

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

**Original Application No. 25 of 2021**

Friday, this the 03<sup>rd</sup> day of September, 2021

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

Smt Vimla Devi, W/O Late Gambhir Singh (No. 2994317-N Ex Sep), R/O Village & Post-Lidaupur, Tehsil-Jalaun, District-Jalaun (UP), Pin-285124.

..... Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011.

2. Incharge, Records the Rajput Regiment, Pin-900427, C/O 56 APO.

3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

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

Ld. Counsel appeared : **Shri RKS Chauhan,**  
for the Respondents Central Government Counsel.

## ORDER (Oral)

1. By means of this Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed for the following reliefs :-

*“(i) This Hon’ble Court may graciously be pleased to direct the respondents to give service element/family pension to the applicant w.e.f. 30.05.2005 along with its arrears and interest towards the disability of her husband i.e. ‘INSULIN DEPENDENT DIABETES MELLITUS-250’ for two years, invalided out for being medically unfit category ‘EEE’.*

*(ii) 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.*

*(iii) Award cost to the applicant.*

2. No. 2994317N Sep Gambhir Singh was enrolled in the Indian Army (Rajput Regiment) on 31.08.1995 and invalided out of service on 24.12.1999 in medical category ‘EEE’ due to disability ‘INSULIN DEPENDENT DIABETES MELLITUS-250’. His disability was assessed @ 11-14% for two years neither attributable to nor aggravated by military service (NANA). He submitted an application dated nil to Record Office, Rajput Regimental Centre, Fatehgarh for grant of pension which after processing was rejected vide PCDA (P), Allahabad order dated 07.11.2000. Thereafter, appeal submitted against rejection of disability pension claim was also rejected vide order dated 10.04.2002. Ex Sep Gambhir Singh died on 30.05.2005. The applicant in the year 2020 submitted an appeal to Records, The Rajput Regiment, Fategarh for grant of service element/family

pension which was denied vide letter dated 12.09.2020 (Annexure No A-5). This O.A. has been filed for grant of service element of disability pension to wife of the deceased soldier.

3. Learned counsel for the applicant submitted that applicant's husband had put in more than 04 years of service at the time of invalidation from service and since he was enrolled in medically fit condition, therefore, any disability suffered by him, should be either attributable to or aggravated by military service. He further submitted that while rejecting disability pension claim in respect of applicant's husband, the respondents had not applied their mind and declared the disability as NANA whereas his disease had first arisen in the year 1997 when he was posted in Arunachal Pradesh. He was hospitalized and his medical category was downgraded to P2 (temp) and thereafter released in medical category 'EEE'. His further submission is that applicant be granted family pension with respect to service element of her deceased husband.

4. Repudiating submissions of learned counsel for the applicant, the respondents' learned counsel submitted that the disability pension claim was processed to PCDA (P), Allahabad but it was rejected vide order dated 07.11.2000 (Annexure -4) on the ground of disability being NANA and below 20%. He further submitted that applicant in such circumstances is not entitled to family pension with respect to service element of disability pension. He pleaded for dismissal of O.A.

5. Heard learned counsel for both the sides and perused the material placed on record.

6. No. 2994317N Ex Sep Gambhir Singh was enrolled in the Army on 31.08.1995 and invalided out of service w.e.f. 24.12.1999 after completion of only 04 years and 04 months service. The Invaliding Medical Board had assessed his disability @ 11-14% for two years neither attributable to nor aggravated by military service. Disability pension claim was rejected vide order dated 07.11.2000 and first appeal preferred by applicant (wife of deceased soldier) was rejected vide order dated 12.09.2020. The Army personal who was not in receipt of any pension died on 30.05.2005.

7. We are clear that when an Army person is invalided out of service, his services are cut short, meaning thereby he is deprived of further service to earn pension. In the instant case applicant's husband was deprived of further service due to disability 'INSULIN DEPENDENT DIABETES MELLITUS-250' and was invalided out of service with disability @ 11-14% for two years neither attributable to nor aggravated by military service.

8. We have also gone through the IMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of husband of applicant attributable to or aggravated by military service?

9. 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)."*

10. In view of the settled position of law on attributability/aggravation, we find that the IMB/appellate authority has denied attributability/aggravation to applicant only by mentioning that this disease is a constitutional disorder which is cryptic.' We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started in the year 1997 i.e. after completion of about 02 years of his service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and the disability of the applicant should be considered as aggravated by military service.

11. The law on this point of disability percentage in invaliding cases is very clear as reported in (2014) STPL (WEB) 468, **Sukhwinder Singh vs Union of India & Ors**, judgment delivered by Hon'ble Supreme Court in which it was held as under:-

*“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. **Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.**”*

12. Thus, in view of aforesaid ruling disability percentage in respect of applicant's husband would be 50% for two years.

Since applicant's husband is no more, and his RSMB cannot be held to decide further disability percentage, applicant shall be entitled to service element of disability pension of her deceased husband in terms Hon'ble Apex Court decision in the case of ***Union of India Vs Sunil Bhatia***, Civil Appeal No 37695/10 decided on 03.01.2011.

13. Since the applicant is claiming family pension with respect to service element of disability pension, the claim is allowed to that extent from the date of her husband's invalidment but the payment will be restricted to three years prior to the filing of the petition which was filed on 06.01.2021.

14. The respondents are directed to calculate and release the benefits to the applicant within a period of three months from the date of receipt of this order, otherwise the applicant will be entitled to the interest at the rate of 10% per annum on the said amount.

15. The O.A. is **allowed**.

16. There shall be no order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 03.09.2021  
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