

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-9430-2020(O&M)

Date of Decision : 16.10.2020

Sukhwant Kaur

....Petitioner

vs.

Union of India and others

....Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. G.S.Ghuman, Advocate for the petitioner.

Ms. Sonia Sharma, Advocate for respondents No. 1 to 4.

AJAY TEWARI, J. (Oral)

CM-10900-CWP-2020

For the reasons recorded, the same is allowed and the rejoinder filed by the counsel for the petitioner is taken on record.

CWP-9430-2020

This petition has been filed against the judgement and order dated 4.2.2019 of Armed Forces Tribunal, Chandigarh Regional Brach at Chandimandir whereby the OA filed by the petitioner had been partly allowed.

The brief facts are that the husband of the petitioner served in the army from 27.1.1954 till 24.9.1962 and then he was invalidated out from service under Rule 13 3 (III) (iii) of the Army Rules. The husband of the petitioner passed away after 33 years on 15.4.1995 . Thereafter, the present petitioner filed the OA claiming pension along with disability pension.

The case of the respondent was that the claim was usually

delayed. The Tribunal held that pension being a recurring right could not be denied on the ground of delay and allowed the claim as regards pension. Further stipulating that the payment of family pension be restricted for a period of three years from the date of the OA. The present petition has been filed against the disallowance of the claim for disability pension.

The learned counsel has argued that the tribunal itself noticed the judgement of the Supreme Court in ***Civil Appeal No. 5605 of 2010 Sukhwinder Singh vs Union of India and others***, decided on 25.6.2014 wherein the Apex court held as follows:-

“.....Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

Ultimately, the Tribunal came to the conclusion that the husband of the petitioner was entitled for grant of disability pension at the rate 20% (minimum) at the time of his invalidated out of service but since he had never claimed disability pension the claim by his wife would become time barred. Counsel for the petitioner has relied upon the judgement of the Supreme Court in ***Ex.-Gnr. Laxmanram Poonia (dead) through Lrs versus Union of India and others*** wherein the Supreme court had held that once a person was enrolled in Military service without recording any disease or disability it has to be presumed that he was in good

health and any subsequent deterioration in health is deemed to be attributable to Military service.

On the other hand, the learned counsel for Union of India has not disputed the factual assertions but has again sought disentitlement of the petitioner on the ground of delay and laches.

In our opinion, once the Tribunal itself noticed that the right of pension could not be defeated by delay and restricted the grant of family pension only to a period of three years from the date of the application the same principal would hold good for disability pension also, moreso, since the Tribunal itself found that the husband of the petitioner was entitled to at least 20% minimum disability pension.

In the circumstances, it is held that the petitioner would be entitled to get the family pension after adding the component which may accrue on account of disability pension of 20% and the payment of that would also restricted to a period of three years from the date of the application.

The petition is allowed in the above terms.

Since the main case has been decided, the pending miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(RAJESH BHARDWAJ)
JUDGE

16.10.2020
anuradha

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No