Singh (supra); ***Dharamvir Singh (supra)*** as well as in ***Ram Avtar (supra)***, no perversity has been pointed out by the learned counsel for the petitioners hence, no ground for interference by this Court is made out and the writ petition is accordingly dismissed.

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

(HARSIMRAN SINGH SETHI)
JUDGE

August 29, 2025 **(VIKAS SURI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No