

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI****ORIGINAL APPLICATION No. 97 of 2019**Wednesday, this the 19th day of October, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Maya Siddhartha Trupkane, Widow of Late Siddharatha Wasudev Trupkane, Resding at Ganesh Nagar, Behind of SBI, Tehsil-Pulgaon, District-Wardha-442302.

..... Applicant

Ld. Counsel for the : None for the applicant.
Applicant

Versus

1. Union of India, Through its Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of Army Staff, Army Headquarters, DHQ PO, New Delhi-110011.
3. PCDA (Pension), Draupadi Ghat, Allahabad (U.P) -211014.
4. OIC, The Armoured Corps Records, Ahmednagar-414001.

.....Respondents

Ld. Counsel for the
Respondents.: **Shri BK Ashok**, Advocate
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (i) *This Hon'ble Tribunal may kindly be pleased to declare that the Impugned Communications dated 19.04.2018 and 27.07.2018 issued by the Respondent No.4 to the Applicant and earlier communications made by the Respondents with Late Ex. Rect. Siddhartha Trupkane are bad in law as per Army Pension Regulation, 1961 and Army Pension Rules and contrary to the rules laid down by the Hon'ble Apex Court and Ld. Armed Forces Tribunals.*
- (ii) *This Hon'ble Tribunal may kindly be pleased to declare that the applicant is entitled for Ordinary Family Pension as per Army Pension Regulation, 1961 as the late husband of Applicant had been discharged due to the low medical category while he was serving military duties.*
- (iii) *This Hon'ble Tribunal may kindly be pleased to direct the Respondent No.1 to 4 to release the Ordinary Family Pension along with the arrears to the Applicant as per pension Regulations for Army, 1961 with immediate effect.*
- (iv) *This Hon'ble Tribunal may kindly be pleased to direct the Respondent No.1 to 4 to release the Ordinary Family Pension alongwith the arrears against the Disability Claim which was entitled to the Late Ex. Rect Siddhartha Trupkane as per Pension Regulations for Army, 1961 from its occurrence till the filing of present Application.*
- (v) *Any other further relief may kindly be granted in the given facts and circumstances of the present case in favour of the Applicant.*

2. Brief facts of the case are that husband of the applicant was enrolled in the Army on 08.05.1984 and he was invalided out from service w.e.f. 20.09.1985 in medical category 'EEE', under Rule 13 (3) III (iv) of Army Rules, 1954 after rendering only 01 year, 04 months and 13 days service on account of disability 'Neurosis (Historical Reaction)', as a non pensioner. After invalidment, his disability pension claim was rejected vide

letter dated 09.12.1985 but Invalid Gratuity (Exhibit-7) was granted to him (Exhibit-5). Thereafter, first appeal dated 06.02.1986 preferred by the deceased soldier against rejection of disability pension claim was rejected vide order dated 30.07.1986 (Exhibit-8). Thereafter, husband of the applicant remained silent till his death up to 15.10.2017. The applicant sent legal notice dated 15.06.2018 for grant of Ordinary Family Pension which was replied by the respondents vide letter dated 19.04.2018 mentioning therein that applicant is not entitled to Ordinary Family Pension. Aggrieved by the communication dated 19.04.2018 applicant has filed this O.A. for grant of family pension.

3. The applicant pleaded that at the time of enrolment, her husband was found mentally and physically fit for service in the Army and there was no note in the service documents that he was suffering from any diseases at the time of enrolment in the Army. The disease/disability of applicant's husband was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the husband of the

applicant was entitled to receive disability pension and on his demise she is entitled to Ordinary Family Pension.

4. The applicant has further submitted that Rule 181 of the Pension Regulations for the Army, 1961 (Part-I) clearly envisages that recruits, young soldiers and boys shall be eligible for a disability pension at the rate under the conditions applicable to a Sepoy of the lowest group. It was further submitted that the Hon'ble Apex Court has clearly enunciated that the disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability prior to completion of terms of engagement. It was pleaded that in view of beneficial provisions in the cases of disabilities, applicant deserves to be granted Ordinary Family Pension.

5. On the other hand, learned counsel for the respondents has filed counter affidavit stating that the applicant has taken 31 years, after rejection of first appeal, to submit a representation dated 12.02.2018 for grant of family pension, which being a time barred should be rejected under Section 22 of the Armed Forces Tribunal Act, 2007. In regard to this learned counsel for the respondents has cited order dated 16.01.2017 passed by

the Hon'ble Apex Court in the case of ***Union of India & Ors vs Rajwanti***. The learned counsel has further relief upon order dated 09.08.2017 passed by AFT (RB) Chennai in O.A. No 90 of 2016, ***Ex Capt Srinivasan Narayanan***, order dated 21.11.2017 passed by Hon'ble AFT (PB), New Delhi in O.A. No 1915 of 2015, ***Col Opendra Kumar Verms vs UOI & Ors***, the Hon'ble Apex Court order in ***N Balakrishnan vs M Krishnamurthy***, (1998) 7 SCC 123, order dated 21.02.2017 passed by AFT (RB), Lucknow in O.A. No 108 of 2010, ***Smt Barde Devi vs UOI & Ors***, etc.

