

(2025) 11 J&K CK 1805
In the Jammu And Kashmir High Court
Case No : WP(C) No. 785 Of 2024

Surjit Kour

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-11-2025

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Army Rules, 1954 — Rule 13(3)

Citation : (2025) 11 J&K CK 1805

Hon'ble Judges : Arun Palli, CJ;Rajnesh Oswal, J

Bench : Division Bench

Advocate : Chakshu Sharma, Sanjog Khatri, Vishal Sharma, Eishan Dadichi

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. The husband of the petitioner after serving 07 years 06 months and 16 days with the Indian Army was discharged from service on 18.12.1978 on account of being placed in Low Medical Category "CEE" (Permanent) for the principal disability of "Aortic Stenosis Schizophrenia (414)" under Rule 13(3) Item III (v) of the Army Rules, 1954. The husband of the petitioner approached the respondents for grant of disability pension; however, his case was rejected vide order dated 08.04.1980 and November 1982 on the ground that the cause of invalidment was neither attributable to nor aggravated by the military service. Thereafter, the husband of the petitioner died on 16.03.2000. After his demise, the petitioner submitted a representation for grant of family pension, however, the same was rejected vide order dated 29.05.2017. Thereafter, the petitioner approached the respondent No. 2-Armed Forces Tribunal, Srinagar Bench, at Jammu (for short ?the Tribunal?) through the medium of Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007 and sought quashing of order dated 08.04.1980 and November, 1982, whereby the claim of the petitioner for grant of family pension from 17.03.2000 was declined by the

respondents.

2. The said application came to be dismissed by the learned Tribunal vide order dated 09.05.2023 after taking note of the stand of the respondent Nos. 1 to 3 & 5 that the appeals dated July 1979 and June 1982 were received from husband of the petitioner but were rejected vide letters dated 08.04.1980 and November 1982 and thereafter, the husband of the petitioner had filed a writ petition bearing OWP No. 83/1991, but was dismissed for non-prosecution on 01.06.1999.

3. Aggrieved of the order of dismissal of her petition, the petitioner has filed the instant writ petition for quashing the order dated 09.05.2023 and has sought the same reliefs as sought by her before the respondent No. 2-Tribunal.

4. Learned counsel for the petitioner has submitted that the husband of the petitioner may not be entitled to the disability pension, however, he was entitled to invalid pension and in order to buttress his submission, he has relied upon the order/letter dated 16.07.2020 issued by the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare D (Pension/Policy). He has further submitted that in terms of the order/letter dated 16.07.2020, invalid pension is admissible to Armed Forces Personnel with less than 10 years of qualifying service, in cases where they are invalided out of service on account of any bodily or mental infirmity, which is neither Attributable to nor aggravated by military service and which permanently incapacitates them from military service as well as civil re-employment. He has further submitted that the Armed Forces Tribunal, Principal Bench, New Delhi vide its order dated 07.07.2023 has already held that the cut-off date stipulated in para 4 of the order/letter (Supra) is unconstitutional. He has also laid much stress upon the order dated 27.10.2017 passed by the Hon'ble Supreme Court of India in case titled 'Ex. Rect. Mithilesh Kumar vs. Union of India and others' in civil appeal Nos. 16438-16440/2017 to submit that even in cases where the ex-employee is not entitled to disability pension, he is held entitled to invalid pension.

5. Per contra, Mr. Vishal Sharma, learned DSGI has submitted that the case projected by the petitioner in this petition had never been her case before the learned Tribunal, as the petitioner had sought the disability pension and family pension only and the petitioner had never projected her claim in respect of invalid pension.

6. Heard and perused the record.

7. The husband of the petitioner was admittedly discharged from service in Low Medical Category "CEE" (Permanent) under Rule 13(3) Item III (v) of the Army Rules, 1954 after rendering 07 years 06 months and 16 days of service with the Indian Army on account of principal disability of "Aortic Stenosis Schizophrenia (414)".

8. A perusal of the writ petition preferred by the petitioner reveals that the petitioner has now solely based her claim on the order/letter dated 16.07.2020

issued by the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare D (Pension/Policy). This letter was not presented to the Tribunal, nor did the petitioner ever argue a case for the grant of invalid pension before it. Pursuant to the order dated 16.07.2020, the invalid pension has been made admissible to Armed Forces Personnel with less than 10 years of qualifying service in cases where they are invalided out of service on account of any bodily or mental infirmity which is neither attributable to nor aggravated by military service and which permanently incapacitates them from military service as well as civil re-employment. Even the respondent Nos. 1 and 3 to 5 had no occasion to put forth their response to the claim of the petitioner.

9. A perusal of the order impugned dated 09.05.2023 reveals that the petitioner's claim before the learned Tribunal was restricted solely to the disability and family pension, which was rejected vide order impugned. The petitioner did not, at any time, argue before the Tribunal that her husband was entitled to invalid pension, thereby making her eligible for family pension.

10. In view of the fact that the petitioner has neither projected her claim for invalid pension before the respondents nor before the learned Tribunal, we are not inclined to grant any relief to the petitioner in this petition. However, the petitioner shall be at liberty to submit a detailed representation regarding her claim for invalid pension and the consequent family pension, in light of the order/letter dated 16.07.2020 issued by the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, D (Pension/Policy), to respondent Nos. 1, 3, 4, and 5. If such a representation is submitted, the respondents shall consider and decide the same, strictly in accordance with law and the applicable rules, as expeditiously as possible.

11. Disposed of.