

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 813 of 2021**

Thursday, this the 03<sup>rd</sup> day of November 2022

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

Smt. Maya Devi, W/o Late Ptr Prem Singh, R/o Vill- Fatehpur, PO-  
Saidpur, District Buland Shahar (U.P.)

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge Records, The Parachute Regiment, Bangalore.
4. PCDA (Pension), Allahabad.

..... Respondents

Ld. Counsel for the  
Respondents

**:Shri Devesh Kumar,  
Central Govt Counsel.**

**ORDER****“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

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 quash Records, The Parachute Regiment, Bangalore letter No 13605393/4/xxx/DP dated 22 July 71 (Annexure A-2 to O.A.) and direct the respondents to grant disability pension to the applicant duly rounded off to 50% as per her entitlement, along with its arrears with interest.*
- “(ii) Any other relief which the Hon’ble Tribunal may think just and proper may be granted to the applicant.*
- “(iii) Cost of the case may be awarded in favour of the applicant.”*

2. Brief facts of the case are that the husband of the applicant was enrolled in the Indian Army on 12.11.1965 and was invalided out from service on 08.07.1971 in Low Medical Category CEE after rendering 05 years and 10 months of service. The Release Medical Board (RMB) of the husband of applicant opined his disability “**SUPRA VENTRICULAR EXTRA SYSTOLES (429)**” to be neither attributable to nor aggravated by military service with disability 6 - 10% for life. Husband of the applicant died on 24.04.2003. The claim of the husband of the applicant

for disability pension was rejected by the respondents vide letter dated 09.07.1971. Thereafter the husband of the applicant preferred Appeal for grant of disability pension, which was also rejected by the respondents vide letter dated 08.10.1974. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension. Delay in filing the O.A. has been condoned by this Tribunal on 31.03.2022.

3. Learned counsel for the applicant pleaded that at the time of enrolment, the husband of the applicant was found mentally and physically fit for service in the army and there is no note in the service documents that he was suffering from any disease at the time of entry in service. Learned Counsel for the applicant pleaded that since the disease was contacted during the service of husband of the applicant, his disability should be considered as attributable to and aggravated by military service. He further pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the husband of the applicant be granted disability pension. He relied upon the judgment of Hon'ble Apex Court in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) 4 SCT 163 (SC) and pleaded that the husband of the applicant be granted disability pension. He also pleaded that as per Government Order dated 31.01.2001 the disability pension be rounded off to 75%.

4. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents pleaded that husband of the applicant was enrolled in Indian Army on 12.11.1965 and invalided out of service on 08.07.1971 in Low Medical Category CEE permanent after rendering only 05 years, 07 months and 26 days of service. As per rule, he was granted death cum retirement gratuity, invalid gratuity, Balance of AFPP Fund and Final Settlement of Accounts.

5. Learned counsel for the respondents further pleaded that Release Medical Board (RMB) of the husband of the applicant had opined his disability as neither attributable to nor aggravated by military service and had assessed the percentage of disablement @ 6 - 10% for life. He further pleaded that as per policy laid down vide para 81 (a) of Pension Regulations for the Army 2008 (Part 1), service personnel who are invalided out from service on account of a disability which is attributable to or aggravated by service may be granted a disability pension consisting of service element and disability element. He pleaded that as per provisions of Para 53 (a) of Pension Regulations for the Army 2008 (Part-1) which stipulates that an individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective to his period of engagement), if found suffering from a disability attributable to or

aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more. Since assessment of disability qualifying for disability pension of the husband of the applicant was assessed as 6 – 10% for life, he was not granted disability pension and accordingly question of rounding off of disability element does not arise. As per para 7.2 of govt of India, Min of Def letter dated 31.01.2001, broad banding of disability element is extended to those individuals who were invalided out of service before completing their terms of engagement of service. Therefore the disability pension and its rounding off is inadmissible to the husband of the applicant and his claim has rightly been rejected.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the documents available on records. The questions which needs to be answered is “what relief applicant is entitled”.

7. In the instant case husband of the applicant was enrolled in Indian Army on 12.11.1965 and invalided out of service on 08.07.1971 due to

disability “**SUPRA VENTRICULAR EXTRA SYSTOLES (429)**” after rendering only 05 years and 07 months and 26 days of service. His disability was assessed @ 6 – 10% for life and considered as neither attributable to nor aggravated by military service. Husband of the applicant died on 24.04.2003. Claim of the husband of applicant for grant of disability pension was denied by PCDA (P), Allahabad due to disability being 6 – 10% and disability being neither attributable to nor aggravated by military service. In this case husband of the applicant was invalided out of service. As per paras 197 and 198 of the Pension Regulations for the Army 1961 (Part I), husband of the applicant was entitled disability pension being a case of invalidment. In the instant case, though the disability of the husband of applicant was assessed less than 20% but being a case of invalidment, applicant was entitled for grant of disability pension till his life time. Hon'ble Apex Court in ***Sukhwinder Singh vs. Union of India & Ors***, Civil Appeal No.5605 of 2010, had held that if a person is invalided out of service with less than 20% disability, it shall be presumed that the disability is at or more than 20%. Further, personnel who had been invalided out with disability pension whose percentage of disability subsequently fell below 20% were also given service element from the date the disability fell below 20%. While the benefit was initially for those invalided out with effect from 01 January 1973, this was also

extended to pre 01 January 1973 cases. Para 1 of MoD letter No.12(28)/2010-D(Pen/Pol) dated 10 February 2014 being relevant is reproduced below:

*“1. The undersigned is directed to refer to Regulation 186 of Pension Regulations for the Army Part-I (1961) and equivalent provisions in the Pension Regulations for the Navy & Air Force, which provides that in case of personnel below officer rank granted disability pension on invalidment due to disabilities attributable to or aggravated by military service but whose accepted degree of disability subsequently falls below 20%, the service element of disability pension was made permanent provided, the qualifying service rendered by the individual was 10 years or more (15 years in case of NCs (E). The requirement of rendering stipulated qualifying service for continuance of service element was further relaxed to 5 years for the individuals who were invalided out of service on or after 1.3.1968 vide this Ministry's letter No. 1(4)/68/1035-A/S/D (Pension/Services) dated 30.10.1968. In implementation of the Government decisions on the recommendations of Third Pay Commission vide SAI 4/S/75, the condition of having minimum service for continuance of service element, when disability was re-assessed as less than 20% was abolished in those cases where the invalidment occurred on or after 1.1.1973.....”*

8. Since husband of the applicant has died, hence disability pension cannot be granted to husband of the applicant nor to the applicant. Though the applicant has not prayed in O.A. for grant of family pension, but because husband of the applicant was invalided out from service, applicant is entitled for grant of service element of family pension after the death of her husband.

9. In view of the above, the Original Application No 813 of 2021 deserves to be allowed, hence partly **allowed**.. Respondents are directed to grant family pension to the applicant in respect of service element of disability pension from the next date of death of her husband i.e. 25.04.2003 for life. However, due to law of limitation settled by the Hon'ble Apex Court in the case of ***Shiv Dass V. Union of India and Others (2007) (3) WSLR 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 Original Application is 17.11.2021. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 03 November, 2022  
Ukt/-