

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred APPLICATION NO 42 of 2016

Tuesday, this the 21st day of August, 2018

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

Smt Savitri Devi, Wife of Late Kedar Nath,
Resident of Village – Khairohi, Tehsil- Dudhi,
P.O. – Govindpur Ashram, District – Sonebhadra.

.....Petitioner

Ld. Counsel for the : **Shri K.K. Mishra, Advocate.**
Petitioner

Verses

1. Union of India, through its Secretary, Ministry of Defence,
DHQ Post Office South Block, New Delhi.
2. Chief Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad.
3. Office Incharge Records, The Dogra Regiment, Faizabad.

.....Respondents

Ld. Counsel for the : **Shri Virendra Singh,**
Respondents. **Central Govt. Counsel**

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

1. This matter has come before us from the Hon’ble High Court of Judicature at Allahabad by way of transfer under Section 34 of the Armed Forces Tribunal Act, 2007 and has been renumbered as Transferred Application No. 42 of 2016.

2. The petitioner through this Transferred Application has prayed following reliefs:-

i. To issue a writ order or direction in the nature of certiorari quashing the impugned order dated 19.09.2005 passed by the respondent no. 2; contained in annexure no. A;

ii. To issue a suitable order or direction in the nature of mandamus commanding the respondents to grant pension in respect of her husband from 17.06.1953 to 12.09.1984 with interest and also the Special Family Pension from 13th September and continue to pay the same as and when falls due;

iii. To issue any other such order or direction, which may deems fit and proper under the circumstances of the case;

3. The undisputed facts are that the husband of the petitioner was enrolled in the Indian Army on 26.06.1942 and after about 04 years, he was discharged from service on 17.05.1946 due to disability sustained during the World War II in the Burma Theatre. The service documents of the husband of the petitioner have been destroyed by burning on expiry of its prescribed period of retention in the year 1998. As per long roll available, the husband of the

petitioner was discharged on medical grounds. He was granted disability pension @ Rs. 15/- per month from 18.05.1946 to 10.12.1952. His disability pension was discontinued w.e.f 11.12.1952 with the remarks that disability has been assessed less than 20% by Re-survey Medical Board. The husband of the petitioner died on 12.09.1984. The petitioner filed a Writ Petition No. 49316 of 1999 at Hon'ble High Court of Judicature at Allahabad, for grant of arrears of pension of her late husband and for Special Family Pension. Hon'ble High Court directed the respondents to decide the case of the petitioner within four months. PCDA (P), Allahabad rejected the claim stating that disability has been assessed less than 20% by Re-survey Medical Board. Since the husband of the petitioner was not in receipt of any pension at the time of death, petitioner is also not entitled family pension. Being aggrieved by the denial of disability pension as well as family pension, petitioner preferred Civil Misc. Writ Petition No 6249 of 2008 before High Court of Judicature at Allahabad which was transferred to this Tribunal and registered as Transferred Application as aforesaid.

4. Learned counsel for the petitioner submits that the husband of the petitioner was enrolled in the Army on 26.06.1942 and was discharged from service on 17.05.1946 due to disability sustained during the World War II in the Burma Theatre. He was granted disability pension w.e.f. 18.05.1946 to 10.12.1952. As per long roll

maintained in the Records Office, the petitioner's husband was granted disability pension at the rate of Rupees 15/- per month for life with effect from 18.05.1946. The period for grant of disability pension was amended by PCDA (P), Allahabad, vide corrigendum Pension Payment Order (PPO) No 19960 granting disability pension from 18.05.1946 to 11.12.1952 and nature of disability was amended from 'permanent' to 'temporary'. His disability pension was discontinued w.e.f.12.12.1952 with the remarks that disability has been assessed less than 20% by Re-survey Medical Board. The husband of the petitioner died on 12.09.1984. The petitioner applied for grant of special family pension after the death of her husband i.e. from 13.09.1984 but the same was rejected by the respondents communicated to the petitioner vide letter dated 13.07.1999. He submitted that the Court case of the petitioner, for grant of pension, was in process but the respondents have intentionally destroyed the service documents of the husband of the petitioner in the year 1998. Thereafter the petitioner filed a writ petition No. 49316 of 1999 at Hon'ble High Court of Judicature at Allahabad, for grant of arrears of pension of her late husband and Special Family Pension. Hon'ble High Court vide order dated 25.02.2005 directed the respondents to decide the case of the petitioner within four months. PCDA (P), Allahabad rejected the claim of the petitioner on the ground that disability of husband of the petitioner has been assessed less than 20% by Re-survey Medical Board. Since the husband of the petitioner was not in receipt of any pension at the time of death, petitioner is

also not entitled family pension. Learned counsel for the petitioner has drawn our attention that the injury sustained by the husband of the petitioner was attributable to and aggravated by military service, in World War-II, hence he was granted disability pension. Learned counsel for the petitioner submitted that therefore the denial of disability pension claim by Respondents is hit by Article 14 of the Constitution of India hence order of respondents dated 19.05.2005 should be quashed and disability pension should be granted to the petitioner. He concluded by stating that keeping in view the fact that husband of the petitioner served the Army for about 04 years and was invalided out due to injury in World War II, he is entitled to disability pension until his death and the petitioner as his legal wife is entitled to arrears of disability pension and family pension after the death of her husband.

