

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL  
BENCH AT CHANDIMANDIR**

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TA 12 of 2017 (arising out of RSA 310 of 1995 {O&M})

<b>Union of India and others</b>	.....	<b>Applicant(s)</b>
<b>Vs</b>		
<b>Bir Singh</b>	.....	<b>Respondent(s)</b>

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For the Applicants :	Mr FS Virk CGC
For the Respondent :	None.

**CORAM:**

**HON'BLE MR JUSTICE MS CHAUHAN, MEMBER (J)**

**HON'BLE LT GEN MUNISH SIBAL, MEMBER (A)**

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**ORDER**  
**13.09.2017**

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Ex- Cfn Bir Singh, hereinafter referred to as the 'respondent', joined the Indian Army on 18.01.1958 as MT driver in Arty Centre, Devlali. After completing basic training, he was transferred to EME Records, Secundrabad. In the year 1962, he was medically downgraded and was discharged on medical grounds on 10.07.1965. At the time of his enrolment in the Indian Army, no disease/disability was either pointed out or stated to be not detectable. No disability pension was allowed to him. He filed Civil Suit No. 129 of 1990 to claim disability pension, gratuity and other retiral benefits with consequential benefits.

2. Claim of Bir Singh was contested by the Union of India and others (hereinafter referred to as the 'applicants') by filing a written statement wherein preliminary objections regarding limitation, territorial jurisdiction of the Court, bar of Section 4 of the Pension Act and non-compliance of provisions of Section 80 of the Code of Civil Procedure were pleaded and, on merit it was stated that disease "***HYPERHYDROSIS***" was found neither attributable to nor aggravated by Military Service.

From the pleadings of the parties, learned Additional Senior Sub Judge formulated the following issues:-

1. Whether the plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the mandatory injunction as prayed for? OPP

3. Whether the suit is barred by the limitation? OPD
4. Whether the Civil Court has no jurisdiction to try the present suit? OPD
5. Whether the suit is barred by the principles of resjudicata? OPD
6. Whether the notice under Section 80 CPC is not legal and invalid? OPD
7. Relief.

3. Both the parties adduced evidence in support of their respective claim and were heard by the learned Additional Senior Sub Judge.

4. On hearing the parties and appraisal of evidence brought on record, learned Additional Senior Sub Judge came to the conclusion that the respondent was entitled to disability pension and accordingly, vide judgment/decreed dated 16.01.1992, decreed respondent's suit with costs.

5. The applicants challenged judgment and decree dated 16.01.1992 by way of Civil Appeal No. 80/1992 which, after contest, was dismissed by learned Additional District Judge, Gurdaspur, vide judgment/decreed dated 24.09.1994.

6. To assail the judgment and decree passed by the Courts below, the applicants brought Regular Second Appeal No. 310 of 1995 'Union of India and others v. Ex- CFN Bir Singh. The Regular Second Appeal has been received on transfer in this Tribunal on 23.01.2017 under Section 15 of the Armed Forces Tribunal Act, 2007 and has been registered as TA No. 12 of 2017.

7. Notice sent to the respondent has been received back with the report that he had expired as recorded in the order dated 25.07.2017. However, nobody has come forward to get impleaded as Legal Representative of the deceased - respondent in spite of a period more than 90 days having already expired.

8. In the circumstances, we have heard the learned counsel for the applicants and have also perused the record requisitioned from the Court of Additional Senior Sub Judge, Gurdaspur.

9. It is not in dispute that at the time of enrolment, the respondent was not found to be suffering from any disease/disability nor a note/

endorsement stating that such a disease/disability could not be detected at the time of his enrolment or that the disease/disability **“HYPERHYDROSIS”** from which the respondent was found to be suffering by the Release Medical Board, was hereditary in nature. It is also not the case of the applicants that the Release Medical board did call for the records of service of the respondent to find out whether the disability was detected or could not be detected at the time of his enrolment in the Indian Army. That being the situation, the claim of the respondent is found to be covered by the judgment of the Hon’ble Supreme Court in the case of ***Dharamvir Singh v. Union of India and others*, (2013) 7 SCC 316** and the relevant paragraphs ‘32 and 33’ are reproduced here under :

*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 petitioner 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 “Generalized 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 change 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 condition.”*

The above judgment has been constantly followed and further explored by the Supreme Court in **Union of India and others v. Rajbir**

Singh (CA No. 2904 of 2011 decided on 13.2.2015); Union of India and others v. Manjit Singh (CA No. 4357-58 of 2015 (arising out of SLP (C) No. 13732-33 of 2015) decided on 12.5.2015); Union of India v. Angad Singh (CA No. 2208 of 2011 decided on 24.2.2015); KJS Butter v. Union of India (CA No. 5591 of 2006 decided on 31.3.2011; Ex. Hav Mani Ram Bharia v. Union of India and others, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; Satwinder Singh v. Union of India and others Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) and in decided on 11.2.2016.

Finally, in the latest judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 2633 of 017 Ex. Gnr. Laxmanram Poonia vs. Union of India and others [2017 SCC On Line SC 163] decided on 22.02.2017, the same view has been reiterated by the Apex Court. We may gainfully quote paras 26 & 27 from the judgment as under:

*“In the absence of any evidence on record to show that the appellant was suffering from any such disease like schizophrenia at the time of entering into the Military service, it will be presumed that the appellant was in a sound mental condition at the time of entering into the Military service and the deterioration of health has taken place due to Military service. ....Applying the principles of Dharamvir Singh's case and Rajbir Singh's case, it has to be presumed that the disability of the appellant bore a causal connection with the service condition.....”*

10. Even the Courts below have referred to Gurnam Singh vs. Union of India 1992(1) Punjab Law Reporter 24, Ram Pal Singh v. Union of India and others, 1983(3) Services Law Reporter, 291, State of Punjab and another v. DN Rampal, Deputy Advocate General, Punjab, Chandigarh 1985 (1) SLR 14, Soni RD v. State of MP, 1985(1) Services Law Reporter, 92 and Durga Parshad Sodhi vs. State of Punjab and others, 1975 (2) ILR (P) 510.

11. Learned counsel for the applicants has not been able to persuade us to take a view contrary to the view enunciated in the above cited

judgments, particularly in Dharamvir Singh and Rajbir Singh's cases (supra).

12. In view of what has been stated and discussed above, we do not find any reason to interfere with the well reasoned judgments recorded by the Courts below. Not only this, the applicants have not been able to point out what substantial questions of law entitling them to maintain a Regular Second Appeal under Section 100 of the Code of Civil Procedure are involved in the Appeal.

13. In consequence, the application fails and is dismissed leaving the parties to bear their own costs.

**(Munish Sibal)**  
**Member (A)**

**(MS Chauhan)**  
**Member (J)**

13.09.2017  
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