

E-Court No. 1

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

Original Application No. 460 of 2021

Monday, this the 10th day of January, 2022

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

Smt Munni Devi, W/o Late Ex 1279641 Nk Chandra Pal Singh
of DSC, R/o Vill- Garhia Jasupur, PO- Bharka, District-
Farukhabad (U.P.).

..... Applicant

Ld. Counsel for the: **Shri RN Tripathi, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence,
South Block, New Delhi-110011.
2. Officer in charge The Records Office, The DSC, Mill
Road, Cannanore- 670013.
3. Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the : **Dr. Chet Narayan Singh,**
Respondents **Central Govt Counsel.**

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(a) An order or direction to the respondents for paying the disability pension wef 01 Feb 2005 (date of discharge from the DSC service) with the suitable interest.

(b) To allow the OA with costs.

(c) Any other or further order or direction which this Hon’ble Court may deem just, fit and proper in the circumstances of the case and in the interest of the justice.

2. Counter affidavit filed by the respondents is taken on record.

3. The undisputed factual matrix on record is that husband of the applicant was enrolled in Indian Army on 15.03.1969 and was discharged from army service on 30.05.1973 after rendering 04 years and 77 days qualifying service. Thereafter the husband of the applicant was enrolled in Defence Security Corps (DSC) on 10.03.1981 and discharged from DSC service on 31.01.2005 in low medical category P2 (Permanent) under the provisions of Rule 13 (3) Item III (i) of Army Rule 1954, after

rendering aggregate 28 years, 1 month and 09 days qualifying service for which he was granted service pension for life. Husband of the applicant was also granted disability element @ 50% for life wef 23.04.2007. Husband of the applicant represented his case for grant of disability element from the date of discharge which was rejected. Husband of the applicant died in the year 2018. Applicant made various correspondences for the grant of disability element from the date of discharge of her husband, but the same were also rejected by the respondents. Being aggrieved, the applicant has filed instant O.A. for grant of disability element from the date of discharge of her husband i.e. 01.02.2005.

4. Learned counsel for the applicant submitted that since the husband of the applicant was enrolled in the army in medically fit condition and, thereafter, he has been discharged from service in Low Medical Category P-2 (Permanent) for the disability '**DIABETES MELLIUS TYPE-II**' and '**ESSENTIAL HYPERTENSION**'. Composite disability of the husband of applicant was assessed as 30% which was rounded of to 50% for life and disability was considered as aggravated by military service and husband of the applicant was granted disability element wef 23.04.2007. She pleaded that various Benches of

Armed Forces Tribunal have granted disability pension in similar cases from the date of discharge, as such the husband of the applicant be granted disability element as well as arrears thereof from the date of discharge i.e. 01.02.2005.

5. Learned counsel for the respondents has not disputed that applicant suffered composite disabilities to the extent of 30% due to disease, but he submitted that competent authority rejected the claim of the husband of applicant vide letter dated 07.07.2005 as disability was found as neither attributable to nor aggravated by military service, therefore, in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), claim of the husband of applicant for grant of disability element was rejected. The husband of the applicant preferred an appeal against the rejection of disability element and First Appeal Medical Board was conducted which assessed disabilities of the husband of applicant as aggravated by military service with composite 50% disablement for life. Accordingly, husband of the applicant was granted disability element wef 23.04.2007 for life vide PPO No D/E/1058/2007. Learned counsel for the respondents prayed that instant O.A. has no substance and is liable to be dismissed.

6. We have heard learned counsel for the parties and perused the record.

7. The question before us for consideration is simple and straight whether husband of the applicant is entitled disability element from the date of discharge or not?

8. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). 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)."

9. After considering all issues we have noted that the only reason for denying disability element from the date of discharge was that initially release medical board considered the disability of husband of the applicant as neither attributable to nor aggravated by military service. We find that when the husband of the applicant joined the Army, he was medically examined and found to be in Shape-I and the aforesaid disability was contracted after about 27 years of service which resulted in the downgrading of his medical category. In absence of any evidence on record to show that the husband of the applicant was suffering from disability or any ailment at the time of entering in service, it will be

presumed that deterioration of his health has taken place due to service and the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court in the case of ***Dharamvir Singh*** (Supra) from the date of discharge. Therefore, we consider the disease of the applicant as aggravated by military service.

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly, O.A. is **allowed**. The impugned order passed by the respondents, rejecting the claim of the husband of applicant for grant of disability element from the date of discharge is rejected. The respondents are directed to grant disability element to the husband of the applicant @ 50% from the date of discharge i.e. 01.02.2005 to 22.04.2007. Husband of the applicant has already been granted disability element @ 50% for life from 23.04.2007. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

12. No order as to cost.

13. Miscellaneous applications pending, if any, shall stand disposed off.

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

Dated : 10 January, 2022
Ukt/-