

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

12.

O. A. No. 70 of 2011

Smt. Kanta Devi

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S. R. Kalkal, Advocate.

For respondents: Sh. Satya Saharawat proxy counsel for Sh. Ankur Chhibber,
Advocate for R-1 to R-3.
None for R-4.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
21.10.2011


1. Heard learned counsel for the parties.
2. This is second round of litigation. First time the petitioner came before this Tribunal and the direction was given to the respondents to review the medical report of the individual both prior to his discharge and post discharge and find out whether the investigation upheld the contention of the petitioner and financial dues as applicable may be released to the petitioner. After the direction given by this Tribunal, the matter was reviewed and the authorities have found that the petitioner died on account of brain tumour soon after his discharge from hospital and no family pension could be given as he did not put in 13 years of service. He was discharged after giving a show cause notice. However show cause notice was given to the petitioner when he was hospitalised in psychiatric ward. After release from hospital he did not make an application and requested for extension of time to reply the show cause notice. Petitioner was discharged under Rule 13(3) III (v) of Army Rule, 1954.

Now the only question remains with regard to the payment of gratuity. Since he was not having requisite service therefore he could not be paid the service pension but gratuity has been already paid to the petitioner. Learned counsel for the petitioner now in second round submits that the petitioner should have been downgraded when he was alcoholic but since that was not done therefore the petitioner should have been discharged being alcoholic. This is all hypothetical. This could have been done or this could not have been done. On this conjecture the matter cannot be decided. Petitioner was not discharged being alcoholic.

3. Consequently, we do not find any merit in this petition and the same is dismissed with no order as to costs.



A.K. MATHUR
(Chairperson)



S.S. DHILLON
(Member)

New Delhi
October 21, 2011
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