

COURT NO.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 2327/2023

WTTT

MA 3309/2023

Smt Mahanaz Begum Widow of
Ex Sep Late Rafi Mohd Mukhtiar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ramniwas Bansal, Advocate
For Respondents : Mr. Arvind Kumar, Advocate

CORAM

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

2nd February, 2026

ORDER

MA 3309/2023

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and the reasons mentioned in the application, the delay in filing the OA is condoned. MA stands disposed of.

2. This application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, seeking the following reliefs:

- (a) *To direct the respondents to bring on record the Release Medical Board/Invalid Medical Board proceedings/documents of the applicant's Late Husband (Ex-Sep Raiu Mohd Mukhtiar), in respect of all disabilities suffered during him in service tenure, and*
- (b) *To quash and set aside the said RMB/IMB proceedings to the extent the order denies grant of disability/Invalid Pension to the applicant, and*
- (c) *To set aside the impugned orders and direct the respondents to grant the disability pension to the Applicant's deceased husband from the date of discharge till on 19 Jun 2017, with benefit of broad-banding and thereafter, ordinary Family Pension to the Applicant, along with all consequential benefits, with arrears and interest @ 12% p.a., by treating the disability attributable to and aggravated by military service, in view of the Hon'ble Apex Court Judgement in Rajbir Singh (Supra) & Dharamvir Singh (Supra), or*
- (d) *Alternately, direct the respondents to grant invalid pension to the deceased husband of the Applicant till his death on 19 June 2017 and thereafter Ordinary Family Pension to the applicant, along with the consequential benefits, arrears and the interest @ 12% per annum from date of discharge, or*
- (e) *To pass such orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

FACTS OF THE CASE

3. The deceased was enrolled in Territorial Army (159 Infantry Battalion (Territorial Army) (H&H) DOGRA) on 14.01.2004 and discharged from service on 10.02.2015 under TA Rule 14(b)(iii) of TA Regulations 1948 (revised Edition 1976) on grounds of being undesirable after completion of 11 years and 30 days of service (10 years and 130 days embodied service and 265 days disembodied service). At the time of discharge, Release Medical Board assessed disability of the applicant at 'Nil' for on account of "Alcohol Dependence Syndrome' and at '40%' for life on account of 'Adjustment Disorder' and opined that disability of 'Adjustment Disorder' was aggravated by military service. The Copy of RMB, however, was not supplied to the applicant.

4. The deceased preferred SWP No. 2432/2016 before High Court of Jammu and Kashmir against rejection of disability pension which was disposed of by Hon'ble High Court *vide* order dated 29.11.2016 with directions to respondents that the claim of deceased be considered in accordance with the rules and appropriate decision be taken within 6 weeks. Subsequently, the deceased died in a road accident on 19.06.2017.

5. The applicant forwarded an appeal/representation dated 12.09.2017 for the grant of disability pension but the same was rejected by the respondents on 02.10.2017 stating that her late husband was not entitled for disability pension under Army Rule. The applicant thereafter, preferred an appeal dated 30.07.2021 and Appeal cum notice dated 18.04.2023, which have not been replied by the Authorities.

SUBMISSIONS ON BEHALF OF THE APPLICANT

6. It is submitted by the learned counsel for the applicant that due to the continued stress and strain of service conditions, the deceased developed 'Adjustment Disorder', for which he was placed in Medical Category S3(P) by the Invaliding Medical Board (IMB) held on 02.02.2015, which assessed the degree of disablement at 40% for life and categorically opined the disability *as attributable to military service*.

7. It is contended on behalf of the learned counsel for the applicant that despite such a specific finding of attributability by the competent Medical Board, the Principal Controller of Defence Accounts (Pensions), Allahabad, illegally altered the assessment and rejected the claim on the ground that the disability was

“neither attributable to nor aggravated by service” and “less than 20%.”

8. It is argued that the applicant’s husband was invalided out of service on medical grounds after more than eleven years of meritorious service, and therefore, squarely falls within the ambit of Regulation 197 of the Pension Regulations for the Army, 1961 (Part-I), which makes disability pension admissible where the disability is attributable to or aggravated by service and assessed at not less than 20%.

