



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-7703-2021
Date of decision: 14.05.2025

MANJEET KAURPetitioner

VERSUS

UNION OF INDIA AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Vivek Singla, Advocate
for the petitioner.

Mr. Amit Sharma, Senior Panel Counsel
for the respondents- Union of India.

VINOD S. BHARDWAJ, J. (Oral)

Even though the instant writ petition had been filed for seeking setting aside of the order dated 17.06.2020 whereby the claim of the petitioner for extraordinary family pension and lump sum compensation had been declined, Counsel for the petitioner confines his prayer at the time of arguments only to the extent of extraordinary family pension to be granted in terms of Central Civil Services (Extraordinary Pension) Rules, 1939.

2. Learned Counsel appearing on behalf of the petitioner contends that late Harbhajan Singh, the petitioner's husband, had joined the respondent-Indo Tibetan Border Police Force (hereinafter referred to as "ITBP") as Constable-Driver in the year 1986. He was thereafter promoted as Havaldar on 10.10.1997 and later as Sub Inspector (Motor Transport) in the year 2008. He contends that on 27.01.2019, after reaching home from the



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training ground, the petitioner's husband collapsed and died. As per the medical opinion, the cause of death was determined as pulmonary oedema due to underlying chronic myocardial infarction and pre-cirrhotic fibrosis. He contends that the death of husband of the petitioner had occurred while in service and because of the circumstances that were attributable/were aggravated on account of the duties performed by the petitioner with the ITBP (which is usually deployed in high altitude areas along the Tibetan Border i.e. in Leh, Himachal Pradesh, Arunachal Pradesh, or Uttarakhand). He submits that no note of any disability or medical ailment was mentioned at the time of medical examination before the enrolment of the petitioner's husband in the year 1986, hence, the statutory provisions entail a deeming inference to be drawn that any subsequent ailment being contracted during duty. He places reliance on the judgment of the Hon'ble Supreme Court in the matter of "***Bijender Singh v. Union of India and others (2025 SCC OnLine SC 895)***", which is delivered in reference to the provisions of the Armed Forces Tribunal Act, 2007, however, the said principles would apply to the case of the petitioner as well since the provisions are similar. A reference has also been made to the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh***. The operative part of the above judgment in Bijender Singh reads thus: -

"35. This Court in Dharamvir Singh (supra) examined the provisions of Regulation 173 and, thereafter, held that disability pension is to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or above. The



question as to whether a disability is attributable to or aggravated by military service has to be determined under the Rules.

36. In Rajbir Singh (supra), this Court from a conjoint and harmonious reading of Rules 5, 9 and 14 of the Rules culled out the following guiding principles:

(i) a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance;

(ii) in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;

(iii) the disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service; and

(iv) if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated.

37. Government of India, Ministry of Defence through the Director (Pensions) issued instructions dated 31.01.2001 addressed to the Chief of the Army Staff, Chief of the Naval Staff and Chief of the Air Staff on the subject implementation of government decisions on the recommendations of the fifth central pay commission regarding disability pension/war injury pension/special



family pension/liberalized family pension/dependent pension/liberalized dependent family pension for officers and personnel below the rank of officers belonging to the armed forces retiring invaliding or dying in harness on or after 01.01.1996. Para 2.1 mentioned that the provisions mentioned therein shall apply to the armed forces personnel who were in service on and from 01.01.1996. Part-II of the instructions deals with pensionary benefits on death/disability in attributable/aggravated cases. Para 4.1 says that for determining the pensionary benefits for death or disability under different circumstances due to attributable/ aggravated causes, the cases are broadly categorised under five categories i.e. category A to category E. Category B deals with cases of death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Examples of disabilities or diseases attributable to or aggravated by military service would be diseases contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards.

