

RESERVED

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

ORIGINAL APPLICATION No 296 of 2018

Wednesday, this the 01st day of Aug, 2018

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

Smt Laxmi Devi widow of Ex Sepoy Late Haridutt (No. 4164436)
resident of Village and Post Office-Chandani, Tehsil-Tanakpur,
District -Champawat.

...Applicant

Counsel for the applicant: **Shri Kishore Rai, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence,
New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the
Ministry of Defence (Army), South Block, New
Delhi -110011.
3. Officer-in-Charge, Kumaon Regiment Records, Ranikhet.
4. Principal Controller of Defence Accounts (Pension)
Draupadi Ghat, Allahabad.

.... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**
Central Government Counsel

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

1. By means of the present O.A. the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of disability pension of her late husband Ex Sepoy (Late) Haridutt (No. 4164436) and also to grant benefit of rounding off of disability pension.

2. Brief facts as would appear from the pleadings on record are that the husband of applicant was enrolled as Sepoy in the Indian Army on 14.12.1971 in 8 Kumaon Battalion. While serving in the Unit, he was admitted to Military Hospital on 09.06.1978 where he was diagnosed as a case of **NEUROSIS** and was recommended to be invalided out. The deceased soldier was brought before Invaliding Medical Board on 28.10.1978 which assessed his disability @ 20 % for two years. He was invalided out of service on 08.11.1978. The first and second appeals preferred by the deceased soldier were rejected vide orders dated 26.02.2002 and 07.07.2015 respectively. The deceased soldier left for his heavenly abode on 02.04.2014.

3. Since the issue of payment of pension involves recurring cause of action, as such, the delay in preferring the O.A. was condoned vide order dated 01.06.2018. Pleadings have been exchanged.

4. We have heard learned counsel for the parties and perused the record.

5. For adjudication of the controversy involved in the instant case, we need to address two issues; firstly, is the disability attributable to service or not; and secondly, if found to be attributable to, can the benefit of rounding off be extended to the applicant? The provisions of Pension Regulations for the Army, 1961 (Part-1) and the Entitlement Rules for Casualty Pension Award, 1982 are relevant and the same are excerpted herein below;

(a) Pension Regulations for the Army 1961 (Part I)

Para 173. "Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 percent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

(b) Entitlement Rules for Casualty Pension Award, 1982

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-

Prior to and During Service.

- (a) *A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*
- (b) *In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

Onus of Proof.

- 9. *The claimant shall not be called upon to prove the conditions of entitlement. He/she will be given more liberally to the claimants in field/afloat service cases.*

Diseases

14. In respect of diseases, the following rule will be observed:-

(a) cases.....

(b) a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

6. The law on the point of attributability of the disability is no more RES INTEGRA in view of a catena of decisions on the subject. In the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316, on the question with regard to payment of disability pension, their Lordships of Hon'ble Supreme Court held that Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In ***Dharamvir Singh's*** (supra), their Lordships further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Observation made by their Lordships in the case of ***Dharamvir Singh*** (supra) is reproduced as under:-

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle

casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and

29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. The counter affidavit filed by the respondents states that the Invaliding Medical Board had considered the disability was neither attributable to nor aggravated by Military service (NANA). The only explanation given in Invalidation Medical Board is one line cryptic statement 'this is a constitutional disease'. This cryptic statement is not good enough to explain as to how a fit soldier with service over six years developed this disease just one year before his

invalidation only. Hence we would like to give benefit of doubt to the deceased soldier. Thus, in view of the above judgment and settled law on the point we are of the considered opinion that the disability of the deceased soldier is attributable to military service.

8. On the issue of rounding off of the disability pension, we are of the considered opinion that since the rule of benefit of rounding off is effective from 1996, hence the applicant's husband is not entitled to rounding off.

10. In view of the above mentioned legal position, the original application No. 296 of 2018 is **allowed**. The respondents are directed to grant disability pension which includes both disability element and service element to the deceased husband Ex Sepoy Late Haridutt (No. 4164436) @ 20% for two years w.e.f. the date of discharge. Since the husband of the applicant has died on 02.04.2014, the disability pension is to be restricted for two years because RSMB is not possible. The applicant as the legal wife shall also be entitled to family pension of her late husband Ex Sepoy Haridutt (No. 4164436). Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order. Default of this time period will invite an interest @ 09% per annum.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : Aug, 2018

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