

FORM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO : O. A NO. 30 OF 2011

ON THIS 26TH DAY OF MARCH, 2014

CORAM : HON'BLE JUSTICE RAGHUNATH RAY , MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

659510-F Ex AC Harapasanna Das (since deceased)
Indian Air Force, 102 Squadron
Vill/P.O. Kahalia, PS Rajnilgiri
Dist. Balasore, Orissa,

Represented by Legal Representatives

1. Smt. Renubala Dash, W/o late Harapasanna Dash
2. Sri Amarendra dash, S/o Late Harapasanna Dash
3. Sri Chandrasekhar Dash, S/o Late Harapasanna Dash

All residing at Vill/PO Kahalia, PS – Rajnilgiri
Dist. Balasore, Orissa

Substituted Applicants

-VS-

1. Union of India through Under Secretary,
Ministry of Defence, New Delhi
2. The Controller of Defence Accounts (Pension),
Air Force Cell, Allahabad-14 (UP)
3. DGAFMS- 5A, DGMS Army,
AG's Branch, 'L' Block,
Army Headquarters, New Delhi – 110 011
4. Director of Personnel Airmen (DPA)
Air Headquarters, Vayu Bhawan,
New Delhi-06
5. Air Officer-in-Charge, Air Force Record Office,
Air Force Station, Subroto Park,
New Delhi-10

.... Respondents.

For the Petitioner: Mr. Bisikesan Pradhan, Advocate

For the Respondents: Mr. D.K.Mukherjee, Advocate.

ORDER

Per Lt. Gen. K.P.D.Samanta, MEMBER (A)

This is the fourth round of litigation by the applicant, Ex AC, Haraprasanna Das seeking a direction upon the respondents to grant him disability pension. Unfortunately, during the pendency of this application, he died and consequently his wife and two sons have been substituted, who are pursuing the cause with amended prayers inter alia for arrears of life time disability pension of the deceased applicant and family pension for the widow.

2. The deceased, Haraprasanna Das was enrolled in the Indian Air Force on 25-5-1977 as an Airman in Technical Trade, i.e. Engine Technician/Engine Fitter. After completion of training he was posted to a fighter based Squadron. He was detailed to undergo one year conversion course, i.e. Diploma in Aeronautical Engineering. After successful completion of the said training, he was posted in the same Air Force Station but in a different Squadron. While he was posted in 102 Squadron on 31-12-1982 he developed mild headache and fell down while waiting for medical check up. His left limbs were found to be paralyzed and he was diagnosed as a case of "Cerebra Vascular Accident" (CVA). He was downgraded to medical category 'EEE' and was found to be unfit for further retention in service and accordingly, he was invalidated out of service on 24-8-1983 through an Invaliding Medical Board under Air Force Rules 1969, Chap. III, Rule 15, Clause 2(h). The case of the applicant for grant of disability pension was sent to CDA (P) Allahabad but the said authority rejected his claim vide order dated 28-9-1984 stating that the disability of the deceased employee was neither attributable to nor aggravated by Air Force Service, even though the disability was more than 20% as assessed by the Medical Board. The applicant preferred an appeal on 25-3-1985 to the Government of India but the said appeal was rejected on 20-2-1986 concurring with the view of the CDA (P)

Allahabad. According to the deceased applicant, he moved before various authorities for grant of disability pension, but without any fruitful result.

3. It appears that the original applicant after a lapse of about 15 years, filed an original application before the Central Administrative Tribunal, Cuttack Bench, which was, however, dismissed for lack of jurisdiction vide dated 20-3-2001 (Annexure A5) with leave to move before the appropriate forum for relief. Accordingly, the applicant filed a writ application before the Hon'ble Delhi High Court being WP (C) 3899 of 2004. The said Writ Petition was disposed of on 10-10-2007 by issuing the following observations/ directions:

“ The petitioner was discharged from service on 24-8-1983 after being declared medically unfit. The grievance raised by the petitioner is that he has not been given any disability pension.

There is undoubtedly gross delay on the part of the petitioner in approaching the Court. The respondents in their counter affidavit have stated that the relevant records have been destroyed and thus, it is not possible to verify the case of the petitioner.

