

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 604 of 2018

Monday, this the 30th day of September, 2019

Hon'ble Mr. Justice Virender Singh, Chairperson

Hon'ble Air Marshal BBP Sinha, Member (A)

Smt Rambeti Wife of No.20519 Late Sepoy Rajendra Singh
Resident of House No.5/11, Post Hatha Safadar Khan,
Near Garhi Kohana District Farrukhabad (U.P.).

.....Applicant

Ld. Counsel for :
the Applicant

Shri Birendra Prasad Singh,
Advocate

Versus

1. Union of India through Secretary,
Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarter of Ministry of Defence
(Army), South Block, DHQ, New Delhi.
3. Military Secretary, Integrated Headquarter of Ministry of Defence
(Army), South Block, DHQ, New Delhi.
4. Integrated Headquarter of Ministry of Defence (Army), Adjutant
General Branch, Additional Directorate General Personnel Service,
Plot No.108 (W), Brassey Avenue, Church Road, New Delhi.
5. The Officer-in-charge, Records The Kumaon Regiment,
Pin 900473, C/o 56 APO.
6. Record Officer, Kumaon Regiment, Ranikhet, Uttrakhand.
7. Principal Controller of Defence Accounts (Pension),
Allahabad.

.....Respondents

Ld. Counsel for the :
Respondents

Shri GS Sikarwar,
Ld. Counsel for the Respondents.

ORDER

“Per Hon’ble Mr. Justice Virender Singh, Chairperson”

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 issue an appropriate order or direction to the respondents quashing the impugned order dated 26.07.2014 together with letter/order dated 10.06.2015 as contained in Annexure No.1 and 2 to the instant original applicant, and/or

(ii) To issue an appropriate order or direction to the respondents hereto to immediately grant the benefits of disability pension with effect from the date the husband of the applicant Late Sepoy Rajendra Singh bearing Service No.20519 has been invalided out from service till his death and thereafter grant the family pension to the applicant, and/or

(iii) To issue an appropriate order or direction to the respondents hereto to immediately release the amount towards the arrears of disability pension of Late Sepoy Rajendra Singh bearing Service No.20519 as well as arrears of family pension along with suitable interest, and/or

(iv) Issue an appropriate order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case including an order of awarding damages as well as cost of the instant application in favour of the applicant and against the respondents, hereto.”

2. In brief, the facts of the case are that the applicant’s husband late Sepoy Rajendra Singh was enrolled in the Indian Army on 03.07.1947. The applicant’s husband was invalided out of service by Medical Board w.e.f.

12.05.1952 due to disability **EXTRA SYSTOLES (ST)**. The disability claim of the husband of the applicant was rejected by the PCDA (P), Allahabad vide letter dated 06.08.1952 on the ground that the disability suffered by him is not attributable to military service. The husband of the applicant died on 26.05.2007. The applicant was informed about the rejection of claim of the disability pension of her husband and also family pension to her vide letter dated 26.07.2014. After exhausting the official remedy, the applicant filed the instant O.A. for the aforesaid reliefs. As per the pleadings and the documents annexed with the O.A., it transpires that the applicant, for the first time, sent an appeal in the year 2014 and also a representation in the year 2015 to the Hon'ble Defence Minister for grant of disability pension to her husband and also for grant of family pension to her and the same was suitably replied by the respondents to the applicant.

3. On behalf of the respondents, as per service documents presently held with National Archives of Govt of India, New Delhi, the facts are admitted. However, it is pleaded on behalf of the respondents that the disability of the husband of the applicant was regarded by the duly constituted medical board as not attributable to military service, hence he could not be granted disability pension under the provisions of Para 173 of the Pension Regulations for the Army, 1961 (Part-I) in which it is clearly stipulated that “unless otherwise specifically provided a disability pension may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over. The Pension Sanctioning Authority i.e. PCDA (P),

Allahabad on adjudication of the claim of the husband of the applicant has rejected disability pension. Since the husband of the applicant was not in receipt of any type of pension, the applicant is not eligible for grant of family pension.

4. Learned counsel for the applicant has argued that in similar facts situation, the Co-ordinate Bench of Armed Forces Tribunal, Guwahati in **Smt. Vizieu Kesiezie vs Union of India & others** (T.A.No.54 of 2010) decided on 31.03.2011, has granted disability pension to the applicant, who happens to be the wife of the late soldier and he has claimed parity with the same order of Co-ordinate Bench of Armed Forces Tribunal, Guwahati.

5. We have heard learned counsel for the parties and perused the record.

6. From a perusal of the pleadings on record it is established that the husband of the applicant was invalided out of service due to disability “**EXTRA SYSTOLES (ST)**” after following due procedure by the competent authority. Learned counsel for the applicant could not dispute that discharge from service is not a recurring cause of action. It is settled law that if there is inordinate delay and such delay is not satisfactorily explained, the Courts/Tribunals are loath to intervene and grant relief in exercise of its jurisdiction. The High Court (Tribunal in this case) in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. (See *M.P. vs. Nandlal Jaiswal & ors* reported in AIR 1987 SC 251).

7. On careful scrutiny of the IMB and the counter affidavit, it emerges that the disease i.e. “**EXTRA SYSTOLES (ST)**” was not attributable to nor aggravated by military service and had been assessed as 20% for one year.

8. From perusal of the record, it appears that the husband of the applicant was enrolled in the Indian Army on 03.07.1947 and was invalided out of service w.e.f. 12.05.1952 due to disability **EXTRA SYSTOLES** by the Medical Board and held that **applicant is unfit for further Military service.**

9. We have given our anxious consideration on submissions made by both the parties and are of the considered opinion that the applicant was suffering from “**EXTRA SYSTOLES**”. The disease was detected within a short period of service i.e. about 04 years and thus it may be inferred as a constitutional disease and cannot be considered as attributable to or aggravated by military service. Since it was a disease of constitutional nature, hence the same could not be detected during medical examination at the time of enrolment. Additionally what has not been claimed directly should normally not be claimed indirectly. This is a case where the soldier never claimed disability pension from 1952 till his death in 2007, however his wife is now claiming disability pension for the soldier after about 11 years of his death.

10. The applicant, thus is not able to carve out any legal ground for the relief asked for. It cannot be given just on asking.

11. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated: September, 2019
PKG/SB