

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 648 of 2021**Wednesday, this the 23<sup>rd</sup> day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Smt. Archana Rai,  
W/o No. 13881920 Late Sep Satya Prakash Rai  
Village – Taruka, Tehsil – Sagadi, Latghat,  
District – Azamgarh (UP)**.... Applicant**Ld. Counsel for the Applicant: **Shri Manish Kumar Rai**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, D (Pension Grievances), 227-B Wing, Sena Bhawan, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters of MoD (Army), Ministry of Defence, Government of India, South Block, New Delhi – 110011.
3. Officer-in-Charge Records, Sena Seva Corps Abhilekh (Dakshin), ASC Records (South), Bangalore, Pin – 560007.
4. The Principal Controller of Defence Account (Pension), Draupadighat, Allahabad (UP).

**... Respondents**Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,  
Central Govt Counsel.**ORDER (Oral)**

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) To issue pass an order or directions to set aside impugned order dated 24.04.2014 (Annx-1) passed by opposite party no. 3/ASC Records (South).

- (II) To issue pass an order or directions to opposite parties to grant Applicant's deceased husband 20% disability pension w.e.f. 27.01.1989 i.e. from his date of discharge till his date of death i.e. 18.07.1991 which shall stand rounded off to 50% disability from his discharge till his death, by giving the benefit of Govt. of India, Min of Def. letter dated 31.01.2001, to which applicant's husband was entitled as a matter of right.
- (III) To issue pass an order or directions to opposite parties to grant family pension to applicant, as applicable, wef 19.07.1991 (i.e. after death of applicant's husband) with arrears and retiral benefits due to him along with bank interest rate @ 12%. The PPO shall also be issued.
- (IV) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted."

2. Brief facts of the case giving rise to this application are that husband of the applicant was enrolled in the Indian Army on 08.03.1980 and was invalided out from service on 27.01.1989 (AN) under the provisions of Rule 13 (3) III (iii) of Army Rules, 1954 being medically unfit for further service after rendering 08 years, 10 months and 19 days of service. The disability of husband of the applicant was assessed by IMB @ 100% for life as neither attributable to nor aggravated by military service. Disability pension claim of husband of the applicant was rejected vide order dated 06.02.1990. Against rejection of disability claim, the deceased soldier had preferred an appeal dated 28.03.1990 to the respondents which was also rejected by the First Appellate Committee vide order dated 18.02.1991. It is in this perspective that applicant has filed this O.A for grant of disability pension and family pension.

3. Learned counsel for the applicant submitted that the deceased soldier was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore disability 'WILSONS DISEASE' suffered by husband of the applicant after joining the service after about serving eight years 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, ***Sukhvinder Singh vs. Union of India & Ors***, Civil Appeal No. 5605 of 2010, decided on 25.06.2014 and ***Union of India vs. Ram Avtar***, Civil appeal No. 418 of 2012, decided on 10.12.2014 and AFT, Lucknow judgment in O.A. No. 441 of 2017, ***Rekha Devi vs. Union of India***, decided on 18.02.2019 and pleaded for grant of disability pension to husband of the applicant @ 100% for two years as assessed by the IMB and family pension to the applicant from the next date of death of her husband.

4. On the other hand, learned counsel for the respondents argued that the IMB has declared the disability of the deceased soldier "WILSON'S DISEASE" as NANA and not connected with military service being a constitutional disease and assessed @ 100% for two years. The husband of the applicant was recommended to be invalided out of the service being medically unfit for further military service and accordingly, he was invalided out from service w.e.f.

27.01.1989. The competent authority has rejected the claim of disability pension being NANA. The applicant approached ASC Records vide petition dated 11.07.1993 for release of payment of death benefits. Thereafter, applicant submitted a petition dated Nil through Surya ESM Regional Centre, Lucknow vide letter/email dated 22.03.2014 for grant of family pension which was suitably replied by ASC Records vide letter dated 24.04.2014. Thereafter, applicant submitted an application dated 05.07.2021 through RTI asking copy of IMB proceedings which were provided to her vide letter dated 20.07.2021.

5. Learned counsel for the respondents further submitted that under the provisions of Rule 173 of Pension regulations for the Army, 1961 (Part-1), applicant's husband is not entitled to disability pension as his disability has been considered as neither attributable to nor aggravated by military service and not connected with military service. Since, the husband of the applicant is not entitled to disability pension being NANA, applicant is also not entitled for family pension as per rules. Hence, question of rounding off benefit of disability pension as per Govt. of India letter dated 31.01.2001 does not arise. He pleaded for dismissal of 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 and not connected with military service'. 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 09.05.1988 after completion of 08 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 the above, husband of the applicant is held entitled to 100% disability element for two years from his next date of invalidment from service, i.e. 27.01.1989. Since the husband of the applicant died on 18.07.1991, therefore, wife of deceased soldier i.e. applicant will be entitled for family pension in respect of service element only w.e.f. the next date of death of her husband i.e. 19.07.1991.

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability of the deceased soldier is to be considered as aggravated by military 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 could not be held to decide further disability, if any. Since the soldier has died, therefore, respondents are directed to grant 100% disability element for two years to the applicant (wife of deceased soldier) from the next date of invalidment from service.

11. The respondents are further directed to grant family pension to the applicant in respect of service element only w.e.f. the next date of death of her husband i.e. 19.07.1991 for life. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of family pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 22.10.2021. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Dated: March, 2022

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