

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH, NAINITAL)**

**O.A. No. 160 of 2022**

**Thursday, this the 02<sup>nd</sup> day of June, 2022**

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

1. Pushpa Devi W/o Late Harish Chandra @ Bershila Harish (Ex-15361684H Hav (Clk GD).
2. Pankaj Barshila S/o Late Harish Chandra @ Bershila Harish ((Ex-15361684H Hav (Clk GD).
3. Jeewanti Devi W/o Late Narayan Dutt Barshila, mother of late Harish Chandra @ Barshila Harish (Ex-15361684H Hav (Clk GD).  
All R/o Village-Matena Patti & Tehsil Garur, District-Bageshwar.

.....Applicant s

By Legal Practitioner – **Shri DK Joshi**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army staff, DHQ of MoD (Army), South Block, New Delhi-110011.
3. SRO/RO/ARO Record Signal Abhilekh Karyalaya, Signals Records, Post Bag No-5, Jabalpur (MP-482001).
4. No AT/CC/P-Ors/B-163, Office of the CGDA, West Block V RK Puram, New Delhi-66.

....Respondents

By Legal Practitioner - **Shri Rajesh Sharma**, Advocate  
Central Govt Counsel

**ORDER (Oral)**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has sought the following reliefs:-

(i) *To issue suitable order or direction in the nature of certiorari quashing impugned orders dated 03.01.2006 and 29.09.2007 (Annexure No 1 & 2 to this application).*

(ii) *To issue direction against the respondents to release disability pension in favour of husband of the applicant No 1 with all consequential benefits w.e.f. the date of discharge i.e. 12.12.2001 till the dates of death i.e. 18.01.2012 and further to pay the above amount to the applicants with interest @ 18% per annum.*

(iii) *To issue direction to the respondents to pay the family pension to applicant No 1 along with all consequential benefits with interest @ 18% per annum for delayed payment w.e.f. 18.01.2012 till actual date of payment.*

(iv) *To pass any other suitable order/directions as deemed fit and proper in the facts and circumstances of the case, to meet the interest of justice.*

2. Brief facts of the case are that husband of the applicant was enrolled in the Army on 24.01.1988 and served in different units till he was discharged from service. During his tenure of service in the Army, he was awarded six red ink entries (refers para 5 of the C.A.) for the following offences:-

Ser. No.	Army Act Section	Nature of Offence	Date of Offence	Punishment Awarded
1.	39(b)	Without sufficient cause overstaying leave granted to him	27.10.1989	11 days imprisonment in military custody
2.	41 (1)	Disobeying in such manner as to show a willful defiance of authority a lawful	02.06.1990	28 days Rigorous Imprisonment

		command given personally by his superior officer in the execution of his office.		
3.	63	An act prejudicial to good order and military discipline	10.05.1992	28 days Rigorous Imprisonment
4.	48	Intoxication	10.02.2000	Severe Reprimand
5.	48	Intoxication	10.06.2001	Severe Reprimand and 14 days pay fine
6.	39 (a)	Absenting himself without leave	20.08.2001	Severe Reprimand

3. The Commanding Officer invoked Rule 13 (3) III (v) of the Army Rules 1954 and discharged husband of the applicant from service on 12.12.2001 being undesirable soldier. The deceased soldier was a habitual offender and indulged in intoxication. He was counseled time and again to refrain from alcohol. Due to excess consumption of alcohol, in the year 2000, he suffered from 'Affective psychosis (Bipolar)-296' and was admitted to Military Hospital, Mathura where his medical category was downgraded to S2 (temp).

4. After discharge from service, disability pension claim was rejected by PCDA (P), Allahabad vide order dated 31.08.2005. Aggrieved, husband of the applicant submitted a representation dated 21.10.2005 addressed to the Hon'ble President of India which was later rejected vide Signals Records letter dated 03.01.2006.

5. Learned counsel for the applicant submitted that husband of the applicant was enrolled in the Army in medically fit condition. The disability 'Affective Psychosis (Bipolar)-296' was due to stress and strain of military service, therefore, he should have been granted disability pension and the applicant is entitled to family pension of

her husband's disability pension. His further submission is that husband of the applicant was a case of psychotic disorder and therefore, he should not have been discharged from service before completion of terms of engagement as he had put in 13 years plus service. In support of his contention he has relied upon the Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs union of India & Ors***, (2013) 7 SCC 316 and ***Union of India & Anr vs Rajvir Singh***, (2015) 12 SCC page 264.

