

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1174/2017

Smt. Manju Devi W/o Late Ex Hav Shyam Lal Sharma VERSUS Union of India and Ors.	Applicant
	Respondents

For Applicant	:	Mr. Mohan Kumar, Advocate
For Respondents	:	Mr. V. Pattabhi Ram, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by Smt. Manju Devi, the widow of Ex-Hav Shyam Lal Sharma, seeking various reliefs related to denial of disability pension to her late husband. The applicant prays for the following reliefs:

- (i) *Declare the action of the respondents as unjust, arbitrary, and illegal.*
- (ii) *Quash and set aside the rejection letter dated 05.11.2016 and direct the respondents to grant disability pension from 31.08.1999 (the date of discharge) to 26.07.2016 (the date of death).*
- (iii) *Direct the respondents to grant the benefit of rounding off disability pension from 20% to 50%, in accordance with the government policy dated 31.01.2001.*

- (iv) *Grant interest at the rate of 18% per annum on the delayed payment of disability pension.*
- (v) *Grant any other relief that this Tribunal may deem fit and proper under the facts and circumstances of the case.*
- (vi) *Award costs.*

2. The facts germane for deciding the present OA are that late Ex-Hav Shyam Lal Sharma was enrolled in the Indian Army on 27th August, 1982. on 31st August, 1999 During his tenure at Patiala from 1996 to 1999, he was diagnosed with “Generalized Tonic-Clonic Seizures (Old) 3451V67” on 4th June, 1997. As a result thereof, he was placed in medical category CEE (Permanent) with disability assessed at 20% and held to be attributable to military service. In spite of the applicant’s husband appearing before the Re-category Medical Board continuously for some years, his medical condition did not improve and, therefore, on 31st August, 1999 he opted for voluntary discharge after completion of pensionable service of 15 years.

3. A Release Medical Board was conducted before his discharge, confirming his disability assessed at 20% and attributable to military service. However, despite this, he was denied disability pension. Ex Hav Shyam Lal Sharma, applicant’s husband, died on 26th July, 2016.

4. The applicant seeking disability pension for her late husband filed an appeal on 1st October, 2016 which was rejected on the ground that the disability was constitutional in nature and did not relate to military service. The applicant second appeal filed was also summarily rejected.

5. The applicant, after her husband's demise, pursued his rightful claim for disability pension through a legal notice dated 23rd March, 2017. However, the respondents once again denied the claim on the ground that disability pension cannot be granted after the death of the individual which led to the filing of the present application.

6. Mr. Mohan Kumar, learned counsel for the applicant, placed reliance on the following landmark judgments of the Hon'ble Supreme Court to substantiate the claim:

(i) *Dharamvir Singh v. Union of India* (2013) 7 SCC 316

Wherein it was held that if a soldier is found fit at the time of enrolment and is subsequently discharged with a lower medical category, his disability is presumed to have been caused due to military service unless proven otherwise by cogent medical evidence.

(ii) *Union of India v. Tarsem Singh* (2008) 8 SCC 648 –

The Hon'ble Supreme Court held that pension is a continuous financial entitlement and even if there is delay in filing pensionary claims, these should be considered.

- (iii) *K.J.S. Buttar v. Union of India & Others* ([2011] 11 SCC 429)

In this case the Hon'ble Supreme Court affirmed the entitlement of disability pension to personnel discharged due to medical conditions, attributable to military service.

- (iv) *Shiv Dass v. Union of India & Others* (AIR 2007 SC 1330)

The Hon'ble Supreme Court emphasized that disability pension cannot be arbitrarily denied without assigning valid reasons.

- (v) *Ram Avtar v. Union of India* (C.A. No. 418 of 2012, decided 10.12.2014)

The Hon'ble Court held that the individual is entitled to rounding off the disability percentage from 20% to 50%.

