

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT
CHANDIMANDIR**

**T.A. No. 176 of 2009
(arising out of CWP No.6688 of 2003)**

Smt. Har Kaur Petitioner

Vs.

UOI & Ors Respondents

**ORDER
30-07-2010**

**Coram: Justice Ghanshyam Prasad, Judicial Member.
Lt Gen H.S. Panag (Retd) Administrative Member.**

For the applicant (s) : -Mr. R.S. Sangwan, Advocate.

For the respondents. : -Mr. S.K. Sharma, CGC.

JUSTICE GHANSHYAM PRASAD:

This application/writ petition has been filed by the petitioner for quashing order dated 10-04-2003 (Annexure P-4), with a prayer for directing the respondents to grant element of service pension to the husband of the petitioner till his death i.e. 6-12-2002 and afterwards family pension be paid to her being widow of the deceased.

The husband of the petitioner was enrolled in the Army on 23-05-1975. At the time of enrollment he was hale and hearty. However, he was discharged from service on 10-12-1989 on this own request on compassionate grounds. He was examined by the Medical Board and his disability was assessed as 30% and he was found to suffer from

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“DEPRESSIVE NEUROSIS 300 (d)”. He was discharged from the military service after rendering 14 years 6 months and 7 days service.

It is averred that in view of Paragraph 125 of Pension Regulations for the Army, the husband of the petitioner ought to have been granted service pension after condoning the deficiency of service. Since the husband of the petitioner was entitled to get the service pension, the petitioner is also entitled to get family pension after his death i.e. 6-12-2002.

Reply has also been filed on behalf of the respondents. It has been stated therein that while the husband of the petitioner was in service, he made a request for his pre-mature discharge on extreme compassionate grounds vide his application dated 19-08-1989. Though he was advised to complete pensionable service, but he refused to stay and asked for discharge without any pensionary benefits. Copy of the request has been annexed as Annexure R-1. The husband of the petitioner was also brought before the Release Medical Board to assess his disability. He was found to suffer from **“DEPRESSIVE NEUROSIS 300 (d)”**, but in view of prevalent circular dated 10/19 January 1970 he was not entitled to get disability pension as he was discharged from service on his own request. Copy of the aforesaid circular and rejection order have been attached as Annexures R-II and R-III.

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It is further averred that the husband of the petitioner was not entitled to get condonation of deficiency of service in order to complete 15 years of pensionable service. According to sub-para (1) of Paragraph 125 of Pension Regulations for the Army, since the husband of the petitioner was discharged at his own request, he was not entitled to get condonation of deficiency in service.

It is also averred that in the year 1993 a civil suit was filed bearing No. 101 of 1993 by the husband of the petitioner for the same relief in the Court of Civil Judge (Junior Division), Charkhi Dadri, District Bhiwani, which was dismissed on 16-09-1999.

Heard the learned counsel for both the parties, perused the pleadings as well as the documents and relevant paragraphs of Pension Regulations for the Army.

It appears from record that the husband of the petitioner was discharged on compassionate grounds in the year 1989. He died in the year 2002. His prayer for grant of disability pension was rejected vide order dated 29-10-1993. Against that, neither he preferred any appeal nor approached the Court. Of course, he was satisfied with the order. Apart from it, the only concerned person, who suffered disability can claim disability pension, and no other person can claim disability pension.

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In this case, the widow of the individual has filed the writ petition, which is not maintainable as no claim for disability pension was made by her husband or pending in his life time.

So far as the condonation of deficiency of service is concerned, paragraph 125 (a) of Pension Regulations for the Army, 1961, is very clear. It says that if an individual, who is discharged at his own request, is not entitled to get condonation. Therefore, the question of condonation of deficiency of service for the purpose of grant of pension does not arise. Apart from it, the husband of the petitioner also did not approach the appropriate authority for condonation of deficiency of service in his life time. At this stage it would not be appropriate and permissible to the widow to raise this matter.

Since the husband of the petitioner was not in receipt of any kind of pension, apparently, the petitioner, being widow, is not entitled to get family pension. It further appears that earlier a suit was filed by the husband of the petitioner for the same relief, but the same was dismissed though not on merit.

Thus, having regard to the facts and circumstances of the case, we find no merit in this application and accordingly the same is hereby dismissed. There shall be no order as to costs.

(Justice Ghanshyam Prasad)

(Lt Gen H.S. Panag (Retd))

**July 30, 2010
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