

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 327 of 2021

Wednesday, this the 16th day of February, 2022

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

Smt. Kanti Devi
W/o Late Shri Suresh Singh (No. 10404811N Hav)
R/o Arya Nagar, Bela Road, Bidhuna,
District – Auraiya (UP)

.... **Applicant**

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

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Officer-in-charge, The JAT Regiment, Bareilly-243001.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj.
4. Chief Manager, Centralized Pension Processing Centre (CPPC), State Bank of India, 4, Kutchery Road, Prayagraj, (UP) – 211002.
5. Branch Manager, State Bank of India, Bidhuna Branch, District – Auraiya, Uttar Pradesh.

... **Respondents**

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel.

ORDER

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:-

- “(a) Issue/pass an order directing the respondents to consider and pay family pension to the applicant with effect from 27.08.2007 along with arrears and interest.
- (b) Issue/pass an order directing the respondents to consider and provide medical, canteen and other facilities available to the dependent of ex-serviceman to the applicant.
- (c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (d) Allow this Original Application with cost.”

2. Brief facts of the case giving rise to this application are that the deceased soldier was enrolled in the Territorial Army on 31.12.1981 and was discharged from service w.e.f. 15.11.2000 in low medical category BEE (Permanent) in the rank of Havildar after rendering 09 years and 55 days of embodied service out of the total service of 18 years and 290 days. The applicant was denied service pension since he had not completed 15 years of minimum embodied service in the Territorial Army. The husband of the applicant was also denied disability pension being disability assessed below 20% (15-19%) as neither attributable to nor aggravated by service. The husband of the applicant approached Allahabad High Court by filing Writ petition No. 15420 of 2001 which was subsequently transferred to this Tribunal and registered as T.A. No. 79 of 2016. During the pendency of case, husband of the applicant died on 27.08.2007. This Tribunal allowed the T.A. and granted disability pension @ 50% for one year. The claim of the husband of the applicant was rejected by PCDA (P) Allahabad, so, husband of the applicant filed Execution Application before this Tribunal. During the pendency of Execution Application,

PPO dated 26.07.2019 granting disability pension @ 50% for one year has been issued. Thereafter, applicant visited Record Office on 27.05.2019 and requested for family pension which was denied to her. Being aggrieved, the applicant has filed the present Original Application for grant of family pension.

3. Learned counsel for the applicant submitted that husband of the applicant was enrolled in the Territorial Army on 31.12.1981 and was discharged from service w.e.f. 15.11.2000 in low medical category BEE (Permanent) in the rank of Havildar after rendering 09 years and 55 days of embodied service out of the total service of 18 years and 290 days. The applicant was denied service pension since he had not completed 15 years of minimum pensionable service. The husband of the applicant was also denied disability pension being disability assessed @ 15-19% as neither attributable to nor aggravated by service. Feeling aggrieved, husband of the applicant approached Allahabad High Court by filing Writ petition No. 15420 of 2001 which was subsequently transferred to this Tribunal and registered as T.A. No. 79 of 2016. During the pendency of case, husband of the applicant died on 27.08.2007. This Tribunal allowed the T.A. and granted 50% disability pension for one year. The claim of the husband of the applicant was rejected by PCDA (P) Allahabad, so, husband of the applicant filed Execution Application before this Tribunal. During the pendency of Execution Application, PPO dated 26.07.2019 granting disability pension @ 50% for one year has been issued.

Thereafter, applicant visited Record Office on 27.05.2019 and requested for family pension which was denied to her.

4. Learned counsel for the applicant placed reliance on judgments of the Hon'ble Apex Court in the case of **State of Kerala and others vs. M. Padmanabhan Nair**, AIR 1985 SC 356 and in **S.K. Mastan Bee vs. General Manager, South Central Railways and another**, 2003 (1) SCC 184. He pleaded submitting that since husband of the applicant has been granted disability pension, therefore, applicant is also entitled for family pension being disability pension is consistent of both service element and disability element. He also pleaded for medical, canteen and other facilities to the applicant as available to dependent of ex-serviceman.

5. On the other hand, learned counsel for the respondents submitted that husband of the applicant was enrolled in the Territorial Army on 31.12.1981. He was downgraded to low medical category BEE (Permanent) for disabilities "OBESITY WITH HYPER CHOLESTEROLAEMIA" and "NIDDM". The husband of the applicant was discharged from service w.e.f. 15.11.2000 after rendering 09 years and 55 days of embodied/qualifying service. His composite disability was assessed @ 15-19% as neither attributable to nor aggravated by military service. The disability pension of the husband of the applicant was rejected by PCDA (P). The husband of the applicant approached Allahabad High Court by filing Writ Petition No. 15420 of 2001 which was subsequently transferred to this Tribunal and registered as T.A. No. 79 of 2016. During the pendency of case,

husband of the applicant died on 27.08.2007. This Tribunal allowed the T.A. and granted disability pension @ 50% for one year. The claim of the husband of the applicant was rejected by PCDA (P) Allahabad being not meeting criteria for grant of disability pension, so, husband of the applicant filed Execution Application before this Tribunal. During the pendency of Execution Application, PPO dated 26.07.2019 granting disability pension @ 50% for one year has been issued.

6. Learned counsel for the respondents also submitted that as per Para 9 of the judgment dated 10.01.2018 passed by this Tribunal in earlier T.A. No. 79 of 2016 filed by husband of the applicant, service pension to husband of the applicant has been rejected being his qualifying service less than 15 years which is mandatory for grant of service pension as per Pension Regulations for the Army. Since, the husband of the applicant was not in receipt of any pension during his life time and disability pension has been granted by this Tribunal and limited for one year from 15.11.2000 to 14.11.2001 only, hence now claiming family pension is unjustified as her husband was not in receipt of any service pension. He pleaded for dismissal of O.A.

7. We have heard learned counsel for the parties and perused the material placed on record.

8. We find that applicant is praying for grant of family pension with regard to service element of disability pension as husband of the applicant has been granted disability pension for one year by this Tribunal. The husband of the applicant died on 27.08.2007. Since

husband of the applicant is held entitled to 50% disability pension for one year from 15.11.2000 to 14.11.2001 and PPO dated 26.07.2019 has already been issued by PCDA (P) granting disability pension, wife of deceased soldier i.e. applicant will be entitled for family pension in respect of service element of the disability pension w.e.f. the next date of death of her husband i.e. 28.08.2007.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order, if any, is set aside. Since deceased soldier's disability was assessed for one year 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 pay disability pension @ 50% for one year from 15.11.2000 to 14.11.2001 as per PPO dated 26.07.2019 to the applicant (wife of deceased soldier), if not already paid.

10. The respondents are further directed to grant family pension to the applicant in respect of service element of the disability pension w.e.f. the next date of death of her husband i.e. 28.08.2007 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 02.07.2021. The respondents are also directed to provide medical, canteen and other facilities as entitled to the dependent of ex-serviceman, to the applicant. The respondents are directed to give effect to this order within four months from the date of

