

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

**ORIGINAL APPLICATION No. 139 of 2021**

Thursday this the 28<sup>th</sup> day October 2021

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

Smt Birmo Devi W/o Late EBR Prem Raj Army No. 6620806  
R/o III Shanti Niketan, DM Road, Bulandshahar, U.P-203001.

..... Applicant

Ld. Counsel for the : **Pushpendra Kumar Dhaka**, Advocate.  
Applicant **and Shri Ramakant Gupta**, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi -110011.
2. Directorate of Indian Army Veterans (DIAV) Adjutant General's Branch, Integrated HQ of MoD (Army) 104, Cavalry Road, Delhi Cantt.-110010.
3. Records Officer ASC, MT Record Office Post AGRAM Bangalore, Karanataka 560007.
4. PCDA (P), Draupadi Ghat, Prayagraj (U.P.).

.....Respondents

Ld. Counsel for the **Mrs. Kavita Mishra**, Advocate.  
Respondents. Central Govt. Counsel

**ORDER (ORAL)**

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

(a) The disability of the late husband of the Applicant may be declared as attributable and aggravated to Military Service which was the cause of invalidment from Army (25.11.1965).

(b) That the late husband of Applicant be notionally declared entitled for invalidment Pension.

(c) That the present Applicant i.e. widow of the late soldier may be granted pensionary benefits.

(d) The arrears of pensionary benefits preceding three years from the date of filing of this application may be directed to be released in favour of the applicant with 8% interest.

(e) Any other relief that the Hon'ble Tribunal deems appropriate in the present case in the interest of justice.

2. Brief facts of the case are that applicant is a widow of No. 6620806 Sep Prem Raj who was enrolled in Army on 10.05.1963. The soldier suffered with 'Psychoneurosis' and on account of that he was medically boarded out of service on medical grounds on 25.11.1965. After discharge, he made a representation for grant of disability pension which was rejected vide order dated 12.02.1966 on the ground that his disability was neither attributable to nor aggravated by military service (NANA). The soldier died on 06.03.2006 (Annexure A-4). After 13 years from death of her husband she preferred an

appeal dated 29.06.2019 for grant of family pension which seems to have not been decided as yet. This O.A. has been filed by applicant for grant of family pension in respect of her late husband who was medically boarded out of service in low medical category.

3. Learned counsel for the applicant submitted that applicant's husband was discharged from service on medical grounds for disability which did not exist before joining the service, therefore, any disability caused after joining the service should be attributable to military service. He further submitted that in these circumstances, husband of the applicant is entitled for grant of disability pension and in consequence thereof applicant is entitled to receive family pension of her deceased husband's service element of disability pension. Further submission of learned counsel for the applicant is that AFT, Regional Bench, Chandimandir has allowed a similar case vide order dated 12.08.2014 in O.A. No. 1813 of 2012, **Smt Inder Kaur vs UOI & Ors**. He pleaded for grant of family pension to applicant.

4. On the other hand submission of learned counsel for the respondents is that since husband of applicant was not a pensioner, applicant is not entitled to receive family pension in terms of Rule 212 of Pension Regulations for the Army, 1961 (Part-I). His further submission is that since husband of

applicant had rendered only 02 years, 06 months and 15 days service which is inadequate for grant of invalid pension in terms of Rule 198 of Pension Regulations for the Army, 1961 (Part-I), therefore applicant is not entitled for family pension. He further pleaded that applicant's husband was a non pensioner, therefore, his service documents have been destroyed in terms of para 595 of Regulations for the Army, 1987 (Revised Edition) after retention for mandatory 25 years after his retirement. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also perused the rejection order of disability pension claim. The question before us is simple and straight i.e. – is applicant entitled to receive family pension?

6. It is an admitted fact on record that husband of applicant was discharged from service on 25.11.1965 and claim for disability pension was rejected vide order dated 12.02.1966. Applicant had submitted a belated appeal dated 29.06.2019 for grant of family pension which is still pending as none of the parties have made it clear whether the said appeal was decided or not.

