

ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR

TA No 182 of 2010
(Arising out of CS No 327 of 2006)

Indravati	...	Petitioner
v.		
Union of India	...	Respondents

ORDER
03.09.2010

Coram : Justice N. P. Gupta, Judicial Member

Lt Gen N. S. Brar (Retd), Administrative Member

For the Petitioner	:	Mr. N.S.Vijayrnia, Advocate
For the Respondents	:	Mr. R.N.Sharma, CGC

Lt. Gen. N. S. Brar (Retd.)

This civil suit pending in the court of Civil Judge (Junior Division), Charkhi Dadri, has been transferred to the Tribunal and is taken up under Section 14 of the Armed Forces Tribunal Act 2007. Written statement had been filed on behalf of the respondents and evidence by the plaintiff had been closed after her own statement at which stage this suit was transferred to this Tribunal.

The plaintiff, Smt Indravati, is the widow of No 798837 Late Sepoy Harphool who died on 23.08.2005. Sepoy Harphool had during his lifetime served legal notice for claiming disability pension which was declined (Exhibit P3 and P4). On the death of her husband the

plaintiff again served legal notice which again was declined (Exhibit P6 and P7) and hence this suit filed on 19.12.2008.

The case of the plaintiff is that her husband was enrolled in the Army (ASC) on 27.06.1942 and was discharged on medical grounds on 15.02.1946 due to 'Deafness' caused while on active service. She therefore claims disability / service element on behalf of her husband from the date of discharge ie 15.02.1946 till his death on 23.08.2005 and family pension for herself thereafter with arrears and interest.

It is averred by the plaintiff that the disability claim of her husband was forwarded to J.C.M.A.P., P.O. – C.M.A (Pension Branch), Lahore Cantt by MT Centre & Records, PO Dilkusha, Lucknow for their adjudication and was subsequently forwarded to Govt of India, Ministry of Defence. However, it was rejected on the grounds that he was not entitled to disability pension in terms of Para 346 of Pension Regulations for the Army in India 1940, Part II. The said regulation was called for by us for our perusal and photocopy of the same produced by the learned counsel for the respondents. Para 346 reads as under –

346. Primary Condition for Grant of Disability and Family Pension.

(i) Disability Pension – *A disability pension may be granted to an individual of the categories referred in rule 344 if he is invalided from service on account of wounds, injury or illness, the cause of which is attributable to military service.*

Rule 344 reads as under –

344. Extent of Application.

The rules in this section shall be applicable to the following categories of personnel, only to the extent specified in each case –

(i) to (iii) – xxx

(iv) Indian other ranks including those of the Indian Territorial Force.

(v) to (Viii) xxx

provided that they were enrolled or permanently appointed to Government service before 18th October 1932.

Learned counsel for the plaintiff contested the applicability of the Pension Regulations for the Army in India 1940 as these had been superseded by Pension Regulations for the Army 1961 and under these Regulations invaliding on medical grounds entitles an individual to disability / service element pension. He also stressed upon the accepted position that pension is a recurring right and cannot be denied at any point of time. He drew our attention to the discharge certificate, copy of which is annexed at P1, which states cause of discharge as 'on medical grounds' and 'unfit' for civil employment. Page 2 of the certificate states findings of medical board as 'attributable'. Then again ASC Records, Bangalore letter dated 27.02.1989 at Exhibit P2 states '*Though your disability has been viewed as aggravated by military service, but your disability pension*

was rejected by Govt of India, Ministry of defence as the disability due to which you were discharged was assessed at less than 20 %. Hence you are not admissible for disability pension'. He also drew attention to Exhibit P4 being letter from the ASC Records (MT), Bangalore dated 25.04.2001 in reply to his legal notice wherein at Para 2 it is stated that 'Your client was brought before invaliding medical board for the disability 'HYSTERICAL DEAFNESS' on 17 Nov 45 which recommended him to be invalided out of service in medical Cat 'E' being unfit for further retention. The Invaliding Medical Board was approved by the competent medical authority ie ADMS on 05 Dec 45 and your client was finally discharged from service on 15 Feb. 46 with release leave from 22 Dec 45 to 15 Feb. 46 being medically unfit.' It was thereafter asserted that the late husband of the plaintiff was entitled to disability pension and the plaintiff to family pension after his death.

Learned counsel for the respondents highlighted the facts stated in the written statement to the effect that no records were available as these had been destroyed after 25 years as per procedure and as per the entries in the long roll the disability and its attributability / aggravation due to military service cannot be established.

Heard the learned counsels for the parties.

From the evidence on record it is apparent that Sepoy Harphool Singh was invalided out of service on medical grounds for disability, which though less than 20 %, was attributable to and aggravated by military service. His discharge and entitlement is also to be regulated by Pension Regulations for the Army 1961. He was clearly entitled to

service element of disability pension in accordance with Regulation 197 and 280 (I) (b) (ii) of Pension Regulations for the Army 1961. On his demise his widow is entitled to the corresponding family pension. The suit was filed on 19.12.2008 and Sepoy Harphool Singh died on 23.08.2005. As per the existing practice, the arrears being limited to three years prior to the filing of the suit, does not entitle the widow to any arrears of the pensionary entitlement of her husband. However, she is entitled to arrears of family pension from three years prior to filing of this suit ie from 19.12.2005.

In the facts and circumstances of the case the petition is partly allowed as above. The authorities are directed to assess and pay the entitled family pension to the plaintiff from 19.12.2005 along with arrears thereof within six months of the receipt of copy of this order. Failure to so pay the plaintiff shall entail interest @ 12 % after expiry of this period till the date of actual payment.

This suit is accordingly disposed of with the above directions.

Parties to bear their own costs.

[Justice N. P. Gupta]

[Lt Gen N. S. Brar (Retd)]

September 03, 2010

RS