

**RESERVED**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 113 of 2019**

Thursday, this the 10<sup>th</sup> day of December 2020

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

Smt Maya Devi W/o late Shiv Ram (No. 8019687), R/O Village-Chunupur,  
Post-Moudha, District-Farrukhabad (UP).

..... Applicant

Ld. Counsel for the: **Shri Ashok Kumar**, Advocate  
Applicant

**Versus**

1. Union of India, through Secretary, Ministry of Defence, South Block,  
Delhi-110011.
2. The Office Incharge Pioneer Corps, PIN-560007, C/O 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat,  
Allahabad.

..... Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**  
Respondents Central Govt Counsel.

**ORDER**

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

“(a) This Hon’ble Court may graciously be pleased to quash the impugned order dated 8.4.2017 (Annexure No A-5) passed by the respondent No 2.

(b) This Hon’ble Court may graciously be pleased to direct the respondents to give arrear of disability pension (category ‘EEE’) to the applicant alongwith other benefits of her husband between the period of 09.08.1986 to 02.07.1999 with interest, in the interest of justice.

(c) This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.

(d) Award costs to the applicant.”

2. In brief the facts giving rise to the instant O.A. may be summarised as under. The husband of the applicant was enrolled in the Indian Army as Sepoy on 15.03.1969 in medical category SHAPE-1 and was invalided out of service on 03.08.1977 having rendered 08 years, 04 months and 18 days service in medical category ‘EE’ (permt) in terms of Rule 13 (3) III (iii) of Army Rules, 1954 with diagnosis ‘Pulmonary Tuberculosis (011)’. Disability of applicant’s husband was assessed @ 100% for one year i.e. 03<sup>rd</sup> August 1977 to 01<sup>st</sup> August 1978 and was granted disability pension vide PPO No. D/2885/78. Subsequently various Re-survey Medical Boards were held in which degree of disablement (percentage of disability) was reduced and in the medical board held up to the period 29.05.1995, applicant’s husband was granted

30% disability element which was paid vide PPO No. D/RA/12904/92. Thereafter, RSMB assessed disability @ 11-14% w.e.f. 30.05.1995 and PCDA (P) Allahabad stopped disability element being disability below 20%. Applicant's husband died on 02.07.1999 and applicant is presently in receipt of ordinary family pension.

3. We have heard learned counsel for both sides and perused the material placed on record.

4. The records reveal that the deceased soldier received disability element up to 29.05.1995 and, after reduction of disability element w.e.f. 30.05.1995, disability element of pension was stopped. Thus, the only point that remains to be considered is whether the stoppage of the disability element of pension by the respondents was legal or not. This point has been considered by the Hon'ble Apex Court in the case of **Balbir Singh vs. Union of India & others** in Civil Appeal No. 3086 of 2012 decided on 08.04.2016 wherein a similar question was involved. We would like to quote the relevant part of the judgment, which reads as under :-

*"It is not in dispute that the appellant was discharged from service/invalidated out of service on account of 100% permanent disability suffered by him during the course of service. It is also not in dispute that the said disability was held to be attributable to military service. That the disability was subsequently reduced to fall below 20% is also common ground. Inasmuch as the authorities stopped the disability pension, they committed no wrong. Stoppage of the disability pension did not, however, mean that the service element of*

*the pension could also be stopped. That is evident from the provisions of Regulation 186 which reads as follows:-*

*“186 (1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.*

*(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall ceased to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension.”*

5. Therefore, in view of Regulation 186 mentioned above and keeping in view the judgment of the Hon’ble Apex Court, we do not find any illegality or irregularity in the order passed by the respondents dated 14.05.1995 stopping the disability element of pension of the applicant’s husband.

6. In view of the above, O.A. lacks merit, and is accordingly **dismissed.**

7. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

Dated : 10<sup>th</sup> December, 2020  
rathore

(Justice Umesh Chandra Srivastava)  
Member (J)