

IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI

OA- 65/2016

PRESENT

HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER(J)
HON`BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)

Smt Nengneikim Kuki,
Widow of No.4338261P, Late Sep
Doukhohen Kuki, permanent resident
Of Kangpokpi Ward No.4 PO Kangpokpi,
PS Kangpokpi, Dist. Senapati, Manipur-795129.

..... Applicant.

By legal practitioners for
Applicant.

Mr.S.Pfokrelo
Mr.Puni Sani & Hrangao.

-VERSUS-

1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence
South Block, New Delhi – 110011.
2. Officer-in-charge, the Records, The Assam Regiment,
Pin No. 900332 C/O. 99 APO
3. President , No.1 Air Force Selection Board,Clement Town,
Dehradun-248002
4. The Principal Controller of Defence Account(Pensions)
PCDS (P) Allahabad-211014.

..... Respondents..

By Legal Practitioner for the
Respondents
Mr.C.Baruah CGSC

Date of Hearing : 22.05.2017

Date of Order : 22.05.2017

ORDER

(Justice B.P.Katakey,)

The applicant, who is the Widow of No.4338261P Sep Doukhohen Kuki, has filed this application challenging the order dated 06.07.2016 passed by the Senior Records Officer, Officer-in-charge Records, Assam Regiment, whereby and whereunder the claim of the applicant for grant of disability pension to her husband w.e.f. 19.10.1965 has been rejected on the ground that the PCDA (P) had already rejected such claim, the percentage of disablement of her husband having found to be less than 20 by the PCDA(P).

[2] We have heard Mr.S.Pfokrelo, learned counsel appearing for the applicant and Mr. C.Baruah, learned CGSC appearing for the respondents.

[3] The applicant's husband was enrolled in the Indian Army on 22.03.1962. He was invalided out from service on 15.01.1965, as he was found to have suffered 100% disablement for 2 years. The applicant's husband, thereafter, was granted disability element of pension @ Rs.100/- for 2 years based on the Invaliding Medical Board proceedings. The applicant's husband though after expiry of 2 years was asked to appear before the Re-survey Medical Board, he could appear only on 17.09.1999 for such re-survey. The Re-survey Medical Board, on 17.09.1999, thereafter reduced the percentage of disablement of the applicant's husband to 30%. The same ,however, had not been accepted by the PCDA(P), who vide order dated 15.04.2000, in consultation with the Medical Advisor (P) attached to the Office, has reduced it to 6% to 10% i.e. less than 20% and hence, the disability element of pension was not granted to the applicant's husband. The applicant's husband, thereafter, preferred an appeal based on which he was asked to appear before the Re-survey Medical Board to

be conducted in the year 2005. Unfortunately, applicant's husband expired in the meantime i.e. on 27.09.2004 and hence, he could not appear such Re-survey Medical Board.

[4] Based on the aforesaid undisputed facts, it has been submitted by the learned counsel for the applicant that since the Re-survey Medical Board in the proceedings dated 17.9.1999 had found the percentage of disability of the applicant's husband as 30, the PCDA(P) could not have reduced the same as the said authority has no jurisdiction to do so in view of the decision held by the Hon'ble Supreme Court in **Secretary ,Ministry of Defence and Ors Vs. A.V.Damodaran(dead) and Ors. Reported in (2009) 9 SCC 140**. The learned counsel, therefore, submits that the Respondents may be directed to pay the applicant the disability pension payable to the applicant's husband w.e.f 17.9.1999 till date of his death i.e. 27.9.2004 with interest. The learned counsel further submits that since the applicant's husband was entitled to disability pension, the applicant, after death of her husband is entitled to ordinary family pension w.e.f. 28.09.2004, which may also directed to be paid.

[5] Mr. C.Baruah, learned counsel appearing for the respondents, on the other hand, referring to the averments made in the counter affidavit filed and also the undisputed facts narrated above, has submitted that since the PCDA(P) did not accept the recommendation of Re-survey Medical Board dated 17.9.1999 and the percentage of disablement having been assessed as less than 20% by the PCDA(P), the applicant's husband was not entitled to disability pension and hence, the impugned order does not require any interference . It has also been submitted that since the applicant's husband was not entitled to any pension, the applicant is not entitled to ordinary family pension.

[6] We have considered the submissions advanced by the learned counsel for the parties and also perused the pleadings.

[7] The facts narrated above are not in dispute. The applicant's husband was invalided out from service on 15.01.1965 after rendering little less than 3 years of service, because he had suffered from 100% disablement for 2 years. He was paid disability pension for 2 years which, however, has been stopped thereafter, despite his invalidment out from service. After expiry of the aforesaid period of 2 years, though the applicant's husband was asked to appear before the Re-survey Medical Board, he only appeared before such Board on 17.09.1999. The Re-survey Medical Board upon due examination has reduced the percentage of disablement from 100 to 30. Such disablement also found to be attributable to service. The opinion of the said Re-survey Medical Board consisting of the specialists, however, had not been accepted by the PCDA(P) and Vide order dated 15.04.2000, the PCDA(P) rejected the opinion of the Re-survey Medical Board relating to the percentage of disablement and reassessed the same as 6% to 10% i.e. less than 20% without conducting any physical examination of the applicant's husband, which could not have been done by the PCDA(P) as held by the Hon'ble Supreme Court in **A.V.Damadharon (Supra)**.

[8] It is also evident from the pleadings of the respondents in the OA that against the aforesaid decision of PCDA(P), the applicant preferred an appeal on 06.09.2001 which was accepted by the respondent authorities and decided on 26.10.2004 directing conduct of a Re-assessment Medical Board, which was communicated to the applicant vide communication dated 19.04.2005. The applicant's husband, however, in the meantime, had expired on 27.09.2004 and hence, no Reassessment Medical Board could be held though the appeal preferred by him was allowed by the respondents after more than 3 years of filing the same. Had the appeal been decided by the respondents within a reasonable period of time from filing the same, the applicant's husband could have appeared before the Reassessment Medical Board. The applicant's

husband having been invalided out from service because of his initial disablement to the extent of 100% and there being nothing on record to demonstrate that he was offered shelter appointment, the applicant's husband was entitled to disability pension as assessed by the Re-survey Medical Board in its proceedings dated 17.09.1999 during his life time i.e. 17.9.1999 to 27.09.2004. The applicant consequently, after the death of her husband, is also entitled to ordinary family pension, which so far has not been granted to her.

[9] In view of the above we allow the OA directing the respondents to pay the applicant disability pension payable to her husband from 17.09.1999 till the date of death i.e. 27.09.2004. The respondents shall also pay the ordinary family pension to the applicant w.e.f. 28.09.2004 with arrear for the period of 3 years preceding the date of filing of the OA (OA filed on 22.11.2016). The aforesaid amounts shall be paid to the applicant within a period of six months from the date of receipt of a copy of the order, failing which the amount will carry interest @ 9% Per annum from the dates of when due and payable, as indicated above, till the date of payment.

[10] The OA is accordingly allowed. No costs.

[11] Mr C.Baruah, learned counsel appearing for the respondents, at this stage, has made an oral prayer to grant leave to appeal before the Hon'ble Supreme Court under Section 31 of the AFT Act, 2007, which is rejected as our order does not involve any question of law having general public importance.

[12] Order dasti.

MEMBER (A)

MEMBER (J)

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