

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,
GUWAHATI

T.A. NO. 54 OF 2010

(arising out of Writ Petition (C) No. 218(K)/2006)

P R E S E N T

HON'BLE MR. JUSTICE H.N.SARMA, Member(J)
HON'BLE CMDE MOHAN PHADKE (Retd), Member(A)

Smti.Vizieu Kesiezie,
Wife of Lt.Duosievi Angami,
Ex.Sepoy No.4507,
1st Assam Regiment,
L.Khel, Kohima Villlage,
Kohima, Nagaland

... **Appellant**

Mr. Imti Longchar
Amungla Vitrizono
V.Suokhrie,
Advocates

**Legal practitioner
for Appellant**

1. The Union of India,
through the Secretary of Home Affairs,
New Delhi.
2. The Director General
of Assam Regiment,
Happy Valley,
Shillong-793007.

3. The Controller of Defence Account,
Allahabad,
Uttar Pradesh
4. The Record Officer,
Assam Regiment Abhiekh
Karyalaya Records,
The Assam Regimental Centre,
Happy Valley,
Shillong-793007.
5. The Secretary,
Rajya Sainik Board,
Nagaland, Kohima.

... **Respondents.**

CGSC

**Legal practitioner
for Respondent (s)**

Date of Hearing : 23rd March, 2011

Date of Judgment & Order : 31st March, 2011

JUDGMENT & ORDER

[Cmde Mohan Phadke]

Smt Vizieu Kesiezie, the petitioner in this case is
the wife of Late Sepoy Dousievi Angami, Ex.Sepoy No.

4507 who was enrolled in the Army on 1st August 1944 and discharged from service with effect from 27-07-1949. Before his discharge, Late Sepoy Dousievi Angami reportedly sustained multiple injuries and became unconscious when the truck in which he was detailed to travel to Guwahati for collection of ammunition from the Regimental Headquarters at Shillong, along with eight other service personnel, met with an accident at about 8 am on 08-05-1948 when the truck allegedly rolled down the gorge. He was, subsequently, discharged/released from service with effect from 27-07-1949.

2. We put on record herein that Late Sepoy Dousievi Angami was enrolled in the Army before independence and fought in the Burma Wars 1939-45 and was awarded Burma Star War Medal. He was also awarded Indian Independence Medal. He fought in the 2nd World War, and was one of the few living soldiers of the time. This octogenarian, the appellant, himself filed the WP(C) No. 218(K) 2006 after his claim for disability pension was rejected by the Department. After his death,

during the pendency of the Writ Petition, his wife, the present appellant, got her name substituted in the petition.

3. The petitioner's case is that her husband was released/ discharged whilst he was still undergoing medical treatment on account of the multiple injuries that he had sustained but was not given any disability pension or any other retirement benefit by the respondents. He was also not issued any Pension Book at the time of his retirement. Denial of such payment to a disabled person who had given his whole life for the defence of the nation was unjustifiable, discriminatory and exploitative. Her husband, therefore, made an application to the Officer in Charge Records, the Assam Regiment, Shillong on 31-05-2002 for grant of disability pension. The application, which is at Annexure 2 of the petition, was routed through the Secretary Rajya Sainik Board, Kohima, who made an endorsement on the said application to say, **“This case deserves special consideration. Hence**

recommended". The Secretary Rajya Sainik Board, Kohima, further wrote :

"4. The applicant is very old and incapable of earning his living and is in distress condition. It is, therefore, requested to kindly review the case and admit/ sanction disability pension as may be entitled to him."

Officer in Charge Records, the Assam Regiment, Shillong then wrote a letter dated 16-07-02(Annexure-4) to the PCDA(P) Allahabad to say :-

"that No. 4507 Ex.Sep. Duosievi Angami of this regiment was enrolled on 01 Aug 1944 and released from service on 27 Jul 1949 after rendering 04 years 11 months seven days of service due to Injury Multiple contrasted wounds-scalp left eyebrow and injury sustained was attributable to Military service. But no disability has so far been granted to him. Further, the Sheet Roll of the said individual has also been destroyed by burning on completion of the stipulated period. The individual is very old and unable to earn his livelihood and approaching this office time and again through various channels for grant of disability pension.

2. In view of the above you are requested to kindly confirm whether he is entitled for disability pension and his case may be perused based on the following documents:-

(a) Detail attached on Appx 'A' from long Roll.

(b) Photo copy of service particulars issued by Records, the Assam Regd. On 01 Nov 1967.”

