
(2025) 09 P&H CK 0858
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1630 Of 2025

Union Of India And Others

APPELLANT

Vs

Ex. LNK Sarup Singh And Another

RESPONDENT

Date of Decision : 30-09-2025

Acts Referred:

Entitlement Rules For Casualty Pensionary Awards, 1982 — Rule 5, 9

Citation : (2025) 09 P&H CK 0858

Hon'ble Judges : Harsimran Singh Sethi, J;Vikas Suri, J

Bench : Division Bench

Advocate : Ramesh Chand Sharma

Final Decision : Dismissed

Judgement

Harsimran Singh Sethi, J

1. In the present petition, the challenge is to the impugned order dated 12.09.2022 (Annexure P-1) passed by respondent No.2-Armed Forces Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal') by which, respondent No.1 has been allowed the benefit of disability pension by rounding off the disability element from 20% to 50% for five years i.e. from 01.06.2001 to 30.06.2005 on the ground that the same is perverse.
2. Learned counsel appearing on behalf of petitioners submits that the disability of Choroidal Angiomatosis with Naevus (LE)' though was suffered by respondent No.1 while in service and same was also not attributable to the Military service and further the disability was between 15-19% instead of minimum 20% required for the grant of disability pension still, the benefit of disability pension has been allowed in favour of the respondent No.1 ignoring the fact that the disability pension is only admissible in case, the disability is 20% or more and same is attributable or aggravated by military service.
3. Learned counsel for the petitioners submits that the claim has been raised after a delay and therefore, the grant of the benefit is incorrect.

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

5. It may be noticed that though, the disability assessed at the time of invalidating out the respondent No.1 was between 15-19% but the same was attributable to the Military service. Once, the respondent No.1 was invalidated out due to the disability, the same has to be presumed 20% 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 relevant paragraph of the judgment is as under:

"Thirdly, there appear to be no provisions authorising the discharge of invaliding out of service where the disability is below 20 percent and seems to us to be logically so.

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%.

Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension."

6. Hence, the grant of disability pension in favour of respondent No.1 is perfectly valid and legal.

7. It is a conceded fact that at the time when respondent No.1 was invalided out from service on 31.05.2001, he had already rendered more than 17 years of service with the petitioners-Union of India. It is also a conceded fact that at the time when respondent No. 1 joined the armed forces on 25.08.1984, he was medically examined and was found not to be suffering from any such disease on the basis of which he has been allowed the benefit of disability pension and the said fact has been made the basis by the Tribunal while granting benefit to the respondent No.1 by placing reliance upon Dharamvir Singh vs. Union of India and others, (2013) 7 SCC 316.

8. It should be noted that as per judgment in Dharamvir Singh's case (supra) 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 "Generalised 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."

9. Qua the rounding off of the said disability of 20% to 50%, the said issue is covered by the judgment of 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.

5. We have heard learned counsel for the parties to the lis.

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.

10. Further, with regard to the delay, which is being argued in claiming the benefit, it may be noticed that the claim with regard to pension is recurring cause of action and the same cannot be dismissed on the ground of delay.

11. As per the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No.4100 of 2022 titled as Shri. M.L. Patil (Dead) through LRs vs The State of Goa and another, decided on 20.05.2022, the claim for the pension/family pension cannot be denied on the ground of delay as the same is a recurring cause of action. The relevant paragraphs 3 and 4 of the said judgment are as under:-

"3. Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent – State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020.

As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1 st January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.

4. In view of the above and for the reasons stated above, the present Appeal Succeeds in Part. The impugned judgment and order passed by the High Court to the extent of denying any arrears of pension and holding that the appellant shall be entitled to the pension at the revised rates only from 1st January, 2020 is hereby quashed and set aside. It is held and ordered that the appellant – original writ petitioner shall be entitled to pension at the revised rates from the date he attains the age of 60 years. Now the arrears accordingly shall be paid to the appellant within a period of four weeks from today. Present Appeal is Partly Allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs ”

12. No other argument has been raised.

13. Hence, in the absence of any perversity being pointed out in the impugned order dated 12.09.2022 (Annexure P-1) either on the basis of the facts or the settled principle of law, no ground is made out for any interference by this Court in the facts and circumstances of the present case and the writ petition is accordingly dismissed.

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