

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No. 1****ORIGINAL APPLICATION No. 206 of 2019**Wednesday, this the 17th day of February, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt Savitri Chand, Widow of Late Naib Subedar Rami Chand Rajan,
Resident of Village – Jhaulakhet, Post- Wadda, District- Pithoragarh-
Uttarakhand, Pin- 262521.

..... ApplicantLd. Counsel for the applicant : **Col BP Singh (Retd), Advocate**

Versus

1. Union of India, through Ministry of Defence South Block,
New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of
Defence (Army), South Block, New Delhi - 110011.
3. Principal Controller Defence Accounts (Pension), Draupadi Ghat,
Allababad
4. Officer-in-Charge, Records Bengal Engineer Groups, Roorkee,
C/o 56 APO

..... RespondentsLd. Counsel for the Respondents : **Dr Gyan Singh,
Central Govt. Counsel****ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

(a) *Issue/pass an order or direction to the respondents to quash/ set-
aside the rejection orders vide PCDA (P) letters dated 11.01.19, rejection of
First Appeal vide AHQ letter No B/40502/918/D(Pen/Appeal) dated*

O.A. No. 206 of 2019 Savitri Chand

12.03.2010 (Annexure No A-2 and A-3) being illegal arbitrary and without application of mind.

(b) Issue/pass an order or direction of appropriate nature to the respondents to grant the entitled to the extent of 50% and the same be 'rounded off' to 75% disability pension to the applicant's husband from 18.06.1978 to 27.10.1983 and thereafter from 28.10.1983 for life family pension to the applicant, as a matter of right as provided Govt of India letter No 1 (2)/97/1/D (Pen-C) dated 31 Jan 2001 (Annexure No A-11) supported by the position held by the Supreme Court.

(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with cost.

2. Brief facts of the case giving rise to this application are that the deceased soldier Late Nb Sub Ram Chand Rajan was commissioned as direct JCO (B/R Grade-II) on 08.02.1969. The applicant's husband was invalided out from service due to mental disease "**SCHIZOPHERENIA**" on 18.08.1978 after serving in the army for 9 years and 130 days. His disability was assessed as 50% for two years and was considered as neither attributable to nor aggravated by army service. The applicant expired on 27.10.1983. The case of the applicant's husband for grant of disability pension was rejected by the respondents being neither attributable to nor aggravated by military service. His First and Second appeals were also rejected vide letter dated 25.03.2008 and 12.03.2010. Appeals of the applicant's husband were rejected after his death. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present O.A.

3. Ld. Counsel for the applicant submitted that the husband of the applicant was enrolled in the army in medically fit condition and there was no note in his service documents with regard to suffering from any

disease prior to enrolment and he was invalided out from army service after about 9 years in Low Medical Category for the disease “**SCHIZOPHERENIA**” assessed as 50% for two years, therefore, any disability suffered by applicant after joining the service should be considered as a result of stress and strain of military service and consider as attributable to or aggravated by military service and he should be entitled to disability pension. Learned counsel for the applicant placed reliance on judgments of the Hon’ble Apex Court in the case of ***Dharambir Singh vs. Union of India & Ors***, reported in 2013 SCC 316 and ***Sukhvinder Singh vs. Union of India & Ors***, reported in 2014 STPL (WEB) 468 SC and pleaded for the grant of disability pension to applicant. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant’s husband is entitled to disability pension and its rounding off to 75%.

4. On the other hand, learned counsel for the respondents argued that the IMB has declared the disability as NANA, therefore, the competent authority has rejected the claim of disability pension under the provisions of Rule 173 of Pension regulations for the Army, 1961 (PART-1). The ground of rejection of the claim is primarily in agreement with the opinion of IMB declaring the disease as NANA on grounds of the disease having no relation to service conditions.

5. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through the IMB proceedings and the rejection order of the disability pension claim.

6. The question before us is simple and straight i.e. –
- (a). Is the disability of applicant attributable to or aggravated by military service and husband of the applicant is entitled disability pension?
- (b). If entitled whether disability pension is to be rounded off?
7. 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)."

8. In view of the settled position of law on attributability/ aggravation, we find that the IMB has denied attributability/aggravation of disability to deceased soldier only by endorsing a cryptic sentence in the proceedings i.e. 'disease is constitutional in nature and not related to service'. We do not find this cryptic remark adequate to deny attributability/ aggravation of disability to a soldier who was fully fit since his enrolment and the disease in question had first started on completion of after eight years of service, therefore, we are of the considered opinion that in the circumstances the benefit of doubt should be given to the deceased soldier as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

9. As far as the benefit of Broad Banding is concerned, since benefit of broad banding was introduced w.e.f. 01.01.1996, hence, prima facie the husband of the applicant is not entitled to broad banding for the period in question i.e. two years. Since the IMB of applicant's husband was valid for two years only and applicant's husband died on 27.10.1983, hence his RSMB cannot be conducted.

10. In view of the above, the disability of the husband of the applicant is to be considered as aggravated by military service and husband of the applicant is held entitled 50% disability pension for two years from the date of invaliding out from service and after death of deceased soldier, applicant shall be entitled service element of pension. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of service element of pension will be restricted to three years preceding the date of filing of the instant O.A.

11. As a result of foregoing discussion, the O.A. is partly allowed. The impugned orders dated 25.03.2008, 12.03.2010 and 11.01.2019 passed by the respondents are set aside. The respondents are directed to grant 50% disability pension to the applicant (wife of deceased soldier) for two years from the date of discharge i.e. 19.08.1978, thereafter grant service element of pension as family pension to the applicant from the date of death of her husband i.e. 28.10.1983 for life. The arrears of family pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 22.01.2018. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 17 February, 2021
Ukt/-