4. The Secretary Rajya Sainik Board, Kohima, also wrote to PCDA(P) Allahabad a letter dated 21-08-02 (Annexure -5) stating,

“the case may please be examined on **PRIORITY** as the applicant is very old and totally incapable of earning his living. He is in distress condition and no financial assistance from any other sources except Rs.300/-pm w.e.f. 01 Apr.2001 as World War II Veteran pension. Hence sanction of disability pension to Ex.Sep. Duosievi will extend great relief and moral boos to Ex-Servicemen in general”

5. The Chief Secretary to the Government of Nagaland then wrote a letter dated 23-07-04(Annexure - 11) to the Secretary Government of India, Ministry of Defence, questioning the rejection of disability pension to the petitioner's late husband and recommending reconsideration of his case but in vain. The said letter at Annexure 11 is extracted below:-

"GOVERNMENT OF NAGALAND
HOME DEPARTMENT;RAJYA SAINIK BOARD

No.RSB/PENS-1/19/92 (Vol-II) Dated, Kohima, the 23 th Jul
2004.

To,

The Secretary to the Govt.of India,
Ministry of Defence(Pension A & AC)
DHQ,P.O.New Delhi – 110011

(Through Officer-in-Charge, Records, the Assam
Regiment, Shillong).

Sub:- APPEAL AGAINST REJECTION OF DISABILITY PENSION
ATTRIBUTABLE TO MILITARY SERVICE : EX NO. 4507 SEPOY
DUOSIEVI ANGAMI OF EX-ASSAM REGIMENT.

Sir,

The undersigned is directed to forward herewith an appeal against rejection of disability pension in respect of the above mentioned Ex-serviceman which is self explanatory for kind consideration together with following enclosures :-

- (a) His Army service particulars (as Appendix 'A')
- (b) State Govt (Home Deptt) letter of even No dated 01 June 2002 addressed to Office-in-Charge, Records, the Assam

- Regiment (as Appendix 'B' along with Annexure – 1)
- (c) State Govt (Home Deptt) letter of even No dated 07 Jul 2003 addressed to PCDA (P) Allahabad (as Appendix 'C').
 - (d) Records, the Assam Regiment letter No.3103/Gen/38/Pen (DP) dated 16 Jul 2002 addressed to PCDA (P) Allahabad. (as Appendix 'D').
 - (e) State Govt (Home Deptt) letter of even No. dated 21 Aug 2002 addressed to PCDA (P) (as Appendix 'E')
 - (f) Records, the Assam Regiment letter No.3103/Gen/68/Pen(DP) dated 31st Aug 2003. (as Appendix 'F').

2. In this connection it is submitted that the pension claim was rejected by PCDA (P) as intimated through the Records, the Assam Regiment vide their letter referred to at Para 1 (f) (Appendix 'F') on ground that "Nothing can be traced from this office without any previous reference/pension certificate (PC) No. etc of this office or Controller of Military Accounts, Lahore". Reason given by PCDA (P) is not justified as under:-

- (a) The applicant was neither issued with pension certificate at the time of release from service or received at his home address after release. As such, same could not be produced.
- (b) Question of non – traceable of the pension certificate from Controller of Military Accounts, Lahore is also not justified as the applicant was released on 27 Jul 1949 much after the partition. (i.e. after 2 years).
- (c) The certificate of service issued by the Officer-in-Charge, Records, the Assam Regiment, Shillong on 10 Nov 1967 referred to Para 1 (a) above (original held by the applicant) wherein, it is clearly stated that "Injury attributable to Military Service in a Peace Area" is a clear proof of his pension entitlement and on the basis of which pension claim may be admitted.

3. It is disheartening to see the incapacitated and demoralized 80 years old II World War Veteran living in distress condition with no support who fought the War in Kohima and throughout the Burma Campaign and have earned War Medals.

4. Besides, the service rendered by such veteran during their youth and claim for their rights and entitlement should not be disposed off so lightly, but deserve a special consideration.

5. In view of the above, this appeal is recommended for re-consideration as a very fit case.

6. Following are also enclosed:-

(a) Form of Application for Disability Pension.

(b) Form of Medical Certificate (For Disability Pension).

Yours faithfully,

(P. TALITEMJEN AO)
Chief Secretary,
Govt of Nagaland"

6. The petitioner's husband had suffered multiple injuries whilst performing his military duty. Thereafter even as he was undergoing treatment the respondents most unceremoniously threw him out of service without paying him, which act was illegal and unjustifiable and calls for the intervention of this Hon'ble Court. As the petitioner's husband had served at one of the most difficult times

which included the Burmese operation and had earned 4(four) medals within a short span of his military service and further as his release was on account of the injury sustained by him whilst performing military duty the respondents should be directed to make payment of disability pension as due to her husband and family pension after his death on 22-02-08 due to cardio-vascular failure. The petitioner being his legally wedded wife is entitled to receive the said pensionary benefits. The petitioner's husband's service to the nation was recognized with effect from 01-04-01 by grant of World War II Veteran pension. In a further Affidavit in Reply filed on 21st March 2011 the petitioner contended, whilst reiterating all facts that her husband had approached the respondents way back in 1967 when all the documents were available but the respondents refused to process his case or pay disability pension to him despite repeated representations/ appeal through the Government of Nagaland on his behalf. The respondents have no right to

deny the grant of disability pension on the premise that it would open Pandora's Box

