

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 687 of 2017**Friday, this the 12th day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt. Sudha Devi
W/o Late Rect. Laxman Singh No. 4061706-K
R/o Vill – Turatpur, P.O. Kadrabad,
P/S : Afsalgarh, District – Bijnaur (UP) – 246722..... **Applicant**Ld. Counsel for the Applicant : **Shri V.K. Pandey**, Advocate.

Versus

1. U.O.I. through Secy MoD, South Block, R.K. Puram, New Delhi.
2. The OIC, Records GARH RIF.
3. PCDA (P), Draupadi Ghat, Allahabad (UP).

..... **Respondents**Ld. Counsel for the Respondents : **Shri Anurag Mishra**,
Central Govt Counsel.**ORDER**

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

- “(i) That this Hon'ble Tribunal may kindly be pleased to quash the impugned order/orders if any, and direct the opposite parties to pay the disability pension from 11.01.1982 to till the death of her husband i.e. 11.01.2000, and provide the

interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment.

- (ii) That this Hon'ble Tribunal may kindly be pleased to award the cost of Rs. 20,20,000/- (RUPEES TWENTY LAC AND TWENTY THOUSAND ONLY) to the applicant against the opposite parties and allow the same.
- (iii) That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.

2. Brief facts of the case are that husband of applicant was enrolled in the Indian army on 05.04.1980 and was discharged from service w.e.f. 11.01.1982 (AN) in low medical category under Army Rule 13(3) III (iv). Disability and its percentage is not known to the applicant. The applicant has preferred an application dated 26.06.2016 for grant of disability pension of her husband but the same has not been replied by the respondents. Being aggrieved, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that husband of applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that a person is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. In this regard, he submitted that under the provisions of Rule 173 of Pension Regulation for the Army 1961 (Part-

1) and Entitlement Rules, applicant is entitled for disability pension of her husband and pleaded for grant of the same.

4. Though, counter affidavit has not been filed by the respondents but during the course of hearing, learned counsel for the respondents submitted that husband of applicant was non pensioner, therefore, his medical documents including constituents thereof have been destroyed by burning after expiry of retention period as per para 595 of Regulations for the Army 1987. Sheet roll in respect of pensioners and non- pensioners are retained for a period of 50 years and 25 years respectively from the date of becoming non-effective. Further submission of learned counsel for the respondents is that since documents relating to applicant have been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner, therefore, degree of disablement cannot be ascertained at this stage. He pleaded the O.A. to be dismissed being devoid of merit.

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

6. On perusal of records, we find that documents relating to ex army person have been destroyed after mandatory retention period in terms of para 595 of Regulations for the Army, 1987. We could have decided the case, had there been related medical documents pertaining to husband of applicant and applicant could have been benefitted, but we are unable to impart justice in the absence of requisite medical documents.