6. On the other hand, learned counsel for the respondents argued and brought out that husband of the applicant was a clear cut indiscipline case and habitual offender who in 13 years of service was awarded six red ink entries. There was no challenge to the punishments by the applicant's husband as such the legality of the punishments awarded to him was not a subject matter. All these red ink entries were awarded by different Commanding Officers in different units. The applicant was discharged on administrative grounds from service under Army Rule 13 (3) (III) (v) as "Service no longer required/undesirable soldier", hence disability pension was not admissible though he was a case of mental disorder and was treated in different Military Hospitals. He further submitted that the deceased soldier did not raise the issues during his life time and this O.A. has been filed by his wife after elapse of 21 years from the date of discharge which is liable to be rejected in delay and laches.

7. It is amply evident from the offences committed by husband of the applicant that he was a habitual offender. Hence, his termination from services was justified as his continuance in service

would have proved detrimental in the interests of the organization as also on the discipline of other men present in the unit. Therefore, in view of the aforesaid facts and legal position, the O.A. is misconceived and devoid of merits as such is liable to be dismissed.

8. Having heard learned counsel of the parties and gone through the relevant records, it is clear that applicant's husband was an indiscipline case in the unit and due to his misconduct he was punished on six occasions by different Commanding Officers. Absenting from field area is a serious offence where day and night everyone has to be alert and keep vigilance round the clock. Presence of every individual on specific task is of a paramount importance in the field area. Such defaulter loses credibility and faith in a unit and becomes ultimately a liability. Commanding Officer exercises corrective measures and try to adjust such liabilities in a unit upto some extent. The Commanding Officer of a unit is a father figure who takes care of his unit as a family.

9. We have gone through the material placed on record and we find that being a habitual offender, applicant's husband was rightly discharged from service as undesirable soldier. Also facts on record reveal that he was suffering from psychotic disorder. On 06.11.2001 while in Military Hospital, Meerut he was checked by Lt Col D Saldanha, Additional Adviser (Psychiatry) who endorsed the following remarks on him:-

*"This 35 yrs old Havildar from Signals having about 14 years of service is admitted for release medical board vide 1 Corps Grid Signal Regt (AREAN) letter No 0169/01/BH/Sigs dated 07 Sep 01 stating that the individual is to be discharged from service under AR 13 (3) items III (v) as service is no longer required. The NCO is an old case of Affective*

*Psychosis in low medical category CEE Temp 6/12 yrs +S3 Temp 6/12 yrs w.e.f. 25 Oct 2000. Last med board was held on 12 Jun 2001. Hence he is due for his med board review also. He was advised to continue Tab Carbamazepine 200 mg under the supervision of his AMA and review every 3 months till next review in Psy OPD. He was also advised not to take alcohol. Individual however took alcohol and was not compliant to drugs, hence abnormal behavior was noticed by the unit authorities who have decided to discharge him from service under Army Rule 13 (3).*

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*Opinion: This is a case of Affective Psychosis (Bipolar Disorder) ICD 296, V67 serving in low med cat S3 Psy 6/12 yrs w.e.f. 25 Oct 2000. He has been admitted for release med bd. Illness has manifested initially under a background history of excessive alcohol consumption and was admitted at the behest of unit authorities at MH Mathura on 29 Feb 2000. Psychiatric evaluation at that time revealed features of Affective Psychosis i.e. picking up fights, over activity, flight of ideas, pressure of speech, impaired insight and judgment in clear sensorium. He responded to active treatment with anti psychotics, mood stabilizers and ECTs. He developed depressive features on stopping mood stabilizers manifesting in sustained sadness of mood, depressive facies, reduced PMA, tearful eyes and ideas of worthlessness. Depressive symptoms remitted on restarting mood stabilizers. Envisaging the overall picture of affective and depressive features, he was diagnosed as a case of Affective Psychosis ICD 296. He was therefore recommended to be treated and stabilized under mood stabilizers. At present he is asymptomatic on mood stabilizers. In view of the above, he is recommended to be released in low med cat S2 Psy permanent."*

10. The aforesaid remark of the Psychiatrist clearly establishes that he was a case of psychotic disorder (a mental disorder) which manifested on excess consumption of alcohol, though he was advised to refrain from alcohol. The husband of the applicant had put in 13 years plus service which could have made him entitled to grant of disability pension, being discharged in low medical category, but keeping in view of the fact that he had set a bad example in the unit, he was discharged from service being an undesirable soldier.

11. In view of above, we do not find any merit in this case and the O.A. No. 160 of 2022 is **dismissed**, accordingly.

12. There shall be no order as to cost.

13. Miscellaneous application(s), pending if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
Member (A)

**(Justice Umesh Chandra Srivastava)**  
Member (J)

Dated: 02.06.2022  
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