7. On behalf of the respondents an Affidavit in opposition was initially filed in writ petition (C) No. 218/2006 by the Record Officer, The Assam Regiment, Happy Valley, Shillong on 19th March 2007 to say that as per Long Roll maintained by the office, the petitioner, No 4507 Ex Sep Duosievi Angami was enrolled in the Army on 01 Aug 1944 and discharged from service on 27 Jul 1949, after completion of 04 years 11 months and 06 days service, on medical ground. All service documents in respect of the petitioner were subsequently weeded out on completion of the stipulated period of retention. As a result the records available are not sufficient to comment on the eligibility of the petitioner's husband to disability pension and reasons for non payment thereof at this belated stage. Notwithstanding this his case was referred to PCDA(P) Allahabad who, however, expressed his inability to review the case in the absence of requisite details and this was

communicated to the petitioner vide the Records letter of 31 Aug 2003(Annexure 9 of the writ petition). It is however evidenced from the extract of the Service Profile that was made from the service documents before they were destroyed that the petitioner was paid Rs. 43.12(Rupees forty three and paisa twelve only) on account of war gratuity. Further, on receipt of Rajya Sainik Board, Nagaland letter dated 23 Jul 2004(Annexure-11 of the writ petition) the Record office approached the IHQ,Mod(Army) vide letter of 16 Aug 2004 for consideration of the petitioner's case. IHQ,Mod(Army),however intimated that a similar case, being CWP No, 1285/2001 and CM No 2274/200 filed by Smt Asghani Begum Vs UOI for grant of family pension was dismissed by the Hon'ble High Court of Delhi vide Judgment dated 28 Mar 2001 and it was held that where service records of the petitioner are not available and no steps were taken by the petitioner/claimant for a period extending over 25 years, no relief for pension could be granted to the petitioner merely as a charity or bounty in the absence of relevant facts

being determinable and relevant documents available. In the present case the petitioner approached the Hon'ble Court after a delay of 53 years and hence the case be disposed of accordingly.

8. The aforesaid writ petition No. 218/2006 was subsequently recast by the petitioner and the present petition WP No.54/2010 was filed in the Gauhati High Court. The respondents contested this vide their affidavit in opposition dated 7th March 2011 in which they contended that as per para 595 of the Regulations for the Army(Revised Edition 1987), the service documents of personnel discharged as pensioners are to be destroyed after retention for 50 years and service documents of non - pensioners are to be retained for 25 years only. As per the available records the service documents of No. 4507 Ex.Sep. Duosievi Angami were destroyed on 1st April, 1976 on completion of 25 years after his release as he was, as per the records, a non pensioner. Before destruction of the documents essential data / details were

recorded in the Long Roll in the Record Office. Perusal of the details on the Long Roll reveals beyond doubt that the individual was not released on medical grounds due to any disability. He might have been released at his own request or on disciplinary grounds. It needs to be considered that the husband of the petitioner was not sanctioned/ authorized any disability pension. This may be so as the disability suffered by the petitioner's husband was attributable to the military service but the degree of disability was less than 20%. Had it not been so his disability pension claim would definitely have been processed by the Records, the Assam Regiment, which was not done in this case. The husband of the petitioner was well aware that he was not entitled to disability pension and therefore he never took up the case for grant of disability pension with Records before the destruction of the records on 1st April 1976. He applied for the Service Particulars only in November 1967 after 17 years of his release from service. If he had taken up the matter earlier he could have been satisfied with documentary proof.

Whilst it is accepted that the disability suffered by the individual was considered attributable as contended by the learned Counsel for the petitioner it is reiterated that a primary condition for the grant of disability pension is that the degree of disablement should be assessed at 20% or above and the individual should not be discharged at his own request. In the present case based on a clarification sought from the PCDA(P) Allahabad he has confirmed that nothing can be traced out without any pension reference / PC No.etc. as the Controller of military accounts was in Lahore and also as no claim for disability pension in respect of No. 4507 Ex.Sep. Duosievi Angami has ever been processed at PCDA(P) Allahabad being not entitled. The instant case suffers from delays and laches as it was filed after an inordinate delay of 53 years after all service documents had been destroyed on 1st April 1976. In the absence of necessary record, the essential details required to examine the case such as the exact cause of discharge, correct diagnosis, percentage of disability at the time of discharge and the exact cause of rejection of

disability pension and relevant communications on the subject are not available with the respondents at this belated stage. It cannot now be assessed as to whether the disability was less than 20% or if the individual was unwilling to continue in service and was accordingly discharged at his own request. As he for the first time approached in June 2002 he cannot be considered entitled to any kind of pension without any proof or supporting documents. The petition is accordingly liable to be dismissed as being devoid of merits.