Learned counsel for the petitioner stated that the petitioner will submit all the relevant records/documents available with him to the respondents within one month from today. On such records/documents being submitted, the case of the petitioner will be examined for grant of disability pension and in case the petitioner is found eligible, the said disability pension will be given to the petitioner along with arrears for past period of three years from the date of filing of the petition. The decision be taken within a maximum period of three months of the petitioner's submitting the relevant records/documents.

Petition stands disposed of in the aforesaid terms while leaving the parties to bear their own costs.”

4. Accordingly, the deceased applicant furnished certain documents, but the respondent authorities by a speaking order dated 5-3-2008 (Annexure A7) rejected the claim for grant of disability pension mainly contending that all relevant records had already been destroyed and the documents that had been supplied by the applicant were not adequate. It will be useful to quote the relevant portion of the said speaking order:

“9. AND WHEREAS, the Hon'ble High Court, vide its order dated 10 Oct 07 observed. “There is undoubtedly gross delay on the part of the petitioner in approaching the Court. The Respondents in their counter affidavit have stated that the relevant records have been destroyed and thus, it is not possible to verify the case of the petitioner” and disposed the writ petition with the direction. “Learned counsel for the petitioner states that the petitioner will submit all the relevant records/documents available with him to the

respondents within one month from today. On such records/documents being submitted, the case of the petitioner will be examined for grant of disability pension and in case the petitioner is found eligible, the said disability pension will be given to the petitioner along with arrears for past period of three years from the date of filing the petition”

10. AND WHEREAS, vide your applications dated 06 NOV 07 you submitted only the medical discharge slip of Air Force Hospital Bareilly and discharge book of Air Force.

11. AND WHEREAS, in compliance of the Hon’ble Court of Delhi order dated 10 Oct 07 your claims for disability pension was again examined.

12. AND WHEREAS, on the basis of documents submitted by you, it cannot be concluded that the disability from which you were suffering was attributable to or arose due to military service.

13. AND WHEREAS, your medical records have been destroyed after 15 years of retention period.

14. NOW THEREFORE, after considering the entire case including the medical documents submitted by you, it is not possible to establish the attributability/aggravation of your disability to military service.”

5. Being aggrieved by this speaking order, the applicant moved before the Hon’ble Orissa High Court by filing Writ Petition No. WP (C) 10228 of 2008 challenging the said speaking order dated 5-3-2008. The Hon’ble Orissa High Court by an order dated 29-10-2009 passed inter alia the following order:

“ On careful reading of the aforesaid provisions, it is clear that the authorities could have directed the petitioner to appear before an appropriately constituted medical board to find out the percentage of disability of the petitioner and whether the disability is attributable to or aggravated by air force service. According to the finding of the medical board, the authorities could have considered the case of the petitioner as claimed.

Therefore, in my considered view, the authorities having not done so, they failed to exercise their jurisdiction vested on them. I, therefore, direct the opp. Parties 5 & 6 to look into the grievance of the petitioner and constitute a medical board as required under the rules directing the petitioner to appear before the said medical board at the cost of the opp. Parties and if the medical board is of the opinion that the petitioner is entitled to disability pension, then the same shall be extended in his favour in accordance with law.

However, the entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order.”

6. Pursuant to this direction of the Hon’ble Orissa High Court, the authorities constituted a Medical Board which examined the applicant on 29-11-2010. The said medical board assessed the disability of the applicant as 50% for life. However, it opined that the disability of the applicant was

neither attributable to nor aggravated by the conditions of service. It was also observed that the applicant was posted in a peace area and there was no evidence of any exceptional stress and strain. Accordingly, the respondent authorities issued a speaking order dated 21-2-2011 rejecting the claim of the applicant. The relevant portion is quoted below:

“8. AND WHEREAS, a medical board was duly conducted at Base Hospital Delhi Cantt on 29 Nov 10 in compliance with the directions of Hon’ble Odisha High Court dated 29 Oct 09 in WP(C) No.10228/08.

9. AND WHEREAS, the said medical board has assessed the percentage of disablement at 50% for life and Disability qualifying for Disability Pension with duration as NIL as the ID is neither attributable to nor aggravated by service.

