

**Court No.1**  
**RESERVED**

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

**Original Application No. 22 of 2020**

**Friday, this the 10<sup>th</sup> day of September, 2021**

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

Phoolwati Devi W/o Sep Mohan Singh  
Village : Lalapur, PO : Son  
Teh & Distt : Mathura (UP), PIN-281123

..... Applicant

Ld. Counsel for the Applicant: **Col R.C. Dixit (Retd)**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, D (Pension Grievances) 227-B Wing, Sena Bhawan, New Delhi – 110011.
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), Sena Bhawan, DHQ PO New Delhi – 110011.
3. Office of Pr C.D.A. (O), Draupadi Ghat, Allahabad, PIN-211014.
4. Chief Office in charge Records, The Records JAT Regimental Centre Bareilly, PIN 900496, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,  
Central Govt Counsel.

**ORDER**

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

“(a) That applicant had suffered mental agony against the grave injustice done to her husband by sending him on premature discharge against the provisions of Army Order 415/59 (i.e. applicant’s husband could render only 8 years 6 months of active service and was left with another 1 year 6

months to complete his terms of engagement of 10 years). Keeping in view provisions of para 134 of Regulations for Army to be read in conjunction with SAO 10/S/64 applicant's husband was entitled to put in coloured service for 10 years and afterwards 5 years in reserve service. In view of the same Hon'ble Tribunal may order or direct respondents to grant applicant's husband full pay till 1 year 6 months and subsequently grant to his wife family pension alongwith disability pension keeping in his terms of engagement. Applicant may be granted 20% disability pension (to be compounded to 50% vide para 7.2 of Ministry of Defence letter No. 1(2)/97/D(Pen C) dated 21-01-2001) as per recommendations of Invaliding Medical Board on 13 December 1971, she may be granted :

- (i) Disability pension for life in terms of regulation 173 read in conjunction with regulation 179 of Pension Regulation for the Army 1961; and
- (ii) Ordinary family pension in terms of Regulation 212 of Pension Regulation for the Army 1961.

(b) That Applicant has been denied her legal right in gross violation to para 212 of pension Regulations for Army 1961 (Annexure A-1 to Annexure A-7 corroborate this fact), in view of the same, she may be granted ex-gratia lump sum compensation towards mental pain and agony which she had suffered since such a long time due to glaring lapses of respondents.

(c) Pass any other order as the Hon'ble Tribunal deems appropriate in the matter along with cost."

2. Briefly stated facts of the case are that husband of the applicant was enrolled in Army on 13.06.1963 and after having rendered approx 8 years and 119 days service, he was discharged from service w.e.f. 13.12.1971 (AN) being placed in medical category BEE (Permanent) under Rule 13 (3) III (iv) of the Army

Rules, 1954 due to disability "**HIGH HYPER METROPIA (378)**". His claim for grant of disability pension was processed to PCDA (P) Allahabad which was rejected vide letter dated 28.04.1972 being disability below 20%. It is in this perspective that the applicant has preferred the present Original Application for grant of disability pension for her husband and ordinary family pension for herself.

3. Learned Counsel for the applicant submitted that husband of the applicant was enrolled after a thorough medical examination by the Army authorities. After enrolment on 13.06.2013 and completion of his initial training, husband of the applicant was posted to anti tank gun platoon of a JAT unit. He had a healthy family background so he was found fit in each and every physical test. The Medical Board has graded him as BEE Permanent with disability less than 20% and therefore, no disability pension was granted to him. However, in terms of Regulations 173 of Pension Regulations for the Army, 1961 the applicant's husband was eligible not only for service pension but also for disability pension as per rules. The Records Jat Regimental Centre has discharged husband of the applicant in violation to Army Order 679 of 1959 to be read in conjunction with AO 146/77; in which it is stated that a person in low medical category may be absorbed in sheltered appointment. The disability which has manifested during the course of service tenure may be viewed in conjunction with the battle zone specific events, therefore, it appears that there exists some correlation between Recoilless gun firing and the disease HIGH HYPER METROPIA. It is well known that human body is

exposed to extreme pressures in war zones and it is very common that soldiers suffer some serious complication after a tough combat operation. The applicant's husband served under very demanding conditions and participated in all major wars which Independent India fought. Immediately after 1962 Indo-China war he was posted to NEFA in 1963. Subsequently, he fought 1965 war with Pakistan and in 1971 he was fighting in Bangladesh against Pakistan's Armoured Regiments. Thus he had thorough exposure and stress of war on his shoulders and in such circumstances he got 'HIGH HYPER METROPIA' caused by overstress in battle fields. The medical authorities without considering his war zone commitments on human physique, discharged him with less than 20% disability whereas he could have been given sheltered appointment to recuperate and refit. The applicant's husband was discharged from service without granting pension or disability pension whereas he has been granted invalid gratuity and his disability pension claim was rejected vide PCDA (P) Allahabad letter dated 28.04.1972.

