

E Court No. 1

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

ORIGINAL APPLICATION No. 447 of 2021

Wednesday, this the 11th day of May, 2022

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

No. 2889195W Ex Sepoy Ved Prakash, R/o Village & PO-
Bhatona, Distt- Bulandshahar (U.P.)

Through

Smt Mithlesh Devi, W/o Ex Sepoy Ved Prakash, R/o Village &
PO- Bhatona, District- Bulandshahar (U.P.)

..... Applicant

Ld. Counsel for the : **Shri KK Misra, Advocate.**
Applicant

Versus

1. Union of India, through its Secretary to Ministry of
Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge Records, The Raj Rif, Delhi Cantt.
4. Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Prayagraj-211014.

.....**Respondents**

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
Respondents. **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). *To quash Record, Raj Rif, Delhi Cantt, letter No RNE/DP/2889195 dt 09 June 2012 (Annexure A-3 to (O.A.).*
- (ii). *To direct the respondents to hold the applicants husband’s medical board to assess his medical condition, and thereafter;*
- (iii). *Direct the respondents to grant 20% disability pension to the applicant, duly rounded of to 20% with arrears and interest as applicable.*
- (iv). *Any other relief which the Hon’ble Tribunal may think just and proper may be granted to the applicant.*
- (v). *Cost of the case may be awarded in favour of the applicant.*

2. Briefly stated facts of the case are that husband of the applicant was enrolled in Indian Army on 25.04.1994 and he was discharged from service on 31.03.2000 under Rule 13(3) iii (iv) of Army Rules, 1954. The claim preferred by husband of the applicant, for grant of disability pension, was rejected vide letter dated 09.06.2012 stating that he was discharged from service in medical category SHAPE-1. The applicant preferred First

Appeal against rejection of disability pension claim which was also rejected vide order dated 10.04.2015. It is in this perspective that the applicant has preferred the present Original Application for grant of disability pension.

3. Learned counsel for the applicant submitted that husband of the applicant was enrolled in the army on 25.05.1994 in physically and mentally fit condition. In the year 2000, while posted at J&K, husband of the applicant suffered from mental disease and started losing his balance of mind. He was treated in MI Room where he was detected a case of Neurosis. He was sent back for duty with prescribed medicines. He was not referred to Military Hospital despite being a serious case of mental disease. The Commanding Officer finding him a liability, decided to sent on discharge from service as a case of 'discharged from service on his own request'. Signatures of husband of the applicant were obtained on blank paper and contents for discharge from service on his own request were written later by someone. Since, husband of the applicant was of imbalance of mind, he even did not know what he was asked to sign and what he was signing. Applicant was discharged from service on 31.03.2000 before completion of terms of

engagement on his own request. As per Army Order, before an army personnel is discharged, for whatever reason it may be, his medical Board is required to be held to assess his medical condition at the time of discharge. Nothing was done in the case of husband of the applicant. After discharge from service, no disability pension was granted to him. The husband of the applicant made protracted correspondents with the concerned authorities for grant of disability pension but every time he was informed that husband of the applicant is not entitled any pension as he was discharged from service on his own request under medical category SHAPE-1. It is in this perspective that the applicant has preferred the present Original Application.

4. On the other hand, Ld. Counsel for the respondents submitted that husband of the applicant was discharged from service on his own request due to domestic problem. He submitted an application dated 23.09.2000 for premature discharge to his Commanding Officer stating that he was unable to serve in the army due to domestic problems. Discharge of husband of the applicant was sanctioned and he was discharged from service under item 13 (3) III (iv) of Army Rule 1954 after rendering 06 years, 11 months and 07 days of

service including 195 days non qualifying service. Husband of the applicant was never placed in Low Medical Category during his service. At the time of discharge, his Release Medical Board was held and he was found in Medical Category SHAPE-1, therefore, he was not eligible for grant of disability pension in terms of Para 173 of Pension Regulations for the Army 1961 (Part-1) which reads 'Unless otherwise specifically provided a Disability Pension consisting of Service Element and Disability Element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by Military Service in non battle casualty and is assessed 20% or over' but in the instant case the husband of the applicant was discharged in Medical Category SHAPE-1, therefore, the applicant is not entitled to disability pension. Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of para 198 of Pension Regulations for the Army, 1961 (Part-I), which categorically states that the minimum period of qualifying service actually rendered and required for grant of invalid pension is ten years. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. The question before us to decide is 'whether husband of the applicant discharged from service in Medical Category SHAPE-1 on his own request is entitled for grant of disability pension?

7. On perusal of document, it appears that husband of the applicant submitted an applicant for discharge from service due to domestic problem and his discharge was sanctioned. Prior to discharge from service on his own request, his Release Medical Board was held and he was found in medical category SHAPE-1. Husband of the applicant was granted Rs. 20,210/- on account of Service Gratuity, Rs. 8385/- on account of Death cum retirement Gratuity, Rs. 75,406/- on account of Final Settlement of Account and Rs. 60,079/- on account of AFPP Fund. Since husband of the applicant had served in the army only for 06 years, 11 months and 07 days and he was discharged from service in Medical Category SHAPE-1, on his own request, he is neither entitled for service pension nor disability element.

8. In view of the above, we are of the considered opinion that applicant is not entitled disability pension and O.A. is liable to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

10. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 11 May, 2022

ukt/-