

(2014) 11 J&K CK 0034
In the Jammu And Kashmir High Court
Case No : LPASW No. D-3 Of 2007

Murti Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2015) 1 JKJ 251

Hon'ble Judges : M.M. Kumar, CJ; Tashi Rabstan, J

Bench : Division Bench

Advocate : Abhinav Sharma, Advocate, for the Appellant; P.S. Chandel, C.G.S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Tashi Rabstan, J.â?"Through the medium of this appeal, writ petitioner-appellant has assailed the judgment of the learned Single Judge dated

12.10.2006 passed in SWP No. 126/2003, titled Murti Devi v. Union of India and others (for short, impugned judgment), whereby and

whereunder husband of the writ petitioner-appellant was held entitled to the disability pension with effect from 1956 to 1977 while the claim of the

writ petitioner-appellant for entitlement of service pension was rejected. The facts, in brief, on the basis of which instant appeal has been filed are

as under:-

2. The husband of the writ petitioner-appellant, namely, Sepoy Narpat Ram, resident of village Jassor, Tehsil R.S. Pura, District Jammu was

enrolled in the Indian Army on 27.01.1943 and was thereafter transferred to Dogra Regiment with effect from 01.11.1947. It is claimed that

during his tenure in the army, he sustained injury ""Dislocation Elbow Left 596""

of severe nature on 27.01.1949 while practicing high jump in the Unit playground. On his examination by the Medical Board, his disability was assessed to be at 20% and found attributable to military service.

Owing to the injuries sustained by him, the husband of the petitioner was boarded out of service w.e.f. 26.04.1950 under Indian Army Act and Rules 138 III(iv) and Release Regulations Indian Army, 1946. The said soldier was sanctioned disability pension as admissible under rules initially for two years and Re-survey Medical Board re-examined the husband of the writ petitioner-appellant in April, 1956, who again re-assessed his disability at 20%. The disability pension in favour of the deceased was stopped w.e.f. 02.03.1956 by the Pension Sanctioning Authority, i.e. Chief Controller of Defence Accounts (P) Allahabad and the husband of the petitioner appears to have moved representation claiming continuance of his disability pension taking the plea that Pension Sanctioning Authority could not have gone against the opinion of the Medical Board which had assessed disability at 20%. Nothing seems to have happened in the matter till 1977 when re-survey Medical Board was arranged by respondents at Military Hospital, Jammu and the said Board assessed the disability of husband of the writ petitioner-appellant as reduced to 0% (permanent).

As a consequence of recommendation made by the Board, Pension Sanctioning Authority ultimately rejected the case of the husband of the writ petitioner-appellant on 03.06.1977 and even the appeal filed then by the deceased did not yield any result.

3. It may be pointed out that the husband of the writ petitioner-appellant died on 07.11.1982 and after his death writ petitioner-appellant claimed family pension and she, however, appears to have represented in this regard on 14.07.1992 requesting the authorities to grant family pension in her favour being widow of the army personnel, but no decision was taken by the authorities on the said representation filed by the writ petitioner-appellant. She, therefore, filed writ petition (SWP No. 126/2003) claiming inter alia following two reliefs:-

- (a) Release of disability pension of the deceased-husband; and
- (b) Release of service pension of the deceased-husband.

4. As is apparent from the judgment of learned Single Judge, pleas of the writ petitioner-appellant raised in the writ petition were not found tenable.

The husband of the writ petitioner-appellant was not held entitled to disability pension after 1977 as his disability had been reduced to 0%

(permanent). Learned Single Judge did not find him entitled to service pension on the ground that on the date he was boarded out of service, he

did not have minimum qualifying service to his credit. He had merely served the Indian army for a period of seven years whereas minimum

qualifying service for grant of service pension to the army personnel is 15 years. On this account, learned Single Judge dismissed the writ petition of

the writ petitioner-appellant for grant of service pension as well as disability pension. However, learned Single Judge held the husband of the writ

petitioner-appellant entitled to the disability pension w.e.f. 1956 to 1977.

5. Aggrieved thereof, appellant approached this Court by way of instant appeal and challenged the order of learned Single judge and has claimed

that her claim for disability pension as well as service pension has been erroneously rejected by the learned Single Judge.