10. NOW THEREFORE, after considering all aspects of your claim for disability pension in the light of the judgement dated 29 Oct 09 passed by the Hon’ble High Court of Odisha in WP(C) No.10228/08, it is found that you are not entitled for any disability pension.”

7. Being dissatisfied, the applicant has filed the instant OA before this Tribunal challenging the speaking order dated 21-2-2011 and praying for a direction upon the respondents to grant him disability pension with effect from the date of his discharge on invalidation, i.e. 25-8-1983 with 12% interest.

8. As already stated the applicant died on 17-3-2012 during the pendency of this application due to the disease on account of which he was invalidated out from service and accordingly his legal heirs, i.e. wife and two sons have been substituted and they are pursuing the cause. In view of the death of the original applicant, the prayer was allowed to be amended for payment of arrear disability pension as also family pension in favour of the widow i.e. substituted applicant No.1.

9. The application has been resisted by the respondents by filing a written reply affidavit wherein it is stated that the deceased airman Harapasanna Das was enrolled on 25-5-1977 and was invalidated out of service on 23-8-1983 under the provisions of AF Rules 1969, Chap. III, Rule 15 Clause 2 (h) having been found medically unfit for further service for having suffered the disability of “Cerebrovercal Vascular Accident”. Thus, he had rendered only 6 years 85 days of qualifying service. It is further stated that all his medical records have been destroyed by burning by Board of Officers dated 30-10-1998 since the ibid records are to be preserved for 15 years as per AFO 52/98. It is

further stated that as per direction of Hon'ble Orissa High Court dated 29-10-2009, a review Medical Board was constituted which examined the applicant and opined that the disability with which the applicant had suffered was neither attributable to nor aggravated by service conditions. The said medical board has given detailed reasons in support of their opinion which has been quoted in page 3 of the Reply-Affidavit. However, it is admitted that the percentage of disablement of the applicant was 50% for life. Since disability was neither attributable to nor aggravated by Air Force Service, no disability pension is admissible in terms of Regulation 153 of Air Force Pension Regulations, 1961.

10. The applicant has filed a rejoinder in which he has submitted that under the Air Force Regulations 1964, such medical documents have to be preserved for 25 years and not 15 years and therefore, the plea of destruction taken by the respondents should not be accepted. He has annexed an extract from 1964 Regulations with his rejoinder to support this statement.

11. We have heard the learned counsels for both sides and have gone through the documents placed on record. The records of Medical Board, which was held as per direction of Hon'ble Orissa High Court, have also been produced before us. We have perused the same.

12. In the instant case, the facts are not very much disputed regarding the period of service. It is admitted that the deceased applicant was enrolled on 25-5-1977 and was invalidated out of Air Force service on 23-8-1983 being found to be medically unfit for further service under A.F. Rules 1969, Chap.III, Rule 15, Clause 2(h). It is also admitted that the deceased employee had 6 years and 85 days as qualifying service to his credit. It is also on record that initially his case was sent to the CDA (P) Allahabad for grant of disability pension which was rejected in the year 1984 (Annexure A3) on the ground that disability was neither attributable nor aggravated by Air Force Services. His appeal before the Central Govt. was also rejected by an order dt. 20.2.84 (annexure-A4)

13. The respondents have stated in their reply in page 4 that as per entry made in his RCSR (Record Copy Sheet Roll), initially his disability was assessed at 70% for two years. However, he was not granted any disability pension for the aforesaid reasons. He was also not granted any invalid pension as he did not complete 10 years service at the time of invalidment which is the minimum

service required for such invalid pension as per rules. Therefore, he was granted only admissible invalidment gratuity of Rs. 3071.45 and DCRG of Rs. 1675.35.

