

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**

O.A.No. 104 of 2014

Thursday, the 13<sup>th</sup> day of August, 2015

The Honourable Justice V.Periya Karuppiah  
(Member-Judicial)  
and  
The Honourable Lt Gen K Surendra Nath  
(Member-Administrative)

1. Jaya Prada, w/o Late Sepoy Ch.Samson  
No.14360454M, aged 46 years  
House No.5-9-194, Balaji Nagar, JJ Nagar-Post  
Ranga Reddy (AP), Pin: 510087
2. Ch. Sukerthi Samson  
D/o aged 17 years, Minor, Late Sepoy Ch.Samson  
No.14360454M (residing with the first applicant being  
The natural mother and legal guardian and also  
represented by her)  
House No.5-9-194, Balaji Nagar, JJ Nagar-Post  
Ranga Reddy (AP), Pin: 510087

...Applicants

By Legal Practitioner:  
Mrs.Tonifia Miranda

vs

1. Union of India  
Rep.by its Secretary, Ministry of Defence  
New Delhi – 11
2. The Chief of Army Staff  
Army HQ, DHQ PO, New Delhi – 110 011
3. The Chief Record Officer  
DSC Records, Mill Road, Cannanore  
Kerala 670 013
4. The Principal Controller of Defence Accounts  
Office of PCDA (Pensions), Allahabad, Uttar Pradesh  
Pin – 211 014
5. Topkhana Abhilekh  
Artillery Records, Pin: 908802  
C/o 56 APO

...Respondents

By Mr.V.Kadhirvelu, CGSC

**ORDER**

[Order of the Tribunal made by  
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicants have filed this OA requesting that the impugned order dated 14.01.2014 issued by the 3<sup>rd</sup> respondent and letter dated 05.02.2014 issued by the 4<sup>th</sup> respondent be set aside and to grant invalid pension to the 1<sup>st</sup> applicant's husband for the period 31.01.2012 to 29.01.2013 and thereafter grant family pension.

2. Briefly, the 1<sup>st</sup> applicant submits that her husband was initially enrolled in the Army on 11.12.1981 and after his discharge from service on 31.12.1998, was re-enrolled in the DSC with effect from 09.01.2002. She would state that her husband, while serving in DSC had different postings including J&K. Thereafter, the 1<sup>st</sup> applicant's husband was discharged from service on 31.01.2012 under Army Rule 13 (3) III (i) on completion of his terms of engagement. He was not granted extension of service due to being in low medical category P2(P) for the disability 'Alcohol Dependence Syndrome'. The 1<sup>st</sup> applicant's husband passed away on 29.01.2013. She would state that she had applied to the 3<sup>rd</sup> respondent that since her husband was not given extension on medical grounds, he ought to have been considered as being invalided out of service and he be granted invalid pension. However, the respondents have, in their letter dated 14.01.2014 have rejected the claim for invalid pension stating that the 1<sup>st</sup> applicant's husband is not entitled to invalid pension as he had completed his contractual engagement of service and was discharged from service under

Army Rule 13 (3) III (i) and hence not entitled to invalid pension. Aggrieved, the 1<sup>st</sup> applicant has filed this OA for grant of invalid pension and or any other suitable relief as deemed appropriate by the Tribunal.

3. The respondents, in their reply statement, would state that the 1<sup>st</sup> applicant's husband was initially enrolled in the Army on 11.12.1981 and was discharged from service on 31.12/1988 after 17 years and 21 days of qualifying service under provisions of Army Rule 13 (3) III (i) for which he was granted service pension. Thereafter, he voluntarily re-enrolled in DSC on 09.01.2002. His former service was not counted towards DSC service as per the option exercised by the 1<sup>st</sup> applicant's husband and he continued to draw his former service pension separately throughout his DSC service. During the DSC service, he had several red ink and black ink entries, as follows:

- (a) 03 days RI on 28 Nov 2003 under Army Act Section 48
- (b) 05 days Confinement to line on 25 Sep 2007 under Army Act Section 48
- (c) 02 days RI on 20 Nov 2008 under Army Act Section 63
- (d) 20 days RI on 17 Apr 2009 under Army Act Section 36(d)
- (e) 14 days RI on 19 Oct 2011 under Army Act Section 48
- (f) 14 days Pay Fine on 08 Nov 2011 under Army Act Section 48.

4. The respondents would also state that he was placed in low medical category with effect from 15.02.2010 for the diagnosis "Alcohol Dependence Syndrome". Since he was lacking both discipline and medical criteria, he was not granted extension of service beyond the initial contractual engagement of 10 years and in accordance with the provisions of Government of India, Ministry of Defence letter dated 05.12.1981 the initial

period of engagement for Sepoys in the DSC will be of 10 years. Those who are recommended for further retention may, if willing, be given 5 years extension at a time or till they reach the age of superannuation, i.e., 55 years subject to fulfillment of certain eligibility criteria like age, discipline, ACRs, medical condition etc. Since the 1<sup>st</sup> applicant's husband did not meet both the disciplinary as well as medical criteria, he was discharged from service after 10 years and 23 days of qualifying service on 31.01.2012. He was paid his service gratuity and retirement gratuity as entitled to him. The 1<sup>st</sup> applicant's husband expired on 29.01.2013 as informed by his wife. They would further state that since the 1<sup>st</sup> applicant's husband was not invalided out of service and was only discharged from service on completion of his initial fixed and contractual terms of engagement under the provisions of Army Rule 13 (3) (III (i)), he is not entitled to any invalid pension. They would further state that the 1<sup>st</sup> applicant's husband is also not entitled to disability pension as the duly constituted Release Medical Board had found his disability "Alcohol Dependence Syndrome" is neither attributable to nor aggravated by military service. He is also not entitled to any service pension from the DSC separately as he had only served 10 years and 23 days and the minimum pensionable service required is 15 years. However, his wife continues to draw family pension for his service rendered in the Army after the demise of her husband. In view of the foregoing, the respondents would pray that the OA be dismissed lacking in merits.