5. **Per Contra**, Ld. Counsel for the respondents submitted that the husband of the petitioner Late Sep Kedar Nath was discharged from service on 17.05.1946 in low medical category after about four years of service. The service documents of the husband of the petitioner have been destroyed by burning on expiry of prescribed period of retention in the year 1998. As per Long Roll maintained by Dogra Regiment, cause of discharge of the deceased soldier has been shown as 'Discharged by Medical Board'. He was granted disability pension from 18.05.1946 to 10.12.1952. The period for grant of disability pension was amended by PCDA (P), Allahabad from

'permanent' to 'temporary'. The disability pension of the deceased soldier was discontinued with effect from 11.12.1952 being less than 20% by the Re-survey Medical Board. On 27.01.1999, the petitioner intimated the respondents that her husband expired on 12.09.1984 and preferred claim for grant of arrears of pension of her late husband with effect from 11.12.1952 to 12.09.1984 and thereafter Special Family Pension. The claim of the petitioner was rejected and the same was intimated to the petitioner vide order dated 13.07.1999 stating that since the petitioner's husband was not in receipt of any pension, she is neither entitled for arrears of pension of her husband nor special family pension in terms of Army Instruction 51/80 read in conjunction with Government of India, Ministry of Defence letter dated 26.08.1998.

6. He further submitted that in this case, the husband of the petitioner was granted disability pension for the period from 18.05.1946 to 10.12.1952. Thereafter PCDA (P) had rejected the claim of disability pension of the husband of the petitioner stating that the last RSMB had assessed the disability less than 20%. He added that neither the deceased soldier nor the petitioner has represented their case for last 46 years after discontinuation of the disability pension hence their delayed claim has been rejected on this ground also. Learned counsel for the respondents concluded by praying that this petition may be dismissed as devoid of merit.

7. We have heard Ld. Counsel for the parties and perused the material placed on record.

8. We have given our anxious thoughts to this case. The facts which have emerged without any dispute are that the petitioner's husband was enrolled in the Army on 26.06.1942. He was discharged from Army on medical ground on 17.05.1946 i.e. after rendering about four years of service. His disability was considered attributable to military service, therefore he was provided disability element of disability pension from 18.05.1946 till 10.12.1952. Thereafter based on last RSMB report his disability was reduced below 20% and his disability pension was stopped by PCDA (P) Allahabad. The petitioner's husband died on 12.09.1984. Thereafter the petitioner as the wife of the deceased soldier has staked her claim for arrears of disability pension and special family pension which has been rejected by the respondents.

9. In view of the above position the only issue which remains to be decided by us is as to whether the husband of the petitioner was also entitled for service element of disability pension or not, after stoppage of disability element. In this context, regarding his entitlement to service element after stoppage of disability element, there is a Govt of India MOD letter dated 10.02.2014 which is relevant and clarifies the position as follows:-

*“Government of India, Ministry of Defence
Department of Ex-servicemen Welfare*

Dated: 10th February 2014

To

*The Chief of Army Staff
The Chief of Naval Staff
The Chief of Air Staff*

*Subject: Grant of Service element of disability pension
to pre-1.1.1973 invalided out JCOs, ORs and
NCs (E)/ Sailor/Airmen when the accepted
degree of disablement re-assessed as less than 20%-reg.*

Sir,

The undersigned is directed to refer to Regulation 186 of Pension Regulations for the Army Part-I (1961) and equivalent provisions in the Pension Regulations for the Navy & Air Force, which provides that in case of personnel below officer rank granted disability pension on invalidment due to disabilities attributable to or aggravated by military service but whose accepted degree of disability subsequently falls below 20%, the service element of disability pension was made permanent provided the qualifying service rendered by the individual was 10 years or more (15 years in case of NCs(E)). The requirement of rendering stipulated qualifying service for continuance of service element was further relaxed to 5 years for the individuals who were invalided out of service on or after 1.3.1968 vide this Ministry's letter No.1(4)/68/1035-A/S/D (Pension/Services) dated 30.10.1968. In implementation of the Government decisions on the recommendations of Third Pay Commission vide SAI 4/S/75, the condition of having minimum service for continuance of service element, when disability was re-assessed as less than 20% was abolished in those cases where the invalidment occurred on or after 1.1.1973. Due to the above said stipulation of having prescribed service for continuation of service element, pre-1.1.1973 invalided out cases erstwhile in receipt of disability pension, were disallowed service element of disability pension and subsequently family pension also, where the disability was accepted as less than 20% in subsequent re-assessment(s).

2. Based on various representations from such personnel and their families for continuance of service element of disability pension and/or grant of family pension, the matter has been considered by the Government. The President is now pleased to decide that condition prescribed prior to 1.1.1973 for continuance of service element with reference to minimum stipulated qualifying service, in cases where the accepted degree of disability subsequently fell below 20%, shall be dispensed with from 1.1.1973 or the date from which the accepted degree of disability fell below 20%, whichever is later.