4. Learned Counsel for the applicant further submitted that applicant's husband was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to military service, thus there is a causal connection between disability and injuries, hence, he should be given disability pension. He placed reliance in AFT (RB) Chandigarh judgment in T.A. No. 265 of 2010 (arising out of CS 388 of 2009) where they quoted ***Amarjeet Singh vs. Union of India*** case in CWP No. 12311 of 1996 decided on 27.02.1997

where Division Bench of Punjab & Haryana High Court had laid down that '*if an individual has rendered even one day service and becomes disabled, he shall be entitled to service element apart from the disability element pension.*' Accordingly, SLP No. 197 CC 7400 filed by Govt before the Hon'ble Supreme Court was dismissed.

5. Learned Counsel for the applicant also submitted that as per Rule 9 and 173 of Pension Regulations for the Army, 1961, Rule 4 and 5 of Entitlement Rules for Casualty Pensionary Awards, 1982, Rule 14 and 423 of Guide to Medical Officer (Military Pensions), 2002, applicant is entitled to full pay till 1 year 6 months and ordinary family pension to the applicant in terms of Regulation 212 of Pension Regulation for the Army, 1961.

6. On the other hand, Ld. Counsel for the respondents submitted that Sheet Roll alongwith all service and medical documents of the husband of the applicant have been destroyed after expiry of mandatory retention period of 25 years being a non pensioner as per Para 595 of Army Regulations 1987. As per extract copy of long Roll, husband of the applicant was enrolled in Army on 13.06.1963 and after having rendered approx 8 years and 119 days service, he was discharged from service w.e.f. 13.12.1971 (AN) being placed in medical category BEE (Permanent) under Rule 13 (3) III (iv) of the Army Rules, 1954 due to disability "**HIGH HYPER METROPIA (378)**". His claim for grant of disability pension was processed to PCDA (P) Allahabad which was rejected vide letter dated 28.04.1972 due to not meeting the

primary conditions for grant of disability pension as per Regulation 173 of Pension Regulation for the Army, 1961 (Part-1), i.e. the disability should be either attributable to or aggravated by military service and disability should be assessed at 20% and above. Rule 198 of the Pension Regulations for the Army, 1961 (Part-1) says that “where the disability is ‘neither attributable to nor aggravated by military service’, the minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years service, invalid gratuity shall be admissible. Invalid gratuity is a onetime lump sum amount given to the invaliding individual at the scale of half a month’s reckonable emoluments (Pay + Class Pay, if any, last drawn) for six monthly period of service in terms of Rule 201 of ibid Pension Regulations”. Accordingly, applicant’s husband was neither granted disability pension nor invalid pension due to his disability not meeting mandatory conditions as prescribed in Pension Regulation (supra). However, husband of the applicant was granted Rs. 1689.85 on account of invalid gratuity as per rules. Applicant’s husband died on 08.03.2018.

7. Learned counsel for the respondents further submitted that as per procedure in vogue, when disability pension of any individual is rejected, he is communicated the reasons for rejection of his disability pension with an advice to prefer an appeal within six months from the date of receipt of communication. Likewise, in the present case, the applicant’s husband must have been communicated the reasons for rejection of his disability pension by the PCDA (P) Allahabad. But it cannot be ascertained at this

belated stage whether he had preferred any appeal against rejection of disability pension or otherwise in a stipulated time frame because his service and medical documents have been weeded out. After lapse of 44 years from the date of rejection of disability pension claim, the applicant's husband preferred an appeal dated 11.04.2016 and it was communicated to him that his Sheet Roll alongwith all service and medical documents have been destroyed after expiry of retention period, hence, it was not feasible to entertain his appeal at this belated stage. He pleaded for dismissal of O.A.

8. Learned counsel for the respondents also submitted that as per Regulation 44 of the Pension Regulations for the Army, 2008 (Part-1), deficiency in service for eligibility to pension/gratuity may be condoned upto 12 months but husband of the applicant was invalided with less than 15 years of service i.e. 8 years and 119 days, therefore, he is not eligible to condone the delay of shortfall of his service. Since husband of the applicant was not in receipt of any type of pension, applicant is also not eligible for ordinary family pension as per Rule 212 of Pension Regulations for the Army, 1961 (Part-1).

