

E-Court No 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
CIRCUIT BENCH AT NAINITAL**

ORIGINAL APPLICATION No. 852 of 2021

Friday, this the 6th day of May , 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Savitri Devi, Wife of No 173231H, Ex ME-II Om Prakash, Village-
Bauhan Purewa, Post Office- Kotbhas, District- Gonda (U.P.), PIN-
2s71313.

..... Applicant

Ld. Counsel for the Applicant : **Shri Shiv Dayal Singh, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi, PIN - 110011.
2. The Chief of Naval Staff, Integrated Head Quarter, Ministry of Defence (Navy), New Delhi, PIN- 110011.
3. Commodore Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai- 400088.
4. Principal Controller of Defence Account (Navy), Pension Cell, Shahid Bhagar Singh Road, Mumbai- 400001.

.....Respondents

Ld. Counsel for the Respondents : **Shri Kaushik Chatterjee,**
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 pass an order or direction for quashing of order dated 04.07.1995, passed by O No 3, which is annexed as Annexure No 1 to this application, by which the applicant was illegally denied the disability pension.

(II) To pass an order or direction commanding the respondent to grant the arrear disability pension to the applicant from the date of discharge i.e. 01.03.1994 along with interest @ 18% per annum till the actual realization of aforesaid amount.

(III) To pass an order or direction commanding the respondent to grant the benefits and rounding off of disability pension to the tune up to 100% in terms of Govt of India letter dated 31.01.2001 and various judgments of Apex Court as well as this Hon’ble Tribunal.

(IV) To pass an order or direction commanding the respondent to grant family pension to the applicant from the date due along with its arrear with interest @ 12% per annum.

(V) Allow the Original Application with cost.

2. Brief facts of the case giving rise to this application are that the deceased sailor was enrolled in the Indian Navy on 05.06.1986 and was invalided out of service on 01.03.1994 after having rendered 4 years and 9 months and 27 days of service in low medical category 'EEE-5' due to disability "**MONOMELIC AMYOTROPHY (LT) UPPER LIMB**". Prior to discharge from service husband of the applicant was brought before Invalid Medical Board (IMB) which assessed disability @ 80% for two years and considered as neither attributable to nor aggravated by military service. His claim for grant of disability pension was rejected vide order dated 04.07.1995. Against rejection of disability claim the deceased soldier preferred an appeal dated 04.07.1995 which was rejected vide order dated 11.03.1997. From the pleadings on record, it is revealed that husband of the applicant died on 06.05.2016. Being aggrieved, applicant has filed instant O.A. for grant of disability pension.

3. Learned counsel for the applicant submitted that husband of the applicant was enrolled in Navy in medically and physically fit condition and there was no note in his service document that he was suffering from any disease prior to enrolment into service. He was found suffering from "**MONOMELIC AMYOTROPHY (LT)**

UPPER LIMB”. At the time of discharge, Invalid Medical Board of the husband of the applicant was held and his disability was assessed @ 80% for two years and disability was considered as neither attributable to nor aggravated by Navy service. He pleaded that any disability suffered after joining the Navy service, should be considered as attributable to or aggravated by Navy service and husband of the applicant 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 and ***Sukhvinder Singh vs. Union of India & Ors***, reported in 2014 STPL (WEB) 468 SC and pleaded for the grant of disability pension to applicant. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is entitled to disability pension @ 80% for two years and its rounding off to 100%. He further pleaded that since husband of the applicant had died on 06.05.2016, hence applicant be granted service element of disability pension as recommended by Invaliding Medical Board.