14. The learned counsel for the applicant has vehemently argued that the applicant fell ill while on duty and therefore it has to be held that such disability had developed due to service condition and hence he could not have been denied disability pension. He has also pointed out that the applicant had only six years of service and therefore the disease for which he was invalided out could not have been ordinarily arisen due to constitutional reasons. At the time of his entry, he was fit and had worked satisfactorily and also had undergone various trainings courses during the course of his service although he was posted at peace station, i.e. Bareilly; but for an AC (aircraft) engine fitter like the applicant, he had to fly to forward areas also in addition to his normal duties in peace area. However, since the original records are not available, the reasons could not be ascertained. Moreover, for want of a report from the Commanding Officer of the Unit where the deceased applicant was posted, the stress aspect of his charter of duties could not have been assumed by medical officers sitting in Delhi. Mr Pradhan the Id counsel for the applicant, being a former airforce JWO himself, narrated the stress prone duties that are ordinarily performed by the ac engine fitters like the applicant. Bareilly is a very busy operational base and the stress factor would have been ordinarily intense. The Air Force assisting the Id counsel for the respondent did not refute the above contentions made by Mr Pradhan.

15. Mr Pradhan has cited some decisions to buttress his arguments that denial of disability pension in favour of the applicant was unjust and improper. He has submitted that the family members of the deceased employee are not in a position to meet both ends meet as no monetary support is there to help; they are literally starving. He has very fervently prayed that the matter may be considered in its proper perspective and accordingly relief may be granted.

16. On the contrary, the learned counsel for the respondents, Mr. D.K.Mukherjee has drawn our attention to the Medical Board record and submitted that the Medical Board which has been constituted under the orders of the Hon'ble Orissa High Court, had examined all aspects of the case

and considered the guidelines as framed by the Government for the medical officers in the matter of grant of military pension especially Paragraph 14 of Chapter Vi thereof, which deals with the ibid disability. The Medical Board has clearly opined that the applicant was posted in peace area and did not suffer any stress and strain of service which may have caused such disability at young age.

17. We have given our thoughtful considerations to the submissions of both sides. It is a fact that the records of original invalidating medical board that was held at the time of discharge of the deceased applicant long time back in 1982-83 are not available. According to the respondents, those were destroyed in 1998 after 15 years in accordance with Air Force Order (AFO) 52/98, whereas the Id. adv. for the applicant contends that the same cannot be destroyed before 25 years. Be that as it may, as already set out above, the applicant had earlier approached different judicial forums and the respondents took the plea of destruction of records. The Hon'ble High Courts of Delhi and Orissa had not made any observation on the issue, rather the Hon'ble Orissa High Court vide order dt. 29.10.09 directed for holding a fresh medical board, which was complied with. We, therefore, have to consider the matter from that stage only.

18. The medical board records have been produced before us and we have gone through the same. No doubt, the opinion of the medical board is in detail. It has been observed as below:-

Reason/Cause/Specific condition and period of service

<p>Onset of the Cerebrovascular accident was at a young age (23 yrs) while individual was posted to a peace station Bareilly. He was doing routine work when he developed headache, vomiting and then loss of consciousness. He had ischemic CVA Rt MCA territory with Lt hemiparesis, initially he was unable to ambulate without help and had seizures. Presently he is able to ambulate and carry out most activities of daily living, however continues to have seizures off and on. MRI shows, Chronic Rt MCA infarct with Gliosis.</p>
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The Common causes of Cerebrovascular accident in young patients include

- Physical effects of heat,
- Mechanical trauma,
- Arteritis due to infection like TB and connective tissue disorders
- Hypercoagulable state due to deficiency of certain factors or that precipitated by service in HAA
- Premature atherosclerosis
- Cardio embolic phenomenon
- Arteriovenous malformations
- Familial hypercholesterolemia

The ID Cerebrovascular accident has been dealt with in para 14, Chap. VI, Guide to Medical Officers (Military Pension) 2008 which states that “it will be appropriate to award attributability if there is evidence of infection/physical/mechanical trauma related to service underlying the disease, **aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence**”.

In the instant case the ID occurred while he was posted in a peace area. There is no evidence of service in HAA and there was no evidence of exceptional stress and strain of service prior to the event, there is no evidence of infection or physical/mechanical trauma precipitating the disease and after onset individual was treated adequately in service hospital and showed gradual improvement. In view of the above ID is considered neither attributable to nor aggravated by military service in terms of para 14, Chap.VI, Guide to Medical Officers (Military Pension) 2008.

19. We further find that the classified specialist (Medicine & Neurologist) also gave a detailed opinion after examining the applicant. The said opinion is as follows:-

Profile: Developed acute left hemiparesis with dysarthria on 31 Dec 82 while on