

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

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OA 915 of 2015

Smt Kamla Devi	Applicant(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Surinder Sheoran, Advocate
For the Respondent(s) :	Mr Vikas Sharma Sr PC

CORAM:

**HON'BLE MR JUSTICE VIRENDER SINGH, CHAIRPERSON
HON'BLE LT GEN DS SIDHU, MEMBER (A)**

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ORDER
12.05.2017

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1. The applicant, who is widow of late Hav Badan Singh, prays for grant of Special Family Pension wef 15.03.1994. He was enrolled in the Army on 22.07.1977. During service, the individual was downgraded to LMC 'EEE' for the disease '**CARCINOMA STOMACH**' and was invalided out from service on 27.12.1993. The Invaliding Medical Board assessed the disability at 30% for two years and held it to be neither attributable to nor aggravated by military service, being constitutional disease and not connected with military service.

2. PCDA (P), Allahabad, rejected the claim of the applicant on the ground, that the disability was held neither attributable to nor aggravated by military service. Service pension was granted to the husband of the applicant vide PPO dated 04.07.1994. The husband of the applicant expired on 14.03.1994, before receiving first payment of pension. The claim for special family pension was processed with the PCDA(P) Allahabad and it was returned unactioned. Hence, the present petition.

3. On notice, the respondents filed the reply in which it has been pleaded that the Invaliding Medical board assessed the disability of the individual at 30% for two years and held it to be neither attributable to nor aggravated by military service being 'constitutional disease and not connected with military service'. Thus, the applicant was not entitled to disability element of disability pension. Thereafter, the claim for Special Family Pension was processed by the PCDA(P), Allahabad, vide Records JAT letter dated 13.05.2013 and the case was returned unactioned as the disease, which caused invalidment of the husband of the applicant from service, has been assessed as neither attributable to nor aggravated by military service and, as such, the applicant became ineligible for Special Family Pension. Thereafter, the respondents examined Rule 213 and came to the conclusion, that since the disease which caused invalidment was assessed as neither attributable to nor aggravated by military service, she was ineligible for Special Family Pension.

4. We have heard both the learned counsel and perused the records.

5. The late husband of the applicant, Hav Badan Singh, was invalided out on 27.12.1993. He was suffering from **CARCINOMA STOMACH** and expired on 14.03.1994, within two and a half months of being invalided out from service.

6. The learned counsel for the applicant vehemently argued, that under the circumstances, Rule 11 of the Entitlement Rules for Casualty Pensionary Awards, 1982 would apply which is reproduced below for ready reference:

"POST DISCHARGE CLAIMS

11. In cases where an individual in receipt of a disability pension dies at home and it cannot form a strictly medical point of view, be definitely established that the death was due to the disablement in respect of which the disability pension was granted:

(a) the benefit of doubt in determining the attributability should go to the family of the deceased, if death occurs within 10 years from the date of his invalidment from service unless there are other factors adversely affecting the claim; and

(b) if death takes place more than 10 years after the date of man's invalidment from service, the benefit of doubt will go to the State."

7. The learned counsel for the applicant also argued that the reason given by the Medical Board for the disease to be neither attributable to nor aggravated as 'Constitutional', is no reason at all. To support his case, he placed reliance upon the judgment of the Hon'ble Supreme Court in **Civil Appeal 1695 of 2016 (arising out of SLP (C) No. 22765 of 2011) 'Satwinder Singh Vs. Union of India and others'** decided on **11.02.2016**, wherein it has been observed as under:

"Be that as it may the Medical Board has simply opined that the disease is constitutional. There is no explanation or justification leave alone any cogent analysis of the cause or the basis on which the said opinion is recorded. Simply declaring that the disease is constitutional would not in the facts and circumstances of the case suffice.

In the result, we allow this appeal, set aside the order passed by the Tribunal and allow TA No. 986 of 2010 with the direction that the appellants shall be entitled to claim disability pension w.e.f. the date of his discharge from service with the benefit of rounding off as admissible under the prevalent rules and regulations. No costs."