9. Learned counsel for the applicant further submitted that the Principal Controller of Defence Accounts (Pensions), being a financial sanctioning authority without medical expertise, has exceeded its mandate in re-assessing the medical opinion, which is impermissible under law.

10. Referring to Regulation 113(c) of the said Regulations, it was argued by the learned counsel for the applicant that the pensionary entitlement can only be forfeited upon dismissal from service, whereas discharge under administrative circumstances does not attract such forfeiture. For substantiating the same, the learned counsel for the applicant has placed reliance on *Ram Pal*

Singh v. Union of India, Civil Appeal No. 910 of 1981 (before the Hon'ble Supreme Court of India), *Jaggar Singh v. Union of India*, CWP No. 15227 of 2007 (before the Hon'ble Punjab & Haryana High Court) and *Rounki Singh v. Union of India*, T.A. No. 83 of 2010 (before the Hon'ble Armed Forces Tribunal Regional Bench, Chandigarh), wherein it has been consistently held that a discharge on account of red-ink entries or administrative reasons cannot be used as a ground to deny disability pension if the disability was attributable to or aggravated by service.

11. Alternatively, the learned counsel for the applicant submitted that even after assuming the disability to be “neither attributable nor aggravated,” the case would still be governed by the Government of India, Ministry of Defence policy letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, which extends the benefit of invalid pension to personnel invalidated out prior to completion of ten years of qualifying service, when permanently incapacitated from further military or civil employment. The said policy also permits condonation of the deficiency in qualifying service up to twelve months under Ministry of Defence letter dated 14.08.2001. Therefore, the learned counsel for the applicant

submitted that since the applicant's husband had completed over 11 years of service, his case deserves liberal consideration for invalid pension even on that count.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

12. The learned counsel for the respondents submitted that the deceased Territorial Army sepoy rendered 11 years and 30 days in all, comprising 10 years and 130 days of embodied service and 265 days of disembodied service, which falls short of the statutory minimum of 15 years aggregate embodied service prescribed for Personnel Below Officer Rank of the Territorial Army for grant of service pension under Para 186 of the Pension Regulations for the Army, 2008 (Part I). The learned counsel for the respondents highlighted the settled position for Territorial Army personnel, as per which only embodied service counts towards the qualifying service threshold and there exists no power in the respondents to relax or waive the mandated 15-year requirement in an individual case. Accordingly, the learned counsel for the respondents submitted that the deceased in the present case never acquired any vested right to service pension, and the applicant, whose claim to

ordinary family pension is purely derivative, cannot claim a higher right than that of the deceased.

13. It is further submitted by the learned counsel for the respondents that the deceased was discharged from Territorial Army service with effect from 10.02.2015 under Rule 14(b)(iii) of the Territorial Army Regulations, 1948 (Revised Edition 1976), on the ground that his services were “no longer required” being an undesirable soldier, after repeated acts of indiscipline and punishments for absence without leave and intoxication. In this backdrop, it is highlighted by the learned counsel for the respondents that the competent Brigade/Group Commander exercised statutory powers under TA Rule 14(b)(iii), read with Army Act section 22 and Army Rule 13, after issuing a show cause notice and considering the deceased’s reply, and therefore, the discharge is a punishment/administrative discharge for misconduct and unsuitability, not a medical invalidment or release on low medical category.

14. The learned counsel for the respondents pointed out that although the Release Medical Board (RMB) of February 2015 recorded two disabilities, i.e ‘Alcohol Dependence Syndrome (F10.2)’ held neither attributable to nor aggravated by service and

assessed at Nil, and “Adjustment Disorder (F43.2)” held attributable to service and assessed at 40% for life; however, this by itself does not confer a right to disability pension when the discharge is not on medical grounds. Under the extant rules and Government of India, MoD letter No. 1(2)/97/D(Pen-C) dated 31.01.2001, the disability element is admissible only where the individual is invalided out or otherwise released on medical grounds with a minimum assessed disability of 20% attributable to or aggravated by military service; and in cases where the individual is discharged for disciplinary or administrative reasons (such as being undesirable), the disability element cannot be sanctioned merely because the RMB has recorded an attributable disability. It is highlighted by the learned counsel for the respondents that this position is reinforced by the communication of the Principal Controller of Defence Accounts (Pensions) dated 29.10.2015, specifically noting that the discharge was under TA Rule 14(b)(iii) “being undesirable & inefficient soldier and his services no longer required”, and not on account of low medical category, and therefore, disability pension could not be admitted in the instant case.

