

RESERVED
Court No.1

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

Original Application No. 221 of 2015

Tuesday, this the 29th day of January, 2019

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

Smt. Moti Singh
Wife of Angad Singh
Service No. 607582 Rank CPL, Trade Elect/Tech
Present Address, R/o Village – Trilokpur
Post Office – Nauli
Tehsil – Zamania Railway Station Dildarnagar,
District Ghazipur, Uttar Pradesh

..... Applicant

Ld. Counsel for the Applicant : **Shri Virat Anand Singh,**
Advocate

Versus

1. Union of India through its secretary,
Ministry of Defence, New Delhi.
2. Chief of Air Staff,
New Delhi.
3. Air Force Record Office,
Subrato Park, New Delhi.
4. Commanding Officer, AFRO(U),
Subrato Park, New Delhi.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Pandey,**
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

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

- “i. Please to grant disability pension with effect from 1 sep. 1978.*
- ii. Please to pay the entire arrears of pension within stipulated time period provided by this Hon’ble Tribunal and pay interest on the arrears at the rate of 15% per annum.*
- iii. Please to grant any other relief in the interest of justice in the case of applicant and her favour.*
- iv. Please to quash the CDA (P) Allahabad letter No GTS/79/77/III dated 21st July 1979 after summoning the same from the office of the opposite parties in the interest of justice.”*

2. In brief, the facts of the case are that the applicant’s husband Late Angad Singh was enrolled in the Indian Air Force on 16th October 1970. After rendering service of 07 years and 321 days, the applicant’s husband suffered paralysis attack on the right side of the body and he became unable to do his service, consequently he was discharged from service w.e.f. 01st September 1978 and thereafter he died on 26th November 1993. As per the pleadings and the documents annexed with the O.A., it transpires that the applicant, for the first time, sent a representation in the year 2005 for grant of family pension to her and the same was rejected on the ground that the applicant’s husband was not in receipt of any pension, therefore, she was not entitled to any family pension.

3. On behalf of the respondents, the facts are admitted. However, it is pleaded on behalf of the respondents that the entire records of the applicant’s husband have been weeded out after expiry of the period of

retention i.e. 25 years. Since the applicant's husband was discharged from service in the year 1978, therefore, all the documents were destroyed in the year 2003. The applicant has approached this Tribunal in the year 2014. It is submitted that the disease of the applicant's husband was held by the duly constituted Medical Board to be neither attributable to nor aggravated by the military service and accordingly, the claim of disability pension was rejected.

4. Learned counsel for the applicant has argued that in similar facts situation, the Co-ordinate Bench of Armed Forces Tribunal, Guwahati in **Smt. Vizieu Kesiezie vs Union of India & others** (T.A.No.54 of 2010) decided on 31.03.2011, has granted disability pension to the petitioner, who happens to be the wife of the late soldier and he has claimed parity with the same order of Co-ordinate Bench of Armed Forces Tribunal, Guwahati.

5. On behalf of the respondents, it has been argued that this Tribunal in several cases, has held that the claim of disability pension cannot be decided in vacuum because in order to assess the percentage of the disability pension and its duration and attributability, the perusal of medical report is very necessary and in absence of the same, no decision can be taken in this regard.

6. It is clear from the pleadings that the applicant's husband during his entire life after his discharge till the date of his death has not raised any claim for grant of disability pension. It is only in the year 2005, the claim of grant of family pension/disability pension was raised on behalf of the present applicant for the first time.

7. We have carefully examined the case law of the Hon'ble Co-ordinate Bench of Armed Forces Tribunal, Guwahati, on which learned counsel for the applicant has placed reliance. The facts of that case are distinguishable. In the facts of that case, the claim of the applicant's husband was pending and during pendency of the said claim, the respondents weeded out the

records and, therefore, adverse inference was taken against the respondents. This fact is clear from the observation of the Co-ordinate Bench of Armed Forces Tribunal, Guwahati in Para 10, which reads as under :

“10. The respondents, though obliged under the Rules to preserve the service record of the incumbent in view the petitioner’s application in 1967, clearly failed to do so. The service record of the petitioner was destroyed notwithstanding the petitioner’s claim. The Respondents accordingly could not produce the service record even on requisition by us. We do not know the circumstances under which the service record has been destroyed prematurely. In such an event the statements and assertion of the appellant relating to the incidents leading to his discharge on medical grounds from army after 4 years, 11 months and 07 days of service, has to be accepted. “

8. In the instant case, there was no such representation or claim raised on behalf of the applicant’s husband or the present applicant herself was pending when the record was weeded out. The applicant’s husband was discharged in the year 1978 and after expiry of the retention period of 25 years, his entire records were destroyed in the year 2003. Thus, in the instant case, the documents were not destroyed prematurely and documents were destroyed only after the period of retention. Therefore, only on the basis of a presumption that the tenure of service of the applicant’s husband was cut short, we do not consider it appropriate to give any specific finding that the injury of the applicant’s husband was attributable to or aggravated by the military service. There is absolutely no material to hold as to what was the duration, percentage of the injury of the applicant’s husband and the reasons given by the medical board for declaring the disability as NANA.