The NOK of such invalided out personnel who at the time of invalidment were in receipt of disability pension and subsequently died, shall also be entitled for family pension from the date following the date of death of individual.

3. *The service element of disability pension/family pension in terms of these orders shall accordingly be notified by the Pr. CDA (Pensions), Allahabad. For this purpose, each affected personnel below officer rank who was invalidated out prior to 1.1.1973 and initially granted disability pension but the same discontinued as their accepted degree of disability fell below 20% at the time of re-assessment, shall submit an application in the format enclosed as Annexure to this letter to the PSAs concerned through their Pension Disbursing Agencies and Record Office. In cases where the pensioner was alive as on 1.1.1973 or date of discontinuance of disability pension which is later and died subsequently, his heir(s) shall be paid life time arrears on account of service element of disability pension accrued in terms of these orders as per the prevailing instructions on the subject. For this purpose, eligible heir(s) of the deceased pensioner may also apply to the Pension Disbursing Agencies of the deceased pensioner.*

4. *The Record Offices may, however, also identify the affected cases and take necessary action after obtaining relevant information required from the pensioners for notification of their awards.*

5. *Further implementation instructions to all concerned will be issued by Pr.CDA (Pensions), Allahabad, immediately on receipt of these orders.*

6. *This issues with the approval of Ministry of Defence (Finance) vide their I.D.No.10(4)/2012/FIN/PEN dated 16.01.2014.*

7. *Hindi version will follow."*

(Emphasis supplied by us)

10. In our opinion the husband of the petitioner was discharged on medical grounds in the year 1946 with about 04 years of service hence he becomes entitled for service element from 01.01.1973. As per the letter (supra), we therefore don't agree with the contention of the respondents that only those army persons who have been invalidated/discharged/retired on or after 01.03.1968 are entitled to service element of disability pension, in accordance with Regulation 186 of Pension Regulations for the Army, Part-I (1961).

11. Even otherwise the Constitution Bench in the case of **D.S. Nakara & Ors. vs. Union of India** reported in 1983 AIR 130 observed that the division which classified pensioners into two classes was

artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran counter to the very object of the pension scheme. Pension Rules being statutory in character, the amended Rules, specifying a cutoff date resulted in differential and discriminatory treatment of equals was violative of Article 14 of the Constitution. This view was also taken by the Honourable Supreme Court in the case of ***Union of India & Anr. Vs. Deoki Nandan Aggarwal*** reported in 1992 Suppl.(1) SCC 323 and also in the case of ***Union of India & Anr. Vs. S.P.S. Vains (Retd) & Ors.*** reported in 2008 (9) SCC 125 and further followed in the case of ***K.J.S. Buttar vs. Union of India*** reported in (2011) 11 SCC 429.

12. In view of the foregoing, the issue is no more res integra and we therefore, find that same class of armed forces personnel who are similarly placed and were discharged before the cutoff date of 01.03.1968 are also entitled to the benefits of service element of disability pension, as envisaged in the Government of India, MOD letter dated 10.02.2014, as per the essence of the judgments of the Hon'ble Supreme Court on the subject. Thus in view of the above we are of the opinion that the husband of the petitioner is entitled to service element of pension w.e.f. 01.01.1973 as per Govt of India, Min of Def letter dated 10.02.2014.

13. The learned counsel for the petitioner has pleaded for grant of disability pension as per Regulation 186 (2) of Pension Regulations for the Army, 1961 (Part-I). For a better understanding, the said Regulation is reproduced below:-

“186. (1) An individual who is invalided out of service with disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall, however, continue to draw the service element of disability pension.”

14. As the disability pension of the husband of the petitioner was stopped by the respondents with effect from 10.12.1952, we find that the husband of the petitioner is entitled to service element of disability pension alone from 01.01.1973 as per the provisions of Govt of India, Min of Def letter dated 10.02.2014 (supra). The petitioner is also entitled to arrears of service element of her husband upto 03 years before his death. Thereafter she is entitled to family pension from three years prior to filing of first petition in Hon'ble High Court, Allahabad i.e. 01.01.1996. Date of filing of the writ petition was 27.01.1999.

15. In sum, the Transferred Application is allowed to the extent of granting service element of disability pension to the husband of the petitioner with effect from 01.01.1973 till the date of death i.e. 12.09.1984. Arrears of service pension to be restricted to last three years before the death of the petitioner's husband. The petitioner as

legal wife shall be entitled to family pension w.e.f 13.09.1984 considering that the petitioner is over 88 years of age and at the sunset of her life, the concerned Record Office is directed to detail an experienced person who can visit the lady and guide her in completing all papers formalities expeditiously. The Respondents are also directed to issue corrigendum PPO for service element of arrears and family pension within a period of four months from the date of receipt of certified copy of this order. Default on time line shall entitle the petitioner with interest @ 9% per annum till the date of actual realization of payments.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: August 2018
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