

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

Original Application No 129 of 2021

Tuesday, this the 3rd day of August, 2021

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

Devki Devi W/o No. 4179904 Ex Sepoy Jagdish Chand
R/o Village – Bichpuri, PO – Chakarpur, Khatima,
District – Udham Singh Nagar

..... Applicant

Ld. Counsel for the Applicant: **Shri Kishore Rai**, Advocate

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110011.
2. PCDA (P) Allahabad, Uttar Pradesh.
3. Chief of Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi – 110011.
4. Senior Record Officer, Records The Kumaon Regiments, Ranikhet, District - Almora

..... Respondents

Ld. Counsel for the Respondents : **Shri Neeraj Upreti**,
Central Govt Counsel.

ORDER

1. The instant Original Application has been filed by Smt. Devki Devi (wife) on behalf of her husband, Ex Sepoy Jagdish Chand, who is mentally unsound after retirement from service, under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“i. A direction to quash the order dated 27.02.1998 passed by respondent no. 3 (contained as Annexure No.4 to this original application) or to

- ii. A direction to grant the disability pension to the applicant from the date of his retirement i.e. 25.10.1994 along with rounding off to the tune of 50%.
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. Briefly stated facts of the case are that the husband of the applicant was enrolled in the Army on 12.01.1985 and was invalided out from service on 25.10.1994 in low medical category 'EEE' before completion of his terms of engagement after rendering more than 9 years of service. The invaliding Medical Board (IMB) assessed his disability "**SCHIZOPHRENIA**" @ 50% for two years and opined the disability as neither attributable to nor aggravated by military service. The disability claim of the husband of the applicant was rejected by PCDA (P) Allahabad vide their letter dated 14.12.1995. The husband of the applicant submitted first appeal dated 19.01.1996 which was also rejected vide letter dated 27.02.1998. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the husband of the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the husband of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling

the recommendations of IMB by higher competent authority was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. UOI & Ors***, (2013) 7 SCC 316 and ***Union of India & Ors vs. Rajvir Singh (2015) 12 SCC, 264*** and pleaded that husband of the applicant be granted disability pension.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the husband of the applicant has been regarded @ 50% for two years by IMB as neither attributable to nor aggravated by military service and not connected with service. Hence, as per Rule 173 of Pension Regulations for the Army 1961 (Part-1) and the Hon'ble Apex Court judgment in Civil Appeal No. 7672 of 2019, ***Ex Cfn Nar Singh Yadav vs. Union of India & Ors***, husband of the applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the IMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of husband of the applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to

Medical Officers to sum up the legal position emerging from the same in the following words:-

"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. In view of the settled position of law on attributability/aggravation, we find that the IMB has denied attributability/aggravation to husband of the applicant only by endorsing a cryptic sentence in the proceedings i.e. 'disease is constitutional in nature and not connected with service'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had started during service in March 1994 after 9 years of

service, therefore, we are of the considered opinion that the benefit of doubt should be given to husband of the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, husband of the applicant is held entitled to 50% disability pension for two years from his date of discharge from service.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order passed by the respondents is set aside. The disability of the husband of the applicant is to be considered as aggravated by military service. The husband of the applicant is entitled to disability pension @ 50% for two years from the date of discharge from service. The respondents are directed to grant disability pension @ 50% for two years from the date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. The respondents are also directed to conduct a Re-survey Medical Board for the husband of the applicant to assess his further entitlement of disability pension. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 3rd August, 2021

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