38. Para 7.2 of the instructions dated 31.01.2001 says that where an armed forces personnel is invalided out under circumstances mentioned in para 4.1, the extent of disability or functional incapacity shall be determined for the purposes of computing the disability element in the following manner:

<i>Percentage of disability as assessed by Invaliding Medical Board</i>	<i>Percentage to be reckoned for computing of disability element.</i>
<i>Less than 50</i>	<i>50</i>
<i>Between 50 and 75</i>	<i>75</i>



<i>Between 76 and 100</i>	<i>100</i>
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39. *Para 8.2 declares that for disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. However, no disability element shall be payable for disability less than 20%. In such a case, provisions contained in para 7.2 would not be applicable for computing disability element.*

40. *There is a letter dated 20.07.2006 of the Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army) dealing with revision of rules and procedures regarding grant of disability pension/special family pension to armed forces personnel. A standard operating procedure has been laid down by the aforesaid letter. Para 5 of the said letter mentions that if the resultant disability is held as attributable to service by the competent authority and assessed at 20% or more (01% or more in case of post January 01, 1996 invalidment cases) by the Invaliding Medical Board/Re-Survey Medical Board, further action would be taken as per clauses (a) and (b). As per clause (b), the disability element in cases of invalidment shall be regulated in terms of para 7.2 of the instructions dated 31.01.2001. Therefore, this letter removed the disability cap of 20% in respect of invalidment due to disability attributable to military service cases post 01.01.1996.*

41. *This takes us to the letter dated 19.01.2010 of the Department of Ex-Servicemen Welfare, Ministry of Defence, Government of India addressed to the Chiefs of all the three services. It is stated therein that in order to consider various issues relating to pension of armed forces pensioners, government had set up a committee*



headed by the cabinet secretary. The committee had made recommendations on disability/war injury pension which were considered by the government. Upon such consideration, it was decided that with effect from 01.07.2009, the concept of broad branding of percentage of disability/war injury as provided in para 7.2 of the instructions dated 31.01.2001 would be extended to officers and armed forces personnel who were invalided out of service prior to 01.01.1996 and are in receipt of disability/war injury pension as on 01.07.2009. However, it was clarified that wherever the disability element/war injury element of pension in pre 01.01.1996 cases were not allowed for disability being accepted as less than 20% at the initial stage or subsequent stage on reassessment of the disability, the same will continue to be disallowed and such cases will not be reopened.

42. In K.J.S. Buttar (supra), this Court examined para 7.2 of the instructions dated 31.01.2001 which provided amongst others that where the disability was assessed between 50% and 75%, then the same should be treated as 75% and it made no difference whether he was invalided from service before or after 01.01.1996. Appellant in this case was an ex-captain in the Indian army who was invalided out of service because of a gunshot injury whereby he was found to be disabled with degree of disability assessed at 50% and attributed to military service. According to the appellant, his disability should have been treated as 75% instead of 50% in terms of para 7.2 of the instructions dated 31.01.2001. It made no difference whether he was invalided from service before or after 01.01.1996. Therefore, this Court held that the appellant in that case was entitled to the said



benefits with arrears from 01.01.1996 and interest at 8% per annum on the same.

42.1. Further, this Court after thorough examination of para 7.2 of the instructions dated 31.01.2001 held that there will be violation of Article 14 of the Constitution if those who had retired/were invalided before 01.01.1996 are denied the same benefits as given to those who retired after that date. Para 16 is relevant and is extracted hereunder:

16. At any event, we have held that there will be violation of Article 14 of the Constitution if those who retired/were invalided before 01.01.1996 are denied the same benefits as given to those who retired after that date.

43. Dharamvir Singh (supra) is a case where this Court examined amongst others the question as to whether a member of armed forces can be presumed to have been in sound physical and mental condition upon entering service in the absence of disability or disease noted or recorded at the time of entrance? That was a case where the appellant who was a sepoy in the Indian army was boarded out of service with effect from 01.04.1996 on the ground of 20% permanent disability as he was found to be suffering from generalized seizure (epilepsy). As per the Medical Board, the said disability was not related to military service. As a result, he was denied disability pension. His challenge to the same was accepted by the Single Bench of the High Court. Single Bench was of the view that there was nothing on record to show that the appellant was suffering from any disease at the time of his initial recruitment in the Indian army. Therefore, such disease would be deemed to be



attributable to or aggravated by military service. Therefore, in terms of Regulation 173 of the Regulations, he would be eligible for disability pension. Union of India challenged the aforesaid decision of the Single Bench before the Division Bench. Division Bench set aside the order of the learned Single Judge whereafter the appellant approached this Court and in the above context, the aforesaid question was framed. After referring to relevant provisions of the Regulations and the Rules, this Court summed up the principles in the following manner:

29. A conjoint reading of various provisions, reproduced above, makes it clear that:

29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].



