

RESERVED
Court No. 2

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

ORIGINAL APPLICATION No. 318 of 2015

Thursday, this the 08th day of March, 2018

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Urvashi Devi, wife of Ex Recruit Vehicle Mechanic Service No. 7098636 Shiv Narain Mishra, resident of village : Bhagwan Din Purwa, Post :Khargupur, Bazar, Teh : Gonda District- Gonda, U.P. **.....Applicant**

Ld. Counsel for the : **Shri S.K.Gupta, Advocate.**
Applicant

Verses

1. The Union of India through Chief of Army, Government of India, New Delhi.
2. Additional Director General, D.H.Q Delhi.
3. E.M.E Record Office, Secunderabad-21.
4. PCDA (Pension) Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri A.N.Tripathi, Advocate**
Respondents **CGSC**

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Present O.A has come to be filed under section 14 of the Armed Forces Tribunal Act, 2007 in which relief claimed is to grant disability pension and other consequential benefits since 22.06.1967.
2. Initially the petition was filed by the husband of the applicant but during pendency of the O.A the husband of the Applicant breathed his last on 12.06.2017 and as a result, the applicant came to be substituted by filing the substitution Application which was allowed by this Tribunal vide order dated 21.11.2017.
3. The husband of the Applicant in the instant case was enrolled in the Indian Army on 09.10.1965 and was invalidated out from service on 04.06.1067 under Rule 13 (3) IV of the Army Rules 1954. The total service rendered by the husband of the applicant was less than two years. During the course of service, he was detected to be suffering from the disability diagnosed as DRACONTIOSIS. Before being invalidated out from service, the husband of the applicant was brought before Invalidating Medical Board which opined the disability as neither attributable to nor aggravated by Military service. The opinion recorded was that the disease was due to worm infestation and the

disability was assessed as 11-19% for life. The claim for disability pension was processed but the same was rejected by the PCDA (P) Allahabad on the ground that it was neither attributable to nor aggravated by military service.

4. The learned counsel for the respondents submits that the husband of the applicant slept over the matter for over 45 years and it was in the year 2015 that he served a legal notice dated 16.01.2015 through a lawyer for grant of disability pension.

5. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also traversed upon the documents brought before us.

6. The learned counsel for the Applicant has cited before us various decisions of the Apex Court including the decisions rendered in Dharamvir Singh Vs Union of India, rendered on July 2, 2013, Sukhvinder Singh Vs Union of India and others (2014) 14 SCC 364, Veer Pal Singh Vs Union of India {2014 (32) LCD 17} and finally Ex Naik Umed Singh Vs Union of India and others rendered on 14.05.2014 by the Punjab & Haryana High Court. The learned counsel for the Applicant has cited the aforesaid decision to prop up his submission that at the time of entry in service, the Applicant was thoroughly examined and was found fit and thus, by applying the ratio of the aforesaid

decisions, the husband of the Applicant be granted disability pension.

7. The short question in the instant case revolves round the medical report which has been annexed as Annexure no 3 to the O.A. In the case of Dharamvir Singh vs Union of India, it has been clearly ruled that in case the disability is not deemed to have arisen during service, the Medical Board should give reasons.

8. We have gone through the medical report dated 17.04.1967 in which it is clearly mentioned that the husband of the applicant was detected to be suffering from DRACONTIOSIS which he had suffered four years back while in civil in District Gonda. The aforesaid opinion is based on the own statement of the husband of the applicant. Below the aforesaid opinion, the signatures of the husband of the applicant are affixed. It is further mentioned in the medical report that **“the disease is due to worm infestation which has been contracted while in civil”**. It is also mentioned that **“the disease could not be detected at the time of recruitment as it was in latent form.”**

9. One of the averments made in para 14 of the rejoinder affidavit is that the medical opinion as contained in Annexure 3 to the O.A is biased. Nothing has been brought on record to disprove the finding of the medical board. As stated supra, it is clearly stated that the disease

DRACONTIOSIS was in latent form and at the time of recruitment it could not be detected. Further the medical opinion mentioned that according to the own admission of the husband of the applicant, the disease aforesaid was contracted by him four years back i.e. before entry in the military service. Thus it is also an apparent case of concealment of the disease by the husband of the applicant at the time of enrolment.

10. The case relates to a hoary past. Further relevant records are neither available with the applicant nor with the respondents except the medical report. In the circumstances, we have no option except to rely upon the medical report brought before us.

11. In the case of Dharamvir Singh vs Union of India (supra), Chapter II of the Guide to Medical Officers (Military Pensions) 2002 has been fully considered in which it is made clear that the Medical Board should examine cases in the light of the etiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority would be able to appreciate fully in determining the question of entitlement according to the rules. Condition (vi) of the said decision as contained in para 28 is worthy of notice and it is that 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. In our considered opinion, the Medical Board has clearly outlined the reasons in the report which is that the disease could not be detected as it was in latent form. Thereafter the medical Board also relied upon the own statement of the husband of the Applicant who admitted to the fact that he had contracted the disease four years back in civil prior to entry in military service. Thus in our opinion, the condition laid down by the Apex Court in the case of Dharamvir Singh vs Union of India (supra) is satisfied by the Medical Board. The reasons given by the Medical Board in our opinion are adequate and the applicant has failed to make out any ground for grant of relief of disability pension.

12. As a result of foregoing discussions, we are of the view that the O.A is devoid of merit and fails.

13. It is accordingly **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : March, 08 ,2018

MH/-