6. Learned counsel for the respondents further submitted that applicant's husband was enrolled in the Army on 08.05.1984 and he was invalided out from service w.e.f. 20.09.1985 (AN) under Rule 13 (3) III (iii) of Army Rules, 1954 by the Invaliding Medical Board (IMB) after rendering 01 year, 04 months and 13 days service in the Army. He further submitted that under the provisions of Army Order 146/1977 his IMB was held at Military Hospital, Kirkee on 24.07.1985 and recommended him to be invalided out of service in Low Medical Category 'EEE' (Psychological) as he was unfit for further service. The IMB considered his medical disability 'NEUROSIS

(HYSTERICAL REACTION) (300B)' as neither attributable to nor aggravated by military service (NANA) and assessed at 20% for two years. It was further submitted that disability pension claim and first appeal were rightly rejected on the ground that his disability was neither attributable to nor aggravated by military service. The learned counsel further submitted that since applicant's husband was not in receipt of service/disability pension, applicant's family pension claim was also rightly rejected by the pension sanctioning authority.

7. Further submission of learned counsel for the respondents is that as per records held in Armoured Corps Records, the next of kin (NOK) of the late soldier is Wasudeo (father) and the deceased soldier had not intimated to Army authorities about his marriage with Smt Maya Siddharth Trupkane till his death. It was submitted that the applicant being not NOK of the deceased soldier cannot claim family pension, even if the deceased soldier was in receipt of any type of pension. He pleaded for dismissal of O.A.

8. Heard Shri BK Ashok, learned counsel for the respondents and perused the material placed on record.

9. Respondents have contended that in view of O.A. being filed belatedly, this should be dismissed owing to inordinate delay on the basis of referred citations. We find that the case being related to grant of pension, was admitted for hearing and the delay was condoned.

10. The short question involved in this case is whether family pension can be granted to NOK of the deceased soldier who was not in receipt of service/disability pension?

11. Undisputedly applicant's husband was enrolled in the Army on 08.05.1984. In January, 1985 he was detected to be suffering from 'NEUROSIS (HYSTERIC REACTION) (300B)'. The IMB held on 24.07.1985 had assessed his medical disability @ 20% for two years neither attributable to nor aggravated by military service. It was also mentioned in the IMB that his disability was constitutional in nature. As per record applicant's husband died on 15.10.2017. Disability pension claim and first appeal were rejected vide orders dated 09.12.1985 and 30.07.1986 respectively. We have noted that disability pension claim and first appeal were rejected by the respondents on the ground of disability being NANA. We observe that the deceased soldier was suffering from mental disorder which

was detected within one year of his enrolment when he was even not attested. The records reveal that he was optimally treated but being suffering from Neurosis he was invalided out of service in low medical category 'EEE'.

12. As per para 132 of Pension Regulations for the Army, 1961 (Part-I), the minimum period of qualifying service (without weightage) for earning service pension shall be 15 years. Since the applicant's husband had rendered only 01 year, 04 months and 13 days qualifying service in the Army, he was neither entitled nor granted service pension due to the policy constraints. With regard to grant of disability pension to the deceased soldier, we find that the respondents have denied disability pension solely on the ground that IMB has categorically held the disability to be constitutional in nature and NANA.

13. Averments made by learned counsel for the respondents with regard to NOK of the deceased soldier are sustainable on the ground that as per Armoured Corps Records, NOK of the deceased soldier was notified in the name of father Wasudeo and the deceased soldier had not informed about his marriage with Smt Maya Siddhartha Trupkane during his life time.

14. For grant of disability pension we find that Para 173 of Pension Regulation for the Army, 1961 (Part-I) is relevant, according to which the primary condition for grant of disability pension is 'unless otherwise specially provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over'. In the instant case, the IMB has considered his disability viz 'NEUROSIS (HYSTERICAL REACTION) (300B)' as NANA, therefore disability pension claim was disallowed.

15. The applicant had preferred petition dated 12.02.2018 for grant of disability pension to her deceased husband but it was denied vide letter dated 19.04.2018. The said letter for convenience sake is reproduced as under:-

Extract of letter dated 19.04.2018

- “1. Refer to your petition dated 12 Feb 2018.
2. It is intimated that disability pension claim in respect of No 1081282 Late Rect Siddharth Wasudeo has already been rejected vide PCDA (P), Allahabad letter No G-3/85/8393/VII dated 09 Dec 1985 which was forwarded to you vide this office letter No 1081282/DP/9/Pen dated 24 Dec 1985 (copy attached).
3. For information please.”

16. For the reasons stated above, we are of the opinion that since applicant's husband was not in receipt of any type pension, the applicant, who is claiming to be widow

of the deceased soldier (whose name has not been found entered in record of the deceased soldier), is not entitled to receive family pension.

17. In view of the above, the O.A. being devoid of merit is **dismissed**.

18. No order as to costs.

19. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 19th October, 2022

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