6. Heard learned counsel for parties, perused the record as well as the documents annexed with the appeal and judgment impugned.

7. Under Regulation 132 of the Pension Regulation for the Army, 1961, it is provided that the minimum period of qualifying service (without

weightage) actually rendered and required for earning service pension would be 15 years.

8. For facility of reference, Regulation 132 is reproduced here as under:-

Section 132 deals with minimum qualifying service for pension:

132. The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years.

9. Therefore, claim of the writ petitioner-appellant rejecting family pension in favour of the appellant on the ground of not qualifying minimum

qualifying service, has rightly been rejected by the learned Single Judge. Accordingly, the same is maintained.

10. So far as second prayer made by the writ petitioner-appellant for grant of service element has force on the ground that in terms of Regulation

186 of the Pension Regulation for the Army 1961, writ petitioner-appellant is entitled to get service element.

11. For facility of reference, Regulation 186 is reproduced as under:-

186.(1) An individual who is invalidated out of service with a disability

attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw

disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension.

12. Pension Regulation 186 (1) states that Army personnel, who is invalidated out of service with a disability assessed at below 20 per cent shall

be entitled to service element only. The present controversy is covered under Pension Regulation 186(2) which clearly states that Army personnel,

who was initially granted disability pension, but whose disability was re-assessed at below 20 per cent subsequently, shall cease to draw disability

element of pension from the date it falls below 20 per cent. However, he shall continue to draw the service element of disability pension.

13. It is claimed that disability pension as well as service pension has been erroneously rejected by the learned Single Judge. However, during the

course of arguments, learned counsel for the writ petitioner-appellant could not persuade us to accept the plea of appellant that despite the fact that

on re-survey Medical Board held on 03.01.1977 at Military Hospital, Jammu wherein disability of the husband of the writ petitioner-appellant was

assessed as reduced to 0% (permanent), husband of the writ petitioner-appellant was still entitled to disability pension when rules unequivocally

provide that army personnel boarded out of service on account of disability means is shown to have suffered disability attributable to military

service and assessed at the minimum of 20%. Undoubtedly, injury was suffered by the husband of the writ petitioner-appellant during the course of

his service and was attributable to military service. He was, thus, rightly found entitled to disability pension till 1977. However, his disability was

reduced to 0% (permanent) in the year 1977 when re-survey Medical Board examined him at Military Hospital, Jammu on 03.01.1977.

14. However, we find force in the plea of learned counsel for writ petitioner-appellant that the husband of writ petitioner-appellant was discharged

from service due to disability incurred by him during the course of his service, thus, was incapacitated to continue in army and complete even the

minimum qualifying period of service of 15 years. Had her husband not suffered any injury during service and not discharged from service, he

would in the normal course, have ordinarily completed at least qualifying service of 15 years. Thus, as has been rightly claimed by learned counsel

for writ petitioner-appellant that husband of writ petitioner-appellant cannot be made to suffer for happening of an event, which was not on his

own, but was part of service hazards. The deceased, who was incapacitated to complete his qualifying service by the injury, which he sustained

while in service of Army, cannot be, therefore, deprived of service element. Petitioner's husband expired on 07.11.1982. Therefore, Regulation

186 of the Pension Regulation for the Army, 1961 would be attracted in the present case.

15. That being so, appeal of the writ petitioner-appellant partly succeeds. The writ petitioner-appellant is, therefore, held entitled to the benefit and

claim of service element of pension of deceased-husband upto 07.11.1982, i.e., the date of death of the personnel. The respondents are,

therefore, directed to assess and calculate the arrears of service element which have accrued to the husband of the appellant till 07.11.1982 under

rules and release the same in favour of the writ petitioner-appellant (widow of deceased personnel) within a period of three months from the date

certified copy of this order is made available to them by the writ petitioner-appellant. In case the arrears are not disbursed within the said period,

the entire arrears will carry interest at the rate of nine per cent per annum from the date of expiry of three months till the date of payment.

16. This appeal, therefore, is partly allowed in the above terms and, accordingly, the judgment of learned Single Judge is also partly modified. No

order as to costs. Disposed of as above along with connected CMA(s).