

**Court No. 1 (E-Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 754 of 2020**

Wednesday, this the 07<sup>th</sup> day of July, 2021

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

Smt. Amarwati W/o Late Ex. Gnr. Mahesh Chandra, at present R/o Village Alha, Post Sikanderpur, Tehsil – Chhibramau, District Kannauj, at present R/o B-69, Block-B, Near Shiv Mandir, Kondli Diary Farm, Mayur Vihar Phase – III, East Delhi-110096.

..... Applicant

Ld. Counsel for the Applicant : **Shri Ashok Kumar**, Advocate and  
**Shri Om Prakash Kushwaha**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Incharge, Records Artillery Records, Nasik Road Camp-422002, PIN- (Army)908802 C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

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

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (i) *This Hon'ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 02.04.1985 invalided out from service for being medically unfit towards his disability BEE (Psychological) Permanent, Lower than 'A'.*
- (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 costs to the applicant.*

2. Briefly stated, applicant's husband (Ex. Gnr. Mahesh Chandra) was enrolled in the Indian Army on 17.09.1980 and was invalided out from service on 02.04.1985 in Low Medical Category – BEE (Psychological) Permanent lower than 'A' under Rule 13(3) III (v) of the Army Rules, 1954 after rendering 04 years, 06 months and 17 days of service. The claim of applicant's husband for grant of disability pension was rejected. The applicant's husband preferred Legal Notice dated 24.08.2018 but of no avail. It is in this perspective that the applicant's husband has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant's husband was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant's husband was contracted during the service, hence it is attributable to and

aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant's husband be granted disability pension as well as arrears thereof, as applicant's husband is also entitled to disability pension and its rounding off to 50% presuming that applicant's husband disability was @20% or over.

4. On the other hand, Ld. Counsel for the respondents contended that all service and medical documents in respect of applicant's husband were destroyed, being non pensioner, after expiry of its retention period of 25 years from the date of his discharge from service in accordance with Paragraph 595 of Regulations for the Army 1987 (Revised Edition). Only minimum information in the form of (In lieu of IAFK – 1172) - 'Particulars of Non Effective Docu (JCOs/OR) Destroyed' is available. The applicant's husband was discharged from service under low medical category - BEE (Psychological) Permanent lower than 'A'. The applicant's husband was not granted disability pension as the Release Medical Board has assessed his disability as "Neither Attributable to Nor Aggravated by Military Service and No Causal Connection with Service Could be Established". He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the

records and we find that the questions which need to be answered are of three folds:-

- (a) Whether applicant's husband disability was @20% or over:
- (b) Whether the disability of the applicant's husband is attributable to or aggravated by Military Service?
- (c) Whether the applicant's husband is entitled for the benefit of rounding off the disability pension?

6. In the case of ***Sukhwinder Singh vs Union of India & Ors***, (2014) STPL (WEB) 468, Hon'ble Apex Court has observed 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 authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. **Fourthly, wherever 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."*

7. It is not disputed that the medical records of the applicant's husband have been destroyed as per rules. However, the records for invalidment out service i.e. 'BEE (Psychological) Permanent being placed in medical category lower than 'A' has been recorded in the 'Particulars of Non Effective Docu (JCOS/OR) Destroyed' (In lieu of IAFK – 1172). Further, since the applicant's husband was invalided out from service it can be assumed that his disability must have been above twenty percent.

8. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. 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)."*

9. In view of the settled position of law on attributability, we find that the Principal Controller of Defence Accounts (Pension), Allahabad has denied disability pension stating that disability of applicant's husband is not attributable to military service. The applicant's husband was enrolled in Indian Army on 17.09.1980 and was invalided out from service on 02.04.1985 after rendering 04 years, 06 months and 17 days of service. We are therefore of the considered opinion that the benefit of doubt in these

circumstances should be given to the applicant's husband in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the disability of the applicant's husband should be considered as aggravated by Military service.

10. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

*“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalided out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.*

5. *We have heard Learned Counsel for the parties to the lis.*

6. *We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*

7. *The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

11. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

*"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."*

12. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension presuming minimum



@20% for life to be rounded off to 50% for life may be extended to the applicant's husband till his death from three preceding years from the date of filing of the Original Application.

13. In view of the above, the Original Application No. 528 of 2019 deserves to be allowed, hence **allowed**. The disability of the applicant's husband is held as aggravated to by Military Service. The respondents are directed to grant disability pension to the applicant's husband presumed minimum @20% for life which would stand rounded off to 50% till his death i.e. upto 29.11.2020. However, arrears of disability pension will be restricted to three years preceding the date of filing of Original Application. The date of filing of Original Application is 16.10.2018. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment.

14. No order as to costs.

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

Dated : 07 July, 2021

AKD/-