15. The learned counsel for the respondents further submits that ordinary family pension under Para 63 of the Pension Regulations for the Army, 2008 (Part I) is admissible only where the deceased (a) dies while in service, having been found medically fit at entry, or (b) dies after release/retirement/discharge/invalidment “with a pension of any kind” under the Regulations. In contrast to this, the learned counsel for the respondents highlighted that in the present case, the deceased did not die while in service, and at the time of discharge he was neither a service pensioner nor a disability pensioner of any class but he stood discharged as an undesirable OR without grant of any pension. In this backdrop, it is highlighted by the learned counsel for the respondents that since the ordinary family pension is a derivative right that presupposes either a qualifying death in service or an existing pensionary status of the service member, and neither condition is satisfied in the instant case, the applicant widow’s claim is outside the four corners of Para 63 and is not maintainable.

CONSIDERATION

16. We have given our considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record. It is an admitted fact that the petitioner was discharged

on administrative ground as an undesirable soldier under Rule 14 (b) (iii) of Territorial Army Act Rules 1948. It is also an admitted fact that at the time of discharge, the applicant was brought before the Release Medical Board which found him suffering from 'Alcohol Dependence Syndrome' assessed at 'NIL' and 'Adjustment Disorder' assessed at '40%' for life, being aggravated by military service.

17. Now the only question remaining for adjudication is as to whether the individual who has been discharged from service before completing pensionable service on administrative ground as an undesirable soldier is entitled for disability pension if his disability is found aggravated by military service and assessed 20% or above. The question is no more *res-integra*. The Hon'ble Supreme Court of India in the case of *Ram Pal Singh vs Union of India* (supra) allowed the disability pension although the petitioner of that case was found to be undesirable soldier after repeated court martial held against him on several occasions. The Hon'ble Armed Forces Tribunal Regional Bench, Chandigarh has taken similar view in *Kulvinder Singh vs. UOI* (supra), *Narender Singh vs. UOI* (supra), *Rajinder Singh vs. UOI* (supra) and *Aviar Singh vs. UOI* (supra). Apart from these, the Principal Bench of this

Tribunal also had an occasion to deal with a similar matter in the case of *Ex Sep Manoj Kumar v UOI* bearing OA No. 913/2015, wherein disability element of the pension was granted to the applicant therein who was discharged on administrative ground being undesirable soldier under Rule 14(b)(iii) of Territorial Army Act Rules 1948.

18. In view of the above we are satisfied that the applicant is entitled for disability element from the date of discharge. The applicant would also be entitled to broad banding of disability element from 40% to 50% based on the Government of India, Ministry of Defence Circular dated 31.01.2001 and Hon'ble Supreme Court of India's judgement in the case of *Union of India vs. Ram Avtar* delivered on 10.12.2014.

19. Accordingly, since the soldier has already expired on 19.06.2017, the right to receive arrears of the disability element, having accrued during his lifetime, would survive to his legal heir. The applicant being the legally wedded wife of the deceased soldier is, therefore, entitled to receive the arrears of disability element for the period commencing from the date of discharge i.e. 10.02.2015, till the date of his death i.e. 19.06.2017, together

with all consequential benefits as admissible under the applicable Pension Regulations for the Army.

20. The respondents are directed to make necessary calculations and make payment to the applicant within a period of four months from the date of receipt of this order failing which the amount shall carry interest @ 8% per annum from the date of order. No order as to costs.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(RASIKA CHAUBE)
MEMBER (A)