

**ARMED FORCES TRIBUNAL, REGIONAL BENCH CHANDIGARH
AT CHANDIMANDIR
(THROUGH VIDEO CONFERENCING)**

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**OA 502 of 2021
Monday, the 13th day of Dec, 2021**

CORAM:

**HON'BLE MR JUSTICE DHARAM CHAND CHAUDHARY, MEMBER (J)
HON'BLE VICE ADMIRAL HCS BISHT, MEMBER (A)**

Harpal Singh

(By Mr Surinder Sheoran, Advocate)

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Applicant

Versus

Union of India and others

(By Mrs Savita Chaudhary Sr PC)

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Respondents

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ORDER

Heard the learned counsel and perused the relevant record.

By means of this application, following reliefs have been sought to be granted:-

- (i) *“Direction to the respondents for quashing offending part of RMB vide which the disability No. (ii) has been declared as neither attributable to nor aggravated by military service and impugned letter dated 26.02.2020 vide which claim of the applicant has been rejected wef 01.02.2020 for life.*
- (ii) *Direction to the respondents to process the case of the applicant for grant of disability pension @ 50% against 40.5% disability wef 01.02.2020 for life.*

The brief facts necessary for adjudication of this Original Application are as follows:-

The applicant joined service in the army on **01.02.2003** in a fit medical condition. During the course of service, he incurred the qualifying disabilities of (i) ***BILATERAL HEARING SENSORIAL HEARING LOSS*** & (ii) ***“PRIMARY HYPERTENSION 1-10”*** and thus, was finally discharged from service on **31.01.2020**. At the time of discharge, his disability was assessed @ **40.5%** (composite) **for life** by the Release Medical Board however, held to be neither attributable nor aggravated by military service.

Applicant's claim for disability pension was therefore, rejected by the respondents. Hence, the present application. The applicant submits that the point in issue stands decided by the Hon'ble Supreme Court, in *Dharamvir Singh Vs Union of India* (2013) 7 SCC 316, Civil Appeal 2337/2009 *Union of India Vs Chander Pal* decided on 18-09-2013, *Union of India Vs Rajbir Singh* (2015) 12 SCC 264, *Union of India Vs Angad Singh Titaria* (2015) 12 SCC 257, *Union of India Vs Manjeet Singh* (2015) 12 SCC 275, Civil Appeal 4409/2011 *Ex Hav Mani Ram Bhaira Vs Union of India* decided on 11-02-2016, Civil Appeal 1695/2016 *Satwinder Singh Vs Union of India* decided on 11-02-2016 and *Ex Gnr Laxmanram Poonia Vs Union of India* (2017) 4 SCC 697. The Applicant further submits that his claim is also supported by the applicable rules.

On the other hand, the solitary stand as taken by the respondents is that the disability incurred by the applicant is neither attributable nor aggravated by military service, hence the applicant is not entitled to disability pension since the medical board an expert body, its opinion must be must be respected.

We have considered the rival submissions made by learned counsel on both sides in the light of the law laid down by the Supreme Court in *Dharamvir Singh Vs Union of India (Supra)* and the relevant rules. The relevant extract of their judgment reads as follows:-

"Para 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...

Para 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...

Para 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 causal connection with the service conditions..."

Undisputedly, at the time the applicant entered into military service, he was not suffering from any kind of disease/disability. The disabilities, therefore, were incurred by him during the course of military service. So by virtue of the legal principles settled in **Dharamvir Singh's case (Supra)**, the said disabilities to our considered opinion are attributable to and aggravated by military service.

Considering the law laid down by the Supreme Court and also the attending circumstances, the rejection of the claim of the applicant being legally unsustainable is set aside and as a result thereof he is held entitled to disability pension from the day next to the date of his discharge @ **50% against 40.5%** for life after having been rounded off as per the judgement of the Supreme Court in *Civil Appeal No 418/2012, titled Union of India Vs Ram Avtar*, decided on 10.12.2014 subject to verification. The due and admissible arrears be released by the respondents within a period of three months from the receipt of certified copy of this order by the counsel for the Respondents/OIC Legal Cell, failing which the same shall carry an interest @ 8% from the date of this order till realisation.

It is made clear that in case the applicant is already in receipt of the service pension or service element for the same spell of service for which he is entitled, in that event, he shall only be entitled to the disability element of disability pension.

Pending miscellaneous application(s), if any, will also stand disposed of accordingly.

No order as to costs.

(HCS Bisht)
Member (A)

(Dharam Chand Chaudhary)
Member (J)

13th December, 2021
'sp'