7. Since applicant's husband was medically boarded out before completion of terms of engagement, his discharge should be treated as invalided out of service. In this regard, Rule 4 of

the Entitlement Rules for Casualty Pensionary Awards, 1982 defines invalidation as follows:

*“Invaliding from service is a necessary condition for grant of a disability pension. An individual, who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/Ors and equivalent in other services who are placed permanently in a medical category other than ‘A’ and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.”*

8. Thus, in light of above definition, it is clear that husband of applicant was in low medical category as compared the one when he was enrolled and hence his discharge is to be deemed as invalidation out of service.

9. Since medical documents have not been placed on record, as these have been destroyed after completion of retention period, we hold that applicant’s husband would have been invalided out of service with 20% disability as the disease with which he suffered is of grave nature.

10. So far as attributability or aggravation effect of disability are concerned, the provisions of Pension Regulations for the Army, 1961 (Part-I) and the Entitlement Rules for Casualty Pension Award, 1982 are relevant and the same are excerpted herein below;

**“(a) Pension Regulations for the Army 1961 (Part I)**

**Para 173.** *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 at 20 percent or over.*

*The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.”*

(b) **Entitlement Rules for Casualty Pension Award, 1982**

5. *The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-*

**Prior to and During Service.**

- (a) *A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*
- (b) *In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

**Onus of Proof.**

9. *The claimant shall not be called upon to prove the conditions of entitlement. He/she will be given more liberally to the claimants in field/afloat service cases.*

**Diseases**

14. *In respect of diseases, the following rule will be observed:-*

- (a) *cases.....*
- (b) *a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.”*

11. Additionally, the law on the point of attributability of the disability is no more RES INTEGRA. This point has already been decided by the Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316. The relevant portion of the aforesaid judgment, for convenience sake, is reproduced as under:-

*"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)."*

12. Since the ruling with regard to rounding off of disability pension came into existence w.e.f. 01.01.1996 and applicant's husband was invalided out from service w.e.f. 25.11.1965, he is not entitled to rounding off of disability pension.

13. From the above mentioned Rule on disability pension and ratio of law emerging out of Hon'ble Apex Court's judgment (supra), it is clear that once a person has been recruited in a fit medical category and is discharged/invalided out in low medical

category, the benefit of doubt will lean in his favour unless cogent reasons are given by the Medical Board (which is not on record) as to why the disease could not be detected at the time of enrolment. In this particular case, we find that applicant's husband was enrolled in medically fit condition and he was in low medical category at the time of discharge/invalidation.

14. It is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequences of military service. The benefit of doubt should rightly be extended in favour of the applicant. In the instant case since the applicant's husband was found to be suffering from 'Psychoneurosis' after his enrolment in the Army, it should be deemed to be aggravated by military service.

14. In view of the above applicant's husband is entitled to disability pension @ 20% from the date of his invaliding out from service i.e. 25.11.1965 till his death i.e. on 06.03.2006 and thereafter, applicant is entitled to family pension of service element of disability pension of her deceased husband.

15. In view of above, husband of the applicant, who had suffered disability during the course of army service, is entitled for grant of disability pension. In consequence thereof applicant is also entitled to family pension after death of her husband. Since applicant's husband died in the year 2006 and

applicant has filed the instant O.A. on 19.02.2021, she is entitled for family pension with respect to service element of disability pension of her deceased husband w.e.f. three years prior to filing of this O.A. in terms of the Hon'ble Apex Court judgment in the case of ***Jai Dev Gupta vs State of Himachal Pradesh***, AIR 1998 SC 2819.

16. The O.A. is **allowed** accordingly.

17. The respondents are directed to make necessary calculations and make payment to the applicant, within a period of three months from the date of receipt of a certified copy of this order, failing which the amount shall carry interest @ 8% p.a. from the date of this order.

18. No order as to costs.

19. Pending Miscellaneous applications, if any, shall stand disposed off.

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

Dated: 28.10.2021  
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