

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 95 of 2021**Friday, this the 08th day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Asha Shukla, Wife of Ex. Nk. Late Ram Milan Shukla, R/o Village – Alpi Ka Pura, P.O. Atrampur (Serawan), Tehsil Soraon, District – Prayagraj (Allahabad).

..... Applicant

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

Versus

1. Union of India, Ministry of Defence, New Delhi through its Secretary.
2. Chief of Army Staff, through Additional Directorate General Personnel & Services [ADG PS (PS-5)], AG’s Branch, IHQ of MoD (Army), 419, A Wing, Sena Bhawan, DHQ PO, New Delhi-11.
3. Officer Incharge, EME Records, Secunderabad-21.
4. Principal Controller of Defence Accounts (Pension), Allahabad.
5. Command Officer, Command Hospital WC, Chandi Mandir.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Jai Narayan Mishra**, Advocate
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 :-

- A. *To direct the respondents to grant disability pension fund from 31.10.2007 to December 2010 under the new rule with interest to the applicant for which a representation in the month of July 2011 and again representation/reminder dated 27.10.2020 (but returned by respondent No. 1 on the basis of the refusal) was made by the applicant to the respondents.*
- B. *To issue any, order or direction which this Hon’ble Court deem fit and proper in view of the facts and circumstances of the case, may be granted in favour of the applicant.*
- C. *To award cost of the Original Application in favour of the applicant.*

2. Briefly stated, applicant’s husband (14588021P Late Naik Ram Milan Shukla) was enrolled in the Corps of EME of Indian Army on 14.10.1985 and was discharged on 31.10.2007 (AN) on completion of terms of engagement in Low Medical Category P2 (Permanent) under Rule 13(3) Item III (i) of the Army Rules, 1954. The accident was occurred during duty period, when applicant’s husband was topping fuel in T. Tank on 02.07.2005, he fell down and got abdomen injury and medical board gave medical certificate

for disability as Category P3 (Temporary) but after some time Army Medical Board Roorkee gave certificate for disability category as P2 (Permanent). The Court of Inquiry was conducted on 15.11.2005 wherein it is found that injury of the applicant's husband sustained in duty period. The applicant husband was admitted to Command Hospital (Western Command), Candi Mandir on 05.04.2007 for Release Medical Board and he was referred to Surgical O.P.D. for specialist opinion who opined as medical category P2 (Permanent). The applicant's husband was hospitalised from 05.04.2007 to 10.08.2007, however, no Release Medical Board was conducted by Command Hospital (Western Command), Chandi Mandir. The applicant's husband died on 22.12.2010. The applicant preferred representations/reminder in July, 2011 and 27.10.2020 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant's husband was found fit in all respects at the time of enrolment in the army and there was no note in his primary service documents with regard to any disease/injury. Therefore, whatever disease/injury with which applicant's husband suffered during service is attributable to military service. Learned counsel for the applicant also relied upon judgment of the Hon'ble Apex Court in the case of ***Union of India and Another Versus Rajbir Singh***, Civil Appeal No. 2904 of 2011, decided on 13.02.2015, and Govt of India letter

dated 31.01.2001 and pleaded that disability pension be granted to the applicant's husband.

5. On the other hand, learned counsel for the respondents submitted that the husband of applicant was placed in Low Medical Category P2 (Permanent) for diagnosis "Blunt Injury Abdomen (OPTD)" due to fall down from ARV while topping up the fuel tank for unloading of Tank-72 of 17 Poona Horse and discharged from service without undergoing Release Medical Board not on medical ground. The husband of applicant was directed to report to Release Medical Board Section, Command Hospital, Western Command, Chandimandir for holding Release Medical Board along with requisite documents vide 22 Filed Workshop letter dated 30.8.2007, but he did not report on 30.8.2007 and in his absence Release Medical Board could not have been complete. However, after discharge from service, sanction for delayed Release Medical Board was accorded by the respondents vide letter dated 23.03.2010 but in spite of repeated direction the husband of the applicant did not report for Release Medical Board during his life time. Therefore, it can surely be inferred that it was the fault of the husband of the applicant. Hence, disability pension claim could not be processed. He pleaded the Original Application to be dismissed being devoid of merit.

6. Heard Ld. Counsel of both sides and perused the records and we find that at the time of discharge Release Medical Board

has not been conducted so as to ascertain the percentage of disability and its attributability or aggravation. We could have decided the case, had there been related Release Medical Board documents pertaining to the applicant's husband and applicant's husband could have been benefitted, but we are unable to impart justice in the absence of requisite medical documents.

8. In view of the above, we are unable to decide the case in vacuum. Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

9. Pending misc. applications, if any, are disposed off.

12. No order as to costs.

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

Dated : 08 October, 2021

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