2024:PHHC:108742-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19136-2024 (O&M)
Date of Decision: 20.08.2024

UNION OF INDIA AND OTHERS

...Petitioners

Versus

NO 14449872EX GNR DHIRAJ KUMAR & ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Ms. Bhavna Dutta, Senior Panel Counsel,
for the petitioners-Union of India.

SUDHIR SINGH, J.

Challenge in the present writ petition is to the order dated 16.11.2022, passed by the learned Armed Forces Tribunal, Chandigarh Bench, Chandimandir (For short 'the AFT'), whereby the Original Application filed by the respondent No.1, was allowed.

2. Brief facts of the case, are that the respondent No.1 entered military service on 12.10.2002 and at that time he was medically fit. However, during the course of his service, he incurred disability of Stage-1 Hypertension (1-10) and was discharged from service on 31.10.2019. At the time of his release, his disability was assessed at 30% for life by the Release Medical Board. The claim of

respondent No.1 for disability pension was rejected by the petitioners on the ground that the disability suffered by him was neither attributable to nor aggravated by military service.

3. In support of his claim in the OA, respondent No.1 relied upon the judgment of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India (2013) 7 SCC 316; a Three-Judge Bench decision in 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 Ramd Bhaira Vs. Union of India, decided on 11.02.2016 and Ex Gnr Laxmanram Poonia Vs. Union of India, (2017) 4 SCC 697.

4. The petitioners (respondents before the learned AFT) countered the claim of respondent No.1 on the ground that as per the opinion of the Release Medical Board, the disability suffered by respondent No.1 was neither attributable to nor aggravated by military service and that such expert opinion must be respected.

5. Learned counsel for the petitioners vehemently argues that while passing the impugned order, the learned AFT has not taken into consideration the opinion of the Release Medical Board, and therefore, the impugned order is liable to be set aside.

6. We have heard learned counsel for the petitioners and have also gone through the paper book including the impugned order passed by the learned AFT.

5. The learned AFT, while relying upon the judgment of the Hon'ble Supreme Court in Dharamvir Singh's case (supra) has held respondent No.1 entitled to the disability pension. It was further held that at the time of entry into the military service, no such disease/disability did exist. The disability accrued to respondent No.1 during the course of military service and hence, by the application of the law laid down by the Hon'ble Supreme Court in Dharamvir Singh's case (supra), the disability suffered by the petitioner was attributable to and aggravated by the military service. The relevant part of the order passed by the learned AFT, reads as under:-

> "10. It is undisputedly proved that at the time the applicant entered into military service, this type of disease/disability did not exist. The disability accrued to him during the course of military service. So by virtue of the principle laid down in Dharamvir Singh's case (surpa), the said disability can be attributed/aggravated by military service.
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> 11. Considering the law laid down by the Hon'ble Supreme Court and also the attending circumstances, the rejection of the claim of the Applicant is set aside and the applicant is thus held entitled to disability pension @ 50% as against 30% for life after being rounded off as per judgment of the Hon'ble Supreme Court in Civil Appeal No.418/2012 Union of India Vs. Ram Avtar decided 10.12.2014 and the arrears are directed to be released by the Respondents within a period of three months from the receipt of a certified copy of this order by the counsel for the Respondents/OIC Legal Cell, falling which the arrears shall carry at interest @8% from the date of this order."

6. The Hon'ble Apex Court in Dharamvir Singh's case (supra), has held as under:-

"**31.** In the present case it is undisputed that no note of any disease has been recorded at the time of the 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 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 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 Para 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 military service"

32. Para 1 of Chapter II — "Entitlement: General Principles" specifically stipulates that certificate of a constituted medical authority vis-à-vis invalidating disability, or death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre- and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law

and dispute. For the said reasons the Medical Board was required to examine the cases in the light of etiology of the particular disease and after considering all the relevant particulars of a case, it was required to record its conclusion with reasons in support, in clear terms and language which the Pension Sanctioning Authority would be able to appreciate.

33. 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 the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the 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.

34. As per Rule 423(*a*) of the 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 Para 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."

7. The respondent No.1 has served the Armed Forces for nearly 17 years. At the time of his entry in the service, no such disease or disability was existing. Further, it is undisputed fact that at the time of his discharge from the Armed Forces, respondent No.1 was found to be suffering from `Stage-1 Hypertension (1-10)'. Therefore, in terms of law laid down by the Hon'ble Supreme Court in Dharamvir Singh's case (surpa), the disability/disease suffered by the respondent No.1 is attributable to and aggravated by the military service.

8. Thus, we find no illegality or perversity in the order passed by the learned AFT. Consequently, finding no merit in the present writ petition, the same is hereby dismissed.

9. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

20.08.2024
Himanshu

Whether speaking/reasoned Yes/No
Whether reportable Yes/No