9. In the light of the above discussion we find that the petitioner's husband was discharged from the military service on medical grounds on account of multiple injuries that he suffered whilst performing official duty. It is also not in dispute that the disability arising as a result of the injuries suffered by him was considered attributable to the military service. It therefore stands to reason that the petitioner should be given disability pension for a disability that was attributable to military service. Respondents'

contention is that since the petitioner was not given any disability pension the disability must have been less than 20% and he thus, must not have met the essential pre condition. We are unable to accept this assumption for two reasons. Firstly, if that had been the case the petitioner would have been continued in service and given further treatment till he happened to become fully alright. Secondly, he being a war veteran would have been given some sheltered appointment and continued in service. This did not happen in the present case, where the individual was admittedly discharged from service on medical ground. Based on such discharge one can safely conclude that the disability was at least 20% if not over. This conclusion is further supported by the fact that even in 1967, when the petitioner claims that her husband requested for disability pension, he was still not fully well and the disability or it's after effects still persisted. After 1967 the petitioner formally applied for disability pension in 2002 vide his application at Annexure-2. In this context it is important to note that the Secretary Rajya Sainik Board

had whilst recommending his case for grant of disability pension observed, *“The applicant is very old and incapable of earning his living and is in distress condition”*. Similarly, the Officer in charge Records, the Assam Regiment Shillong had vide his letter at Annexure -4 referred to the multiple injuries suffered by the individual as being attributable to military service and the fact that no disability pension had so far been granted to the individual. However, what is more important is the further endorsement which reads, *“Further, the Sheet Roll of the said individual has also been destroyed by burning on completion of the stipulated period. The individual is very old and unable to earn his livelihood and approaching this office time and again through various channels for grant of disability pension”*. (emphasis supplied). This endorsement clearly shows that even after 1967 the petitioner’s husband approached the Officer in Charge Records, the Assam Regiment, Shillong *“time and again through various channels for grant of disability pension”*. Even though the number of approaches made are not known it is enough to

know that the individual had, between 1967 and 2002 when he formally applied for pension, made several approaches and requests for the grant of disability pension. In view of the fact that the records in this case were destroyed on 1st April, 1976 despite a request having been made by the petitioner in 1967, the respondent's plea concerning delay and laches and non-availability of records cannot be accepted. More so, as it is well-settled Principle of Law that pension is a continuing right. It is also noted in the above context that the Chief Secretary, Govt. of Nagaland further brought out the plight of the individual vide his letter at Annexure 11 and recommended his case whilst referring to the fact of the injury being attributable to the military service and highlighting the pecuniary condition of the old war veteran by saying,

“3. It is disheartening to see the incapacitated and demoralized 80 years old II World War Veteran living in distress condition with no support who fought the War in Kohima and throughout the Burma Campaign and have earned War Medals.

4. Besides, the service rendered by such veteran during their youth and claim for their rights and entitlement should not be disposed off so lightly, but deserve a special consideration.

5. In view of the above, this appeal is recommended for reconsideration as a very fit case.....”

10. The respondents, though obliged under the Rules to preserve the service record of the incumbent in view the petitioner’s application in 1967, clearly failed to do so. The service record of the petitioner was destroyed notwithstanding the petitioner’s claim. The Respondents accordingly could not produce the service record even on requisition by us. We do not know the circumstances under which the service record has been destroyed prematurely. In such an event the statements and assertion of the appellant relating to the incidents leading to his discharge on medical grounds from army after 4years 11 months and 07 days of service, has to be accepted.

11. In the facts and circumstances of this case we have no hesitation in holding the petitioner's husband, late No 4507 Ex Sep Duosievi Angami entitled to disability pension on assessment of the disability at 20% right from the date of his discharge from military service till the day of his sad demise, while he was discharging military duties, on 22-02-08. Thereafter benefits as admissible are to be paid to the petitioner, who is the widow of the late soldier. We also notice that at the time of discharge from service the rate of disability pension in respect of Sepoy of the army was Rs.3/ only per month, as submitted by the Respondents. However, the amount would be proportionately increased after the subsequent revision of pay. But nonetheless, though the amount to which the petitioner will now be entitled to would only be a small sum, it would give some solace to the appellant, wife of a valiant Indian army soldier who fought during 2nd World War and was a recipient of Burma Star War Medal and World War II pension of Rs 300/- p.m. w.e.f. 1st April 2001.

12. In view of the above discussion, the petition is allowed. Respondents are directed to make payment of disability pension and other dues as admissible to the petitioner as per the direction given in the preceding paragraph within 60(sixty) days of the receipt of this order.

13. In the facts and circumstances of the case, we, however, pass no order awarding costs.

MEMBER (A)

MEMBER (J)