9. Ld. Counsel for the respondents submitted that though the medical documents of the petitioner are not available, however, from the records available it appears that the disability pension claim was rejected by PCDA (P) Allahabad as his disability was regarded as neither attributable to nor aggravated by military service (NANA), therefore the pension sanctioning

authority has rightly rejected disability pension claim of the applicant's husband. He further pleaded that Para 173 of Pension Regulations for the Army, 1961 (Part I) puts an embargo for grant of disability pension to the applicant's husband as his disability is NANA in the instant case. Relying upon similarly situated cases the Ld. Counsel for the respondents submitted that O.A. No 95 of 2014 (AFT, Principal Bench), *Smt Dulari Devi widow of Late Swr Rajbir Singh Rana*, O.A. No. 11 of 2010 (AFT, Jaipur Bench), *Smt Nasim Bano widow of Late Swr Usman Ali Khan* and O.A. No. 175 of 2010 (AFT, Jaipur Bench), *Ex Swr Mohd Aslam* were dismissed on account of non availability of RMB/IMB. He pressed for O.A. to be dismissed.

10. Same view has also been taken by this Tribunal in the case of **Bhagwat Prasad Lal vs Union of India & others** (O.A.No.460 of 2017) decided on 22.01.2019.

11. The present applicant has not filed medical documents of her husband, which are necessary for examination of certain factual position of the disease, the opinion of Medical Board for reasons declaring the disease as NANA, as well as percentage of the disability. The counter affidavit filed by the respondents also does not contain the medical documents as the same have been weeded out after expiry of the period of retention. The respondents have stated during hearing that the medical documents of the applicant's husband have been destroyed as per due process of law and are not available. There is specific averment to this effect in the counter affidavit. Therefore, neither the applicant nor the respondents were in a position to place on record the medical documents of the applicant's husband. Thus in the absence of medical documents, no order can be passed by this Tribunal in vacuum.

12. In counter affidavit filed by the respondents, it has been stated that since the applicant's husband is not a pensioner, his service documents have been destroyed on completion of its mandatory retention period of 25 years in accordance with Para 592 to 596 of Defence Service Regulations for the Army, 1987 (Revised Edition).

13. This point involved in this case has also been considered by the Armed Forces Tribunal, Regional Bench, Chennai in the case of **Ex Sep K. Muniyandi vs. Union of India & others** (O.A.No.145 of 2013) decided on 08th January, 2014, in which Hon'ble the Regional Bench has held in Para 11 as under :

“11. When the documents related to the service and medical disability of the applicant are not available, the Judgement of Hon'ble Delhi High Court 14 made in C.M. No.2063 of 1993 and C.W. No.1267 of 1993 in between Hans Ram Vs. Union of India and Others dated 31.7.1995, is found squarely applicable to the present case. The relevant portion would be as follows :-

“The respondents have stated on oath that the service record of the petitioner is not available to verify the correct facts and place the same before the Court. It is also submitted that if such petitions are entertained it would tantamount to opening a pandora's box creating serious financial and other complications.

It is true that ordinarily in matters relating to pension the writ courts do not deny the relief on account of delay merely. A sympathetic and liberal view is always taken. Indulgence is invariably shown. In the case of Bachan Kaur Vs. Union of India (W.P.621/89) decided on 13.4.85, a Division Bench of this Court has taken the view that a writ petition claiming pension if the claim be otherwise just and legal may be entertained and allowed limiting the same to a period of three years before the date of filing of the petition. In the present case the petitioner has on account of culpable delay and laches extending over a period of 25 years himself created a situation which disentitles him to any relief. The service record of the petitioner is not available. It is not known as to why and in what circumstances the petitioner was paid merely the gratuity and yet felt satisfied therewith though no pension was allowed. If only the petitioner would have approached the Court within a reasonable time, the respondents could have been directed to search and produce the relevant service record of the petitioner enabling a just decision of the petitioner's claim, which is not possible in the present case. The entire fault is of the petitioner. However sympathetic we may be with the petitioner, sitting as a writ court, we cannot grant relief of pension to the petitioner merely as a charity or bounty in the absence of relevant facts being determinable and relevant comments available. For the foregoing reasons the petition is dismissed though without any order as to costs.”

14. In view of the foregoing discussions, it is our considered opinion that we are not in a position to accept that the disease of the applicant's husband was either attributable to or aggravated by military service because of following reasons:-

(i) The Medical Board proceedings are not available and therefore the opinion of the Medical Board as to why the disease could not be detected at the time of enrolment cannot be scrutinised to decide attributability.

(ii) The delay of more than 25 years in raising the claim for pension after discharge in 1978 is the primary reason for destruction and non availability of Medical Board proceedings

15. Accordingly, this Original Application has no substance, deserves to be dismissed and is hereby **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : January , 2019.
PKG