4. On the other hand, learned counsel for the respondents argued that husband of the applicant was invalided out from

service after rendering only 04 years, 09 months and 27 days of service due to disease “**MONOMELIC AMYOTROPHY (LT) UPPER LIMB**”. After discharge from service, husband of the applicant was granted Death Cum Retirement Gratuity of Rs. 4,500/-. The IMB declared the disability of husband of the applicant as neither attributable to nor aggravated by Navy service. Accordingly, claim of husband of the applicant for grant of disability pension was rejected by the competent authority. Husband of the applicant expired on 06.05.2016. Now the applicant has filed instant O.A. for grant of disability pension @ 80% for two years and its rounding off to 100% along with prayer to grant service element of disability pension. The competent authority has rejected the claim of disability pension under the provisions of Regulation 101 of Navy Pension Regulation 1964 which states that disability should be either attributable to or aggravated by the Navy Service. Rule 8 of Entitlement Rules for Casualty Pensionary Awards 1982 clarified that attributability / aggravation shall be conceded if causal connection between disablement and Navy service is certified by appropriate medical authority. The IMB had considered disability of Ex sailor as NANA, consequently, disability pension was not granted to him.

Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

5. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also perused the material placed on record.

6. We have gone through the IMB proceedings and the rejection order of the disability pension claim. The question before us to decided is straight i.e. – is the disability of husband of the applicant attributable to or aggravated by Navy 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 husband of the applicant only by endorsing a cryptic sentence in IMB proceedings i.e. 'disease is constitutional in nature' and no specific reason has been given to justify. This is a case wherein at the time of entry in

service, the husband of the applicant was found physically and medically fit. There is no dispute that during the tenure of his service, he was being treated in Navy Hospital for the ailment he was suffering. In such circumstances, the disease for which the husband of the applicant was being treated being the cause of his discharge, cannot be said to be not attributable to or aggravated by military service. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Invalid Medical Board for considering disability as neither attributable to nor aggravated by military service is not convincing and doesn't reflect the complete truth on the matter. Duty on ship, either in peace or field has own pressure of stress and strain of duty. Navy personnel perform their duties in odd conditions without caring for their life. During performance of duty they sacrifice their life in the service of the nation and sometimes they become disabled. For caring their future Govt of India compensates them, if they suffer from disability. It is extremely surprising that the individual was invalided out with 80% disability which was considered as neither attributable to nor aggravated by Navy service whereas in Para 1, page 3 of IMB question "**Did the disability exist before entering service?**" has been replied – "**No**". Further in Para 21, Page 7 of IMB question

“Invalid/Disability Pension for which recommended” has been replied **“Disability element Rs 360/- and service element of Disability pension recommended Rs 375/-”** but no amount was paid to ex sailor. It defies logic and rationality as to where was the need to snatch the right of livelihood of a person and invalid him out of service without disability pension. There is no reasoned statement or rationale given by the Invaliding Medical Board to justify the opinion that the individual was suffering from the said disease before his entry in the service. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to ex sailor in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the disability of the husband of the applicant should be considered as aggravated by Navy service. Thus, considering that the applicant’s husband has served for four years, 09 months and 27 days and that the Invaliding Medical Board has given no reason as to why the disease was considered neither attributable to nor aggravated by Navy service, we consider the disease as attributable to Military Service.

9. In view of the above, applicant is held entitled to disability pension @ 80% for two years to be rounded of to 100% from the next date of invalidment of her husband i.e. 02.03.1994. Disability

pension includes both the disability element and service element. In normal circumstances, a RSMB would have been conducted on completion of the two years i.e. in 1996. However from the material on record it appears that it was not conducted. Since the sailor died on 06.05.2016 there is now no scope to conduct a RSMB whose outcome would have determined the continuance or otherwise of the disability pension of the sailor. Be that as it may, we feel it appropriate that since the sailor would have been eligible for disability pension for two years after discharge, he is considered to be a notional pensioner. Since the husband of the applicant died on 06.05.2016, therefore, wife of deceased sailor i.e. applicant will be entitled for family pension in respect of service element only w.e.f. next the date of death of her husband i.e. 07.05.2016.

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The disability of the deceased sailor is to be considered as aggravated by Navy service. Since deceased sailor's disability was assessed for two years from the date of discharge, 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 disability pension @ 80% rounded of @ 100% for two years to the applicant (wife of deceased soldier) from the next date of invaliding out from service. 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. 07.05.2016 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 28.11.2018. 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.

11. No order as to costs.

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

Dated : 06 May, 2022
Ukt/-