

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A.No. 10 of 2010

Smt. Kesri Devi

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner : Mr. D.K. Sharma, Ms. Vandana Sharma and Mr. O.V. Singh,
Advocates.

For respondents: Mr. Mohan Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER
06.01.2011

1. Petitioner by way of this petition has prayed that impugned letter dated 9th May 1980 issued by the ASC Records (South) whereby claim of family pension of petitioner was rejected should be quashed and petitioner should be granted a family pension with effect from the date of death of her husband i.e. 8th July 1993 along with interest and arrears thereon.
2. Petitioner's husband was enrolled as ASC (MT) on 29th July 1963. Petitioner married with him on 11th December 1963. The husband of the petitioner was transferred to Pension Establishment on 26th June 1971 and was granted disability pension vide PPO No. D/2967/72. On 8th July 1993 husband of the petitioner died. Petitioner's husband was drawing disability pension up to 30th June 1993. After death of her husband, petitioner filed an application before the Rajya Sainik Board for grant of family pension to her on 5th February 1997 but she was informed that she was not eligible for family pension. She was informed by the communication dated

29th September 1997 by the ASC Records (South), Bangalore that family pension is not admissible as the temporary award of disability pension to the husband of the petitioner was discontinued with effect from 30th August 1997 and at the time of the death of the husband of the petitioner he was not in receipt of any kind of pension. The grievance of the petitioner is that her husband was getting a disability pension up to 1993 which has not been disputed by the respondents. Since petitioner's husband was getting a disability pension up to 1993 and further he had not gone for a second medical check-up then at the best it may be construed that his disability pension has come below 20%. Learned counsel for the respondents submits that disability pension has two elements as mentioned in Rule 173 of the Pension Regulations for the Army, 1961 i.e. disability pension and service element of pension which reads as under:

Rule 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 20 per cent or over."

3. Therefore, learned counsel for the petitioner submits that the disability pension once granted to the petitioner's husband ceases if he had not gone for second medical check-up then as per the provisions of Rule 173 he would have been entitled to service element of pension. Rule 186 says that after an individual

who was invalidated out of service with a disability attributable to or aggravated by service but assessed at below 20% shall continue to have a service element.

Rule 186 reads as under:

- (1) "An individual who is invalidated out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.**
- (2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension."**

4. Learned counsel for the petitioner submitted that a combined reading of Rule 173 with Rule 186 result that even if it is construed that the petitioner's husband has not gone for a second medical check-up, at the best it can be construed that his disability has ceased to exist but nonetheless her husband was entitled to service element of pension and according to Rule 186 if it has gone below 20% then the disability pension ceases to exist except the service element. Learned counsel for the petitioner submitted that reading of these two provisions together and keeping in view the fact that the petitioner is the widow of the deceased, she is entitled to at least ordinary family pension.

5. Learned counsel for the respondents contested the matter and pointed out from the reply that since the husband of the petitioner has not put in requisite number of years of service, he was not entitled to a family pension. It was also pointed out that he was also not invalidated out from the service.

6. Having heard learned counsel for the parties and after perusing the record, we are of the opinion that incumbent who was already drawing a disability pension up to 1993 presupposes that the Government has released that pension as per the rules and orders obtaining at that time. The petitioner's husband was already discharged from service on 8th November 1969 though he was transferred to the Pension Establishment w.e.f. 26th June 1971. Be that as it may, the fact remains that the petitioner was drawing the disability pension up to 8th July 1993 when he died. This fact has not been denied by the respondents. This shows that the petitioner was drawing the pension which was admissible to all combatant officers though he was a non-combatant officer. The distinction of a combatant and non-combatant officer has long been given up. Therefore the petitioner was granted a disability pension from 1972 as appears from the PPO No. D/2967/72. There is no such condition laid down for grant of a disability pension that in case disability ceases and he had not put in requisite number of years in service then he would be disqualified from family pension. Had there been a condition in Rule 173 or Rule 186 that after ceasing of the disability he should have a minimum number of years in service as a qualifying service for grant of family pension, then we could have understood the submissions of learned counsel for the respondents. The petition was filed on 7th January 2010. Since incumbent has died in 1993 drawing a disability pension then in that case it will be presumed that the condition of qualifying service was not there

and it was only an after thought of some bureaucratic level. Since the imposition of condition of qualifying service for grant of service element of pension is not there therefore we reject the contention of learned counsel for the respondents. Consequently, we allow this petition and set aside the order dated 9th May 2008 and direct the respondents to release the family pension to the widow petitioner from 1993 and she may be given arrears for the last three years from the date of filing the petition i.e. 07.01.2010. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 6, 2011.