29.3. *The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

29.4. *If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)].*

29.5. *If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

29.6. *If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and*

29.7. *It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002.*

43.1. *Accordingly, this Court answered the question so framed in favour of the appellant and held in the facts of that case that no note of any disease was recorded at the*



time of the appellant's acceptance for military service. In the absence of any note in the service record at the time of acceptance of joining of the appellant, it was incumbent on the part of the Medical Board to call for records and look into the same before opining that the disease could not have been detected on medical examination prior to the acceptance for military service.

44. This Court in Sukhvinder Singh Vs. Union of India (2014) 14 SCC 364, noticed that the relevant Rules and Regulations did not set out the medical parameters to be considered by the Invaliding Medical Boards justifying or requiring serviceman/officer to be removed from service. This feature renders the decisions taken by such Boards pregnable to assaults on the grounds of capriciousness or arbitrariness. This is especially so where the extent of disability is below 20%. Highlighting the paradox, this Court posed the following question:

Can the authorities be permitted to portray that whilst a person has so minor a disability as to disentitle him for compensation, yet suffers from a disability that is major or serious enough to snatch away his employment?

44.1. It was in that context, this Court held that 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. Para 11 reads thus:

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 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 appear 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.

44.2. As can be seen from the above, this Court emphasized that the morale of the armed forces requires absolute and undiluted protection. If any injury leads to loss of service without any recompense, this morale would be severely undermined. Further, this Court noticed that there appeared to be no provision authorizing the discharge or invaliding out of service where the disability is below 20% which is quite logical. Therefore, it has been held that where 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%. Most important is that this Court after considering the extant Rules and Regulations has held that a disability leading to invaliding out of service would



attract grant of 50% disability pension.

45. We have already noticed the analysis of Rules 5, 9 and 14 of the Rules in Rajbir Singh (supra). After adverting to the decision of this Court in Dharamvir Singh (supra), this Court opined as under:

14. The legal position as stated in Dharamvir Singh case is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, 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 service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service.

15. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit



those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. 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 he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension.

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.

3. Relying on the same, Counsel contends that the Central Civil Services (Extraordinary Pension) Rules, 1939, read with Schedule 1-A under sub-Rule 4 of Rule 3, provide the list and classification of diseases which can be contracted by service and the same includes Pulmonary Oedema as a



disease which is affected by climatic conditions. It is thus submitted that the respondents have prescribed the said disease as one which could be contracted by service condition and, reading the same in harmony with Rule 3-A, the benefits accruing in favour of the petitioner could not have been denied.

4. Counsel for the respondent, on the other hand, submits that the cause of death in the present case was pulmonary oedema, and at the time of death, i.e. 27.01.2019, the petitioner was performing duty at Chandigarh which was not a high altitude area. Since it was a case of natural death, hence, the benefits under the Central Civil Services (Extraordinary Pension) Rules, 1939, cannot be extended to the petitioner.

5. Reliance is also placed on the specific averment contained in this regard in Para No.4 of the preliminary submissions in the reply filed by the respondents, which reads thus: -

*“That the case for grant of ex gratia to his NOK (Next of Kin) was forwarded to Sector Head Quarter (Logistics & Communication) in short (SHQ(L&C)) vide TPT BN ITBP letter No. 3388 dated 26.05.2019 and case of extraordinary pension was forwarded to SHQ (L&C) vide Office Letter no 3312 Dated 21.06.2019. Medical officer of Composite Hospital Chandigarh had given his remark vide their office letter number 1238 dated 29th of June 2019 that **"after careful examination of all relevant medical documents (cause of death certificate, etc) patient died due to pulmonary oedema due to underlying chronic myocardial***



infraction and pre cirrhotic fibrosis, a natural cause so it is not due to or attributable to Govt. service" and the unit had informed to the petitioner accordingly vide its office letter number 3496 dated 17th of June 2020."

6. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present writ petition.