8. On the other hand, the learned counsel for the respondents contended that since the Invaliding Medical Board had assessed his disability as neither attributable to nor aggravated by military service and in the case of **Civil Appeal No. 5678/2009 arising out of SLP (C) No. 23727/2008 titled 'Union of India v. Damodaran AV(dead) through LRs & others'** decided on 20.08.2009, the Hon'ble Supreme Court observed that the Medical Board is an expert body and its opinion is entitled to be given due weightage, value and credence and, therefore, cannot be ignored.

9. The present case is covered by the judgment of the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India & others (2013) 7 SCC 316** wherein the apex Court has decided similar controversy and has come to the conclusion that if the Medical Board has not assigned any reason as to why the disease is neither attributable to nor aggravated by military service the opinion of the Medical Board can be ignored. We find similar position in the present case as the Medical Board has not assigned any reason as to why the disease is neither attributable to nor aggravated by military service. In the afore-cited case, as per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982', the petitioner is entitled for presumption and benefit of presumption in his favour. The relevant paragraphs 32 and 33 from the judgment in **Dharamvir Singh's** case (supra) are reproduced here under :

32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982' , the petitioner is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Genrealised seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

33. As per Rule 423 (a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. "Classification of diseases' have been prescribed at Chapter IV of Annexure I ; under paragraph 4 Post traumatic epilepsy and other mental change resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service condition."

10. In view of the above, we are of the opinion that, the Medical Board is duty bound to give reasons as to why the disease is not attributable to or aggravated by military service. Just stating that it is 'constitutional disease' or not connected with service, is not sufficient reason enough. We have also gone through the judgment of this Tribunal in **OA No. 949 of 2011, 'Nirmal Devi vs. UOI & Ors** decided on **13.04.2011** relied upon by the learned counsel, where in a similar case, the late husband of Nirmala Devi had expired within nine days of his discharge. The Tribunal observed that "***Guide to Medical Officers (Military Pensions) 2002**, on the basis of medical research, has clearly documented that contrary to what was believed in the past, all cancers are affected by military service and service related diet, exercise and stress and strain have direct linkage with cancer*".

11. The contention of the respondents by relying upon the case of **Damodaran AV** (supra) does not hold any water, as this judgment was considered by the Hon'ble Supreme Court in the case of Dharamvir Singh (supra).

12. In the instant case, the Invaliding Medical Board has not recorded any explanation, justification or cogent analysis of the cause on the basis on which the said opinion was arrived at. In view of this, we quash the relevant portion of the Invaliding Medical Board and hold that the late Hav Badan Singh, husband of the applicant, would be entitled to disability element of disability pension @ 30% from the date of his invalidment/retirement i.e. 27.12.1993 till his death.

13. Now we set out to examine the claim of the applicant to Special Family Pension. In this case, the late husband of the applicant suffered from cancer and expired within three month of his invalidment. Irrespective of the fact, whether his death was due to the disease in respect of which the disability pension has now been granted and the fact that it is within 10 years from the date of his invalidment, the

benefit of establishing attributability should go to the family of the deceased. This is the position laid out in Regulation 11 of the Entitlement Rules and the case of the applicant is covered by it.

14. The circumstances when Special Family Pension can be paid, is laid down in Regulation 213 of the Pension Regulations for the Army. Same is reproduced below:

"213. A special family pension may be granted to the family of an individual if his death was due to or hastened by

(a) A wound, injury or disease which was attributable to military service OR

(b) The aggravation by military service of a wound, injury or disease which existed before or arose during military service.

15. We, thus, conclude that the death of husband of the late applicant was attributable to /aggravated by military service and he is entitled to disability pension and on his demise, his widow entitled to Special Family Pension.

16. The respondents are directed to calculate and pay the arrears within the period of 3 months to the applicant, failing which, it shall carry interest at the rate of 8% per annum from the date it fell due till the date of payment.

17. The petition is allowed accordingly. No order as to costs.

(DS Sidhu)
Member (A)

(Virender Singh)
Chairperson

12.05.2017
raghav