9. Heard learned counsel for the parties and perused the material on record.

10. After having heard the submissions of parties learned counsel and having perused the record carefully we observe that :

(a) The present O.A. has been filed after 46 years from the rejection of disability pension claim of applicant's husband by

PCDA (P) Allahabad vide letter dated 28.04.1972, which is highly barred by time.

(b) If applicant's husband was agitating for his claim since 2003 but not heard then why petition was not filed when he was alive. No copy of representation allegedly preferred by the applicant's husband to Army authorities has been filed alongwith O.A. to support her claim that her husband kept agitating the claim.

(c) Credibility of the case is doubtful as an important question as to why applicant's husband was silent for 15 years from 2003 to 2018 till he died and thereafter, can be legitimately raised. Wife of the deceased soldier has filed the present case claiming disability pension and ordinary family pension after 2018.

(d) Discharge certificate filed at page 38 of Original Application does not seem genuine.

(e) If applicant's husband was tasked for duty of guarding of prisoners of war during the operations (as claimed by the applicant) then how it is possible that he has actively participated in war also? Two different types of duties cannot be performed simultaneously. Besides it is not clear whether the husband of applicant was discharged in Oct. 1971 (as mentioned in the Long Roll) or in Dec. 1971 (as per date on discharge certificate). Hence, the observations raise doubts about the soldier's participation in 1971 operation.

(f) All service and medical documents of the husband of the applicant have been weeded out after expiry of mandatory retention period of 25 years as per Para 595 of the Regulations for the Army, 1987. In absence of service and medical documents, details/cause of disablement, duration and its repercussion cannot be ascertained at this belated stage.

(g) Disability pension claim of husband of the applicant was rejected by the competent authority under the provisions of Pension Regulations for the Army, 1961 as his disability was assessed below 20% and it was found not attributable to military service, thereby primary conditions for grant of disability pension were not fulfilled.

(h) In absence of medical documents, it is not possible to hold at this belated stage that disability which applicant's husband suffered and on account of which he was invalided out from service was due to military service and not otherwise.

(j) As far as sheltered appointment under the provision of Army Order 679/59 is concerned, this point has not been replied by the respondents in their counter affidavit in absence of service/medical documents of applicant's husband. May be no sheltered appointment was available in the unit commensurate to his low medical category during that period.

(k) AFT (RB) Chandigarh in its order dated 08.05.2013, dismissed OA No. 106 of 2011, ***Mangat Ram vs. UOI & Ors***, upholding the comments of DGAFMS, IHQ of MoD (Army) in their letter dated 20.04.2011 wherein the operative para says ***“Primary Medical Examination at the time of recruitment is basically a screening medical examination to screen out persons with the specified diseases/disabilities and select physically fit person who should be able to sustain the physical stress and strain of training and able to make a good and fit soldier. At the time of recruitment, individual is expected to reveal past illnesses, injuries and also intimate family history of specified disease. Recruiting Medical Officer, based on inputs given by the individual and also as per recruiting standards, examines the persons assembled for enrolment. General examination is carried out. Detailed medical tests and psychiatric examination is neither feasible nor carried out. Generally boys are in the***

***age group of 17-20 years. There are various diseases which manifest later in adult/middle age and certain disabilities have periodic remissions/relapses or there could be disease in sub clinical stage. These diseases cannot be detected at the time of enrolment”.***

Hence, in absence of any valid proof/document filed in his support, benefit of doubt cannot be given to husband of the applicant as claimed in his O.A. that disability 'HIGH HYPER METROPIA' manifested during the course of service tenure in conjunction with the battle zone specific events caused by overstress in battle fields.

(I) As per Para 173 and 198 of Pension Regulations for the Army, 1961 (Part-1), since the husband of the applicant was not in receipt of any kind of pension being not meeting eligibility criteria, the applicant is also not entitled for grant of family pension in terms of Para 212 of Pension Regulations for the Army, 1961 (Part-1).

11. It is clarified that the case law, rules and regulations relied upon by the applicant in Para 3, 4 & 5 above are not applicable in the present case being irrelevant.

12. In view of above, we are of the considered view that neither the deceased soldier nor the applicant can be granted any relief with regard to grant of disability pension and ordinary family pension in absence of requisite service/medical documents after a prolonged gap of more than 46 years from the date of discharge from service/rejection of disability pension claim under the provisions of Para 173, 198 and 212 of Pension Regulations for the Army, 1961 (Part-1).

13. In view of above, the Original Application deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

15. Misc. Application(s), if any, pending for disposal, shall be treated to have been disposed of.

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

Dated: Sept., 2021  
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