7. The relevant rules which govern the case of the extraordinary pension are reproduced below: -

Rule 3-A (1)

Xx xxx xxx xx xxx xxx xxx

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by-

Xx xxx xxx xxx xxx xx

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

(2) There shall be a casual connection between,

Xx xxx xxx xxx xxx xxx xxx

(b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix, which shall be treated as part and parcel of these Rules.



GOVERNMENT OF INDIA'S DECISIONS

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Category 'B' *Death or disability due to causes which are accepted as attributable to or aggravated by Government service, Diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples.*

Category 'C' *Death or disability due to accidents in the performance of duties. Some examples are accidents while travelling on duty in Government vehicles or public transport, a journey on duty is performed by service aircraft, mishaps at sea, electrocution while on duty, etc.*

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SCHEDULE-1-A

[See Rule 3 (4)]

1. **LIST AND CLASSIFICATION OF DISEASES WHICH CAN BE CONTRACTED BY SERVICE.**

A. Diseases affected by climatic conditions.

Xxx xxx xxx xxx xxx

(ii) Pulmonary Oedema.



8. A conjoint reading of the same shows that the extraordinary pension is admissible where death occurs on account of any of the reasons as prescribed in Rule 3-A. As per sub-Rule 1(b), a death shall be accepted as due to Government service provided it is certified that it was due to or hastened by/aggravated by Government service of a wound, injury or disease which existed before or arose during Government service and when there is a 'casual connection' between death and the Government service for attributability or aggravation to be conceded, if the diseases are as per the Appendix.

9. The Government of India, vide its decisions of 01.01.1996 also regulated disability pension/extra ordinary family pension under the rules as contemplated under category 'B' that death or disability due to causes which are accepted as attributable to or aggravated by Government service due to continued exposure to a hostile work environment and weather conditions or occupational hazards would be examined. It is in reference to the aforesaid rules that the schedule has been notified, which includes 'pulmonary oedema' as one of the causes, due to environment/climate.

10. The Hon'ble Supreme Court has already interpreted similar clauses to construe that in the event there is no specific mention of any disability being suffered by an employee at the time of his entry into service, it would be presumed that such disability/contingency is attributable to service and it would accordingly be deemed as an incidence of service.

11. Undisputedly, the service at ITBP involves postings in high-altitude areas, a fact which has not been disputed or denied by the



respondents in the written statement or during the course of arguments. It goes without saying that when a person is deployed in a high-altitude area, he is continuously exposed to a hostile work environment, including being subjected to extreme weather conditions including thin air, extreme cold temperatures etc. A prolonged posting in high-altitude areas itself is a well-known cause for pulmonary disease to be suffered by an employee and no special elaboration on the said account is needed.

12. Insofar as the reliance of the respondents on the opinion in the office letter dated 29.06.2019 is concerned, the same is only to the effect that pulmonary oedema, which occurred due to underlying chronic myocardial infarction and pre-cirrhotic fibrosis, was a natural cause. The said opinion is nothing more than ruling out any foul play as a cause of death. The same cannot be held to be an event that could not have occurred on account of the posting of a person in high-altitude areas. The rules being benevolent, the burden lies upon the respondent-Department to establish that the service conditions neither aggravate(d) the health condition directly nor is there a casual connection between the environment and his demise. The respondent authorities have only referred to the remark, but have not referred to any expert opinion that rules out the disease as being attributable to or aggravated by continued exposure of an employee to harsh weather conditions. Since the respondents have failed to discharge the said burden effectively, the judgment of the Hon'ble Supreme Court in the matter of ***“Bijender Singh versus Union of India and others”*** comes to the aid of the petitioner.



13. Consequently, the writ petition is **partly allowed**. The petitioner is held entitled to the extraordinary pension under the Central Civil Services (Extraordinary Pension) Rules, 1939. The respondents are directed to compute the admissible benefits to the petitioner within a period of three months of receipt of a certified copy of this order and the admissible benefits be released to her within a period of one month thereafter, failing which the petitioner shall be entitled to claim interest @ 6% per annum from the date of filing of the present writ petition till its payment.

MAY 14, 2025

Vishal Sharma

**(VINOD S. BHARDWAJ)
JUDGE**

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