

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 501 of 2019

Monday, this the 05th day of April, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Shakuntala W/O Ex Gunner Mejaji, Katara Pathanan, 312, Firozabad (UP), Pin-283203.

..... Applicant

Ld. Counsel for the: **Col RC Dixit (Retd), Advocate**
Applicant

Versus

1. Union of India, Through Secretary of Defence Ministry of Defence, D (Pension Grievances), 227-B Wing, Sena Bhawan, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), Sena Bhawan, DHQ, PO, New Delhi-110011.
3. Office of Pr CDA (O), Draupadi Ghat, Allahabad, Pin-211014.
4. Chief Officer in Charge Records, Artillery Records, Nasik Road Camp, C/O 56 APO.

..... Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani, Advocate**
Respondents Central Govt Counsel.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

“(a) Hon’ble Tribunal may order or direct respondents to grant applicant’s husband full pay for remainder 9 years 55 days and subsequently grant to his wife family pension along with disability pension keeping in view his terms of engagement. Applicant may be granted adequate disability pension (to be compounded to 50% vide para 7.2 of Ministry of Defence letter No 1(2)/97/D (Pen C) dated 21.01.2001) as per recommendations of invaliding medical board of 13 December 1971, she may be granted:

(i) Ordinary family pension in terms of Regulation 212 of Pension Regulation for the Army, 1961 from the year 1961 (her husband was sent on discharge on 28 Feb 1964).

(ii) Grant her disability pension for life in terms of regulation 173 read in conjunction with regulation 179 of Pension Regulation for the Army, 1961, and-

(b) That applicant has been denied her legal right in gross violation to Para 212 of Pension Regulations for Army, 1961, in view of the same, she may be granted ex-gratia lump sum compensation towards mental pain and agony which she had suffered since a long time due to glaring lapses of respondents.

(c) Pass any other order as the Hon’ble Tribunal deems appropriate in the matter along with cost.

2. Before proceeding further, we would like to state that none of the parties have filed IMB. This order is based on pleadings on record and arguments advanced by learned counsel for both the sides.

3. Brief facts of the case are that husband of the applicant was enrolled in the Army on 19.04.1963 and was invalided out of service w.e.f. 28.02.1964 (FN) in low medical category by an Invaliding Medical Board (IMB) held at Military Hospital, Devlali on 20.01.1964 on account of

disability '**CHRONIC SUPPURATIVE OTITIS MEDIA BILATERAL (390)**'.

The IMB had assessed his disability @ 20% for two years neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected in July, 1964. Applicant's husband died on 02.01.2002. Applicant has submitted numerous representations to the respondents for grant of disability pension in respect of her late husband and family pension after death of her husband. When nothing tangible could be achieved after protracted correspondence on the subject, applicant has filed this O.A. for grant of relief as mentioned in para 1 above.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there is no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by the applicant after joining the service should be considered as either attributable to or aggravated by military service and the applicant should be entitled to disability pension. Learned counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of learned counsel for the applicant is that since the aforesaid disability was a result of the deafening sound of firing from heavy artillery guns during training and therefore, it ought to have been attributable to military service. Learned counsel for the applicant has relied upon the Hon'ble Supreme Court judgments in the case of **Ex Sepoy Jagbir Singh vs Union of India & Ors**, reported in 2000 (2) SCT 555 and **Joginder Singh vs Union of India & Anr**, reported in 1994 (4) SLR 409 and submitted that in view of aforesaid judgments applicant be held entitled to disability pension w.e.f. date of invalidation of her husband till his survival and family pension after

death of her husband.

5. On the other hand, learned counsel for the respondents submitted that applicant's husband is not entitled to disability pension on two grounds, firstly, the disability with which applicant's husband suffered is neither attributable to nor aggravated by military service and secondly, as per para 212 of Pension Regulations for the Army, 1961 (Part-I) and Army Instructions 51/80, family pension is granted to a widow/dependent of those soldiers who died either as a pensioner or while in service. He further submitted that since the husband of the applicant was neither granted disability pension consequent upon his invaliding out from service nor was he in receipt of any kind of pension at the time of his death; therefore applicant is not entitled to family pension in terms of ibid rules. He pleaded for dismissal of O.A.

6. We have heard learned counsel of both sides and perused the material placed on record.

7. We find that husband of applicant was enrolled in the Army on 19.04.1963 and was invalided out from service w.e.f. 28.02.1964 (FN). Thus, he served only for 315 days till his invalidation. We also find that while undergoing basic military training the applicant reported sick to Military Hospital, Devlali within 20 weeks of his enrolment where he was found to be discharging pus from both the ears. On examination, he was detected to be suffering from '**CHRONIC SUPPURATIVE OTITIS MEDIA BILATERAL (390)**' which originated from his childhood as brought out by the respondents in para 10 of the counter affidavit. We further take note that as per the opinion of ENT Specialist dated 20.01.1964 he was found unfit for further military service due to his aforesaid disability. Therefore, he was recommended to be invalided out from military service in medical

category 'EEE'.

8. The applicant was undergoing training. He was not even attested. Thus, the status of the applicant as a recruit was akin to a probationer. Law is settled on the point that a probationer can be discharged from service at any point of time by his employer. Thus, the respondents as an employer had every right to remove a recruit who could not meet the fitness standards required from a soldier.

9. We also note from the downloaded medical documents of a medical expert of Indian University School of Medicine, provided by the learned counsel for the applicant, that the disease i.e. 'OTITIS Media (Chronic Suppurative) *'is a persistent chronically draining ear (>6 weeks) suppurative perforation of the tympanic membrane'*. The disease can result from acute otitis media, eustachian tube obstruction, mechanical trauma, thermal or chemical burns, blast injuries". Thus we see that the onset of the disease has no correlation with noise caused by gun firing etc as suggested by the learned counsel for the applicant. Thus the applicant's counsel has not been able to convincingly show any connection between the disease and the conditions of service.

10. We have also noted that medical check-up of recruits at the time of enrolment is done in outdoor locations across the country and in remote areas, which may not have required facilities for a proper and detailed medical check-up to detect constitutional and congenital disabilities. Hence, we are satisfied that such deficiencies/disabilities cannot be detected at the time of enrolment. In view of the foregoing, and the fact that the disease manifested within about twenty months of enrolment, we are in agreement with the submission of the respondents that the applicant's husband's disability is neither attributable to nor aggravated by

military service and therefore, he is not entitled to disability pension.

11. Army is a combatant force and medical fitness is a must for a recruit.

The Nation cannot afford to have unfit soldiers to continue in training as a recruit and become a soldier merely because their constitutional or congenital disabilities could not be detected at outdoor recruitment rallies.

12. Lastly, With regard to grant of family pension to the applicant, as per para 212 of Pension Regulations for the Army, 1961 (Part I) and Army Instruction 51/80, family pension is granted to a widow/dependent of those soldiers who died either as a pensioner or while in service. Since husband of the applicant was neither granted disability pension consequent upon his invaliding out from service nor was in receipt of any kind of pension at the time of death, the applicant is not entitled to family pension.

13. In view of the above, applicant has not been able to make out a case for grant of pension. The application deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

15. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 05th April, 2021

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