

Court No. 1(E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 741 of 2021**

Friday, this the 13th day of May, 2022

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

Smt. Munni Devi W/o Late Shri Ajay Pal Singh, No. 2969229M,
R/o-Mageswar Khiriya Nagar Shah, Etah (U.P)-207249.

..... Applicant

Ld. Counsel for the : **Shri Vijay Kumar Pandey**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi.
2. OIC Records, Records DSC Centre, Cannanore (Kerala)-670013.
3. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (U.P)-211014.

.....Respondents

Ld. Counsel for the : **Shri G.S. Sikarwar**, Advocate
Respondents. Central Govt. Counsel

ORDER

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

- (i) *That this Hon'ble Tribunal may kindly be pleased to direct the opp-parties to grant the disability pension of the deceased husband of the applicant to the applicant, who is legal wedded wife of the same w.e.f. 26.09.1994 i.e. date of invalidment to 18.10.2018 i.e. date of death of the deceased husband of the applicant, and provide the interest of the aforesaid delayed amount of disability pension with 18% p.a. since due date of actual date of payment in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be awarded the cost Rs. 20,20,000/- (Rs Twenty Lac and Twenty Thousand) to the applicant against the opposite parties.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.*

2. Brief facts of the case are that applicant's husband was enrolled in the Army on 30.12.1971 and he was discharged from service w.e.f. 31.12.1986. He was granted service pension from Army. He was re-enrolled in Defence Security Corps (DSC) on 29.06.1991 and during the initial terms of engagement he was declared as a case of tuberculosis (Chronic Obstructive Pulmonary Disease-'COPD') by Military Hospital, Namkum on 19.02.1994. Therefore, he was invalided out of service on 25.09.1994 (AN) in low medical category 'EEE' under the provisions of Rule 13 (3) III

(iii) after rendering 03 years, 02 months and 27 days qualifying service with 100% composite disability for one year attributable to and aggravated by military service. Accordingly, he was granted disability element of pension for the period 26.09.1994 to 18.08.1995 vide PPO No D/264/1995 (Annexure R-2) and service element of pension w.e.f. 26.09.1994 for life. Thereafter, he was granted disability element of pension @ 20% for 03 years w.e.f. 19.08.1995 to 21.11.1998 vide PPO No D/RA/2390/96. Further, he was granted disability element of pension for another 05 years w.e.f. 22.11.1998 to 16.11.2003 vide PPO No D/TA/2427/99 and thereafter, from 16.11.2003 for life vide PPO No D/RA/15498/2002. Applicant's husband, who was in receipt of service pension from Army and disability pension from DSC, died on 18.10.2018 and accordingly, applicant Munni Devi was granted Ordinary Family Pension from Army as well from DSC which she is receiving regularly. Applicant has filed this O.A. for grant of disability element of pension for the period 26.09.1994 to 19.10.2018 in respect of her husband.

3. Applicant's version is that her husband was enrolled in DSC in medically fit condition and on being invalided out from service due to 'tuberculosis and COPD' on 25.09.1994 her husband (who died on 18.10.2018) was entitled to disability pension w.e.f. 26.09.1994 to 18.10.2018 which the respondents have not granted. Her other version is that after death of her husband, she is fully

entitled to receive disability pension being a legal heir/NOK of her deceased husband.

4. On the other hand, respondents' version is that applicant's husband was enrolled in DSC on 29.06.1991 and he did not opt to count his former service towards DSC service. During initial terms of engagement he was declared as a case of tuberculosis with COPD by Military Hospital, Namkum on 19.02.1994. Thereafter, he was invalided out of DSC service w.e.f. 25.09.1994 (AN) under the provisions of Rule 13 (3) III (iii) of Army Rules, 1954 after rendering 03 years, 02 months and 27 days qualifying service. Prior to his invalidment, he was brought before a duly constituted Invalid Medical Board (IMB) which assessed his disability 'Pulmonary Tuberculosis' as attributable to service with 100% disablement for one year and the disability 'COPD' as aggravated by military service with 20% disablement for one year. The composite assessment was made 100% for one year. Accordingly, he was granted disability pension @ 100% for one year i.e. 26.09.1994 to 18.08.1995 vide PPO No D/264/1995. He further submitted that service element of disability pension was granted to applicant's husband w.e.f. 26.09.1994 for life. Thereafter, he was assessed disability element @ 20% w.e.f. 19.08.1995 to 21.11.1998 (for three years) and the same was granted vide PPO No D/RA/2390/96. He was again assessed disability element at the same rate and was granted disability element w.e.f. 22.11.1998

to 16.11.2003 vide PPO No D/TA/2427/99 and w.e.f. 16.11.2003 for life vide PPO No D/RA/15498/2002 which was paid to her husband till his death. After her husband's death the applicant was granted family pension of service element of disability pension vide PPO No 154202001964/3000 (Annexure R-4) w.e.f. 19.10.2018 which she is receiving regularly. Thus, the respondents' learned counsel submitted that since applicant's husband has already received disability pension from 26.09.1994 to 18.10.2018 and applicant is receiving Ordinary Family Pension from both the ends i.e. from Army as well as from DSC, this O.A. has no substance and needs to be rejected.

5. Heard Shri Vijay Kumar Pandey, learned counsel for the applicant and Shri GS Sikarwar, learned counsel for the respondents and perused the material placed on record.

6. Sep Ajay Pal Singh (deceased) was initially enrolled in the Rajput Regiment of Indian Army on 30.12.1971 and discharged from service on 31.12.1986 (AN). He was in receipt of service pension vide PPO No S/33450/86 (Army). He was re-enrolled in DSC on 29.06.1991 and during initial terms of engagement he was declared as a case of 'tuberculosis with COPD' by Military Hospital, Namkum on 19.02.1994. Accordingly, he was invalided out of DSC service w.e.f. 25.09.1994 (AN) under the provisions of Rule 13 (3) III (iii) of Army Rules, 1954 after rendering 03 years, 02 months and 27 days service. Since he was invalided out of service,

disability pension was granted to the deceased soldier for the period 26.09.1994 to 18.10.2018 i.e. till the date he was alive vide PPO numbers D/264/1995 (for one year), D/RA/2390/96 (for three years), D/TA/2427/99 (for five years) and D/RA/15498/2002 (for life). Thus, the disability pension was received by the deceased soldier till 18.10.2018 i.e. the date on which he died. Thereafter, the applicant was granted Ordinary Family Pension from DSC vide PPO No 154202001964/300. She is also receiving Ordinary Family Pension from the Army.

7. The aforesaid facts clearly establish that applicant's husband has received service pension from Army and disability pension from DSC till he was alive and after her husband's death she is in receipt of dual Ordinary Family Pension. In view of this, there is nothing which can be granted to the applicant and thus, the O.A. has no substance.

8. The O.A. is accordingly, **dismissed**.

9. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 13.05.2022

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