

**RESERVED**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)**

**ORIGINAL APPLICATION No. 273 of 2017**

Friday, this the 03<sup>rd</sup> day of August, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Smt. Leela Devi Karki W/o Late Hari Singh Karki, Ex-Signal Man (Army No. 6281492) resident of Sunar Mohalla, Almora, Post Office & Thana Almora, district Almora.

**..... Applicant**

Ld. Counsel for the : **Shri K.K. Verma, Advocate.**  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block New Delhi 110011.
2. Deputy Commandant, HQ 1 STC, Pin 901124 C/o 56 APO.
3. Officer-in-Charge, The Record Signals, Pn-908770 c/o 56 APO.
4. Chief Defence, Assistant Commandant (Pension) G-3/11 Section Allahabad (U.P.).

**.....Respondents**

Ld. Counsel for the : **Shri Bhanu Pratap Singh,**  
Respondents. Central Govt Counsel.

**ORDER**

**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension of her deceased husband and family pension. The applicant has prayed for the following reliefs:-

(a) To set aside the impugned order dated 3.7.2017 and 14.8.2013 (Annexure 1&2) passed by Chief Record Officer for OIC records.

(b) To direct the respondents to grant disability pension of late husband of applicant from the date of his discharge till his death.

(c) To direct the respondents to grant family pension to the applicant from the date of death of her husband.

(d) To pass any other suitable order deemed fit and proper in the facts and circumstances of the case to meet the interest of justice.

2. Brief facts of the case are that the applicant was enrolled in the Army on 15.05.1961 and invalided out from service on 16.07.1968 in terms of Rule 13 (3) III (iii) of Army Rules, 1954 after rendering 07 yrs and 63 days of service by Invaliding Medical Board (IMB).

3. Ld. Counsel for the applicant submitted that husband of the applicant expired on 02.08.1986. Claim for grant of family pension was rejected vide order dated 14.08.2013 (**Annexure No 2 to the O.A.**). The applicant had challenged the order dated 14.08.2013 by filing O.A. No. 125 of 2016 for grant of family pension which was disposed of vide order dated 17.05.2017 with the directions to the applicant to approach appropriate forum, in accordance with law, for payment of disability

pension. On 12.06.2017 the applicant preferred the disability pension claim to the appropriate authority which was also rejected vide order dated 03.07.2017. Hence this O.A.

4. Ld. Counsel for the applicant submitted that husband of the applicant was enrolled in the Army in fit condition and was discharged in low medical category hence his disability is attributable to and aggravated by military service and he is entitled for disability pension.

5. Rebutting arguments advanced by Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that husband of the applicant rendered only 07 years and 63 days of service in the Army, which debarred him for grant of service pension. He further averred that as per Regulations 132 of Pension Regulations for the Army, 1961 (Part-I), the minimum period of qualifying service (without weightage) actually rendered and required, for earning service pension shall be 15 years. Therefore, the husband of the applicant is not entitled for service pension. Ld. Counsel for the respondents further submitted that husband of the applicant was invalided out from service in low medical category and he was not granted disability pension at the time of invalidment as his disability apparently regarded as neither attributable to nor aggravated by military service.

6. The arguments of the learned counsel for the applicant for grant of disability pension is misconceived for the reason that the statutory provision contained in Para 173 of Pension Regulations for the Army is mandatory and cannot be overlooked while deciding the controversy. Applicant was required to produce the Invaliding Medical Board's opinion to indicate that the disability from which her husband was suffering, was

attributable to or aggravated by military service. It has been rightly submitted by learned counsel for the respondents that Long Roll mentions only the reason for discharge. It is not substantive evidence to establish the cause of the disability from which the applicant's husband is alleged to have been suffering. The applicant has come to this Tribunal after elapse of about thirty years from the date of death of her husband.

7. Learned counsel for the respondents further submitted that as per provisions of law, on completion of prescribed retention period, after following due process of law, the records have been weeded out. It is vehemently submitted that benefit of statutory provision cannot be given in vacuum. The burden lies on the applicant to establish within four corners of settled provisions of law that the disability due to which husband of the applicant was invalided out of service was attributable to or aggravated by military service.

8. A perusal of the Pension Regulations for the Army 1961 (Part I) and Entitlement Rules for Casualty Pension Awards, 1982 shows that not only the opinion of Medical Board is to be taken into account, but the decision taken thereon on attributability and percentage of disability is also required to be taken into consideration while recording satisfaction for grant of invalid/disability pension. After elapse of statutory period, the records have been weeded out in accordance with para 595 (a) (i) of Defence Service Regulations for the Army, 1987 (Volume-II) (Revised Edition), hence it cannot be established at this stage that the disability of husband of the applicant was attributable to and aggravated by military service. The applicant has approached the Tribunal after 30 years. On account of delay caused by the applicant in approaching the Tribunal

and for the reason that the records have been weeded out after following due process of law and in the absence of relevant documents, it is not possible to come to a definite opinion either to uphold or reject the grounds taken by the applicant for grant of invalid/disability pension.

9. In view of what has been observed above, the Original Application lacks merit and is liable to be dismissed for want of necessary documents, which have been weeded out due to delay caused by the applicant himself.

10. Accordingly, we decline to interfere in the matter. The Original Application is hereby **dismissed**.

No order as to cost.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated: Aug 2018  
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