

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 645 of 2021**Friday, this the 8th day of April, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

- (1) Smt. Renu, W/o Late Nag Narayan Singh
 (2) Avinash Singh, Son of Late Nag Narayan Singh
 Resident of Village – Faidapur, Post – Izat Nagar,
 Tehsil and District Bareilly (UP) – 243001

..... Applicant

Ld. Counsel for the Applicant: **Shri Birendra Prasad Singh &
 Shri Ravi Srivastava, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of Ministry of Defence (Army), South Block, DHQ, New Delhi.
3. Military Secretary, Integrated Headquarter of Ministry of Defence (Army), South Block, DHQ, New Delhi.
4. The Additional Directorate General, AG's Branch, Personal Service, PS-4, Integrated MOD (Army), Army Headquarters, New Delhi – 110011.
5. The Officer-in-Charge, Records Signal Jabalpur (MP).
6. Principal Controller of Defence Accounts (Pension), Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Preeti Mala,**
 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 reliefs:-

- “(i) To issue an appropriate order or direction to the respondents quashing the impugned order/letter dated 28.12.2019 together with letter/order dated 15.12.1980 as contained in Annexure No. 1 and 3 to the instant original Application, and/or
- (ii) To issue an appropriate order or direction to the respondents hereto to immediately grant the benefits of disability pension with effect from the date he has been invalided out from service and/or
- (iii) To issue an appropriate order or direction to the respondents hereto to immediately release the amount towards the arrears of disability pension of the applicant, and/or
- (iv) Issue an appropriate order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case including an order of awarding damages as well as cost of this instant application in favour of the applicant and against the respondents, hereto.

2. The present O.A. was filed by Ex Sigmn Nag Narayan Singh who died during pendency of Original Application and, after his death, his wife Smt. Renu has been substituted in his place by Tribunal order dated 08.04.2022.

3. Brief facts of the case giving rise to this application are that the deceased soldier was enrolled in the Indian Army on 16.06.1973 and was invalided out of service on 19.08.1980 under Army Rule 13 (3) III (iii) after having rendered more than 7 years service in low medical category ‘EEE’ due to disability “**IDIOPATHIC EPOLEPSY (345)**”. Prior to discharge from service husband of the applicant was brought before Invalid Medical Board (IMB) held on 09.07.1980 which

assessed his disability @ 20% for two years, neither attributable to nor aggravated by military service being a constitutional disorder. Disability pension claim of husband of the applicant was rejected by Medical Advisor attached to PCDA (P) vide order dated 20.11.1980. The husband of the applicant preferred a petition dated 06.12.2019 after a long period of 39 years, which was rejected by Signals Records vide letter dated 28.12.2019. It is in this perspective that husband of the applicant has preferred the present O.A.

4. Learned Counsel for the applicant pleaded that at the time of enrolment, husband of the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Learned counsel for the applicant placed reliance on judgments of the Hon'ble Apex Court in the case of ***Dharambir Singh vs. Union of India & Ors***, reported in 2013 SCC 316 and ***Sukhvinder Singh vs. Union of India & Ors***, reported in 2014 STPL (WEB) 468 SC and pleaded that applicant be granted disability pension of her husband as per recommendations of IMB @ 20%.

5. On the other hand, Ld. Counsel for the respondents contended that disability of husband of the applicant i.e. **"IDIOPATHIC EPOLEPSY (345)"** has been regarded as 2% for two years as neither attributable to nor aggravated by Military Service by IMB being a constitutional disorder. However, Medical Advisor (Pension), attached

to PCDA (P) Allahabad has rejected the claim of husband of the applicant stating that *“it has been decided that the disability from which the individual suffered during his service in the Army and on which his claim is based (i) is not attributable to military service (ii) does not fulfil the following conditions, namely that if existed before or arose during military service and has been remains aggravated thereby. Accordingly, no disability pension is admissible under rules”*. Therefore, in terms of Rule 173 of Pension Regulations for the Army 1961 (Part-1), husband of the applicant does not fulfil the conditions, hence, husband of the applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

6. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through the IMB proceedings and the rejection order of the disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

7. 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)."

8. In view of the settled position of law on attributability/aggravation, we find that the IMB has denied attributability/aggravation of disability to deceased soldier only by endorsing a cryptic sentence in the proceedings i.e. 'disease is constitutional in nature'. We do not find this cryptic remark adequate to deny attributability/aggravation of disability to a soldier who was fully fit since his enrolment and the disease in question had first started on completion of after seven years of service, therefore, we are of the considered opinion that in the circumstances the benefit of doubt should be given to the deceased soldier as per the Hon'ble

Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

9. In view of above, husband of the applicant is held entitled to disability pension for his disability "**IDIOPATHIC EPOLEPSY (345)**" @ 20% for two years from the date of his invalidment from service. Since benefit of rounding off is applicable w.e.f. 01.01.1996 as per Govt of India, Ministry of Defence letter dated 31.01.2001, hence husband of the applicant being discharged from service on 19.08.1980, is not eligible for the benefit of rounding off.

10. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned orders passed by the respondents and PCDA (P) Allahabad are set aside. The disability of husband of the applicant "**IDIOPATHIC EPOLEPSY (345)**" is to be considered as aggravated by military service. The husband of the applicant is entitled to disability pension @ 20% for two years from the date of invaliding out from service. Since deceased soldier's disability was assessed for two years from the date of invalidment from service, he was required to undergo review medical board which owing to his death on 11.02.2022 could not be held to decide further disability, if any. Since the soldier has died, therefore, respondents are directed to grant 20% disability pension for two years to the applicant (wife of deceased soldier) from the date of invaliding out from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: April, 2022
SB