5. We have heard the arguments of Mrs.Tonifia Miranda, learned counsel for the applicant and Mr.V.Kadhirvelu, learned Central Government Standing Counsel assisted by Maj Suchithra Chellappan, learned JAG Officer (Army)

appearing on behalf of respondents and perused all the documents placed before us.

6. The fact that the 1<sup>st</sup> applicant's husband was enrolled in the Army on 11.12.1981 and was discharged from service after completion of 17 years 21 days on 31.12.1998 with service pension and that he had voluntarily enrolled in the DSC on 09.01.2002 for an initial engagement of 10 years is not disputed by either side. As per the records and the discharge certificate placed before us, we note that on completion of 10 years and 23 days in the DSC, he was discharged on medical grounds. His service was not extended as he did not meet the medical criteria for such extension of service. At the time of discharge from service, the Release Medical Board opined that the 1<sup>st</sup> applicant's husband was suffering from 'Alcohol Dependence Syndrome' and that it is not attributable to or aggravated by military service and the degree of disability was assessed at 40% for life long. The learned counsel for the applicant would state that the 1<sup>st</sup> applicant's husband ought to have been either given extension of service as he was entitled to a maximum service upto 58 years or he should have been invalided out of service and thereafter he is entitled to invalid pension or any other alternate remedy.

7. Per contra, the respondents would state that since the applicant had completed his terms of engagement, i.e., of 10 years of service and that he did not meet the eligibility criteria for further extension of service, he was discharged from service under Army Rule 13 (3) III (i) and invalid pension is granted only if he is invalided out of service before completion of service.

8. The respondents, in support of their plea, would cite the judgment of the Hon'ble Principal Bench of the AFT, New Delhi in OA No.690 of 2010 in

the case of ex-Sep Vidya Sagar vs UoI & Ors wherein it has been held that when a person is not granted extension of service on the grounds of being low medical category, that would not be deemed to be an order of discharge on account of invalided out of service and such persons are not entitled to the benefits of pension under Regulations 286 and 287 of Pension Regulations for the Army 1961.

9. We have examined the order of the Hon'ble Principal Bench. For a better understanding, the relevant portion of the judgment is given below:

“1 to 4.       xx                   xx                   xx                   xx

5.       We are of the opinion that the contention of the learned counsel for the petitioner does not have legs to stand. The petitioner has not produced before us the order of his discharge, rather the same has been produced by the respondents, as per this order, the petitioner was discharged simplicitor on completion of his tenure. Simply because he was not granted extension on account of low medical category, that would not be deemed to be an order of discharge on account of invalided out of service. He has been discharged on account of completion of tenure in DSC after a period of ten years. He had not been granted extension for further time because of low medical category. This fact would not amount to invalided out of service. The clear distinction has to be kept in mind. In the present case, the petitioner has been discharged simplicitor and therefore, he is not entitled to benefit of pension under Regulation 286 and 287 of Pension Regulations for the Army, 1961. Consequently, there is no merit in this petition. The same is accordingly dismissed.....”

10. The order of the Hon'ble Principal Bench (Supra) applies squarely in the instant case as the 1<sup>st</sup> applicant's husband was discharged from service on completion of his tenure of service of 10 years in the DSC and he was not granted any extension on account of being held in low medical category. This fact itself would not amount to invalidment out of service. Therefore, we are

inclined to agree with the respondents that the 1<sup>st</sup> applicant's husband was not invalidated out of service but was discharged from service on completion of 10 years of service. Even though he was in low medical category, he was not entitled to benefit of invalid pension under Regulations 286 and 287 of Pension Regulations for the Army 1961.

11. In fine, there is no merit in the Application and consequently the O.A. is dismissed. No costs.

Sd/-

Lt Gen K Surendra Nath  
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah  
Member (Judicial)

13.08.2015

*[True copy]*

Member (J) – Index : Yes/No

Member (A) – Index : Yes/No

*ap*

Internet : Yes/No

Internet : Yes/No

To

1. The Secretary, Ministry of Defence  
New Delhi – 11
2. The Chief of Army Staff  
Army HQ, DHQ PO, New Delhi – 110 011
3. The Chief Record Officer  
DSC Records, Mill Road, Cannanore  
Kerala 670 013
4. The Principal Controller of Defence Accounts  
Office of PCDA (Pensions), Allahabad, Uttar Pradesh  
Pin – 211 014
5. Topkhana Abhilekh  
Artillery Records, Pin: 908802  
C/o 56 APO
6. Mrs.Tonifia Miranda  
Counsel for the applicants
7. Mr.V.Kadhirvelu, CGSC  
Counsel for the respondents
8. Officer in-Charge  
Legal Cell  
ATNK & K Area,  
Chennai-600009.
9. Library, AFT, RB, Chennai.



Hon'ble Justice V.Periya Karuppiah  
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath  
(Member-Administrative)

O.A.No.104 of 2014

Dated : 13.08.2015