7. Per contra, the respondents, represented by Mr. V. Pattabhi Ram, opposed the application and sought its dismissal on the following grounds:

- (i) Delay of 16 years: The claim for disability pension was raised only after the applicant's husband had passed away, despite his failure to pursue it during his lifetime.
- (ii) Medical Board's Assessment: At the time of discharge, Ex-Hav Shyam Lal Sharma was placed in a lower medical category and the Release Medical Board assessed his disability at 20% for two years, considering it aggravated by military service. However, the PCDA,

Allahabad rejected the claim, stating that the disability of the husband of the applicant was constitutional in nature and not related to military service.

8. In support of his arguments, the learned counsel for the respondents placed reliance on Para 53 of the Pension Regulations for the Army, 2008 (Part I) to submit that the primary condition for the grant of disability pension is invalidation. He further placed reliance on Para 173 of the Pension Regulations for the Army, 1961 and Rules 6, 8, and 12 of the Entitlement Rules for Casualty Pensionary Awards, 1982, to argue that the claim was untenable.

9. It is relevant to note that Rule 95 of the Pension Regulations for the Army 2008 (Part I) clearly spells out the conditions wherein a case has to be treated as deemed invalidation and the same is reproduced hereunder:

"95. Individual who is placed in a low medical category (Other than 'E') permanently and who is discharged because no alternative employment in his own trade/category suitable to his low medical category could be provided or who is unwilling to accept the alternative employment or who having been retained in alternative appointment is discharged before completion of the engagement, shall be deemed to have invalidated out of service under the Entitlement Rules for Casualty Pensionary Awards, 1982 as laid down in Appendix-IV to these Regulations."

10. Further in terms of Para 173 of Pension Regulations for the Army 1961 (Part I) also the applicant's husband is entitled to grant

of disability pension on the ground of deemed invalidation with the disability having been held to be attributable to and aggravated by military service and assessed at 20% by a duly constituted Medical Board. The PCDA (P) without assigning any valid reason for taking a different view cannot over rule the assessment of a valid Medical Board.

11. On the careful perusal of the material on record and also the submissions made on behalf of the parties, we are of the opinion that there is no dispute that the disability was assessed at 20% and also held to be attributable to and aggravated by military service. Although the initial disability of the applicant's husband was noted for a period of two years, yet it was incumbent upon the respondents to have called for a Re-survey Medical Board after the lapse of two years and his medical category re-assessed. But, this was not done and the legitimate claim of applicant's husband for disability pension was incorrectly rejected by the PCDA (P) without assigning any convincing reason even after the disability having been declared attributable to and aggravated by military service by the Release Medical Board.

12. In terms of the judgment of the Hon'ble Supreme Court in the case of *Ram Avtar'* (supra), the disability pension has to be rounded off from 20% to 50%.

13. As far as delay of 16 years in filing the claim is concerned, the Hon'ble Supreme Court, in *Tarsem Singh's case* (supra), has held that pensionary claims are of a continuous nature and cannot be rejected solely on the ground of delay.

14. Applying the above parameters and the reasoning to the case at hand and the fact that at the time of discharge the disability of applicant's husband was assessed @20% and also held to be attributable to aggravated by military service, it can be considered to be a case of deemed invalidation and he is entitled to disability element of pension. The rejection of his claim for disability element of pension was unjust and arbitrary and the grounds taken by the respondents for its rejection have no legs to stand before the eyes of law.

15. In view of the above, the applicant's husband - Ex Hav Shyam Lal Sharma is entitled to disability element of pension @ 20% rounded to 50% for the period from the date of discharge of her husband, i.e., 31st August, 1999 till his death on 26th July, 2016. However, in terms of the judgment of the Hon'ble Supreme Court in

the case of *Tarsem Singh* (supra), the arrears are restricted to three years prior to the death of applicant's husband - Ex Hav Shyam Lal Sharma. The respondents are directed to process and disburse the arrears to applicant herein within three months from the date of receipt of this order failing which she will be entitled to interest at the rate of 6% p.a. till realisation.

16. The OA is accordingly allowed.

17. No order as to costs.

Pronounced in open Court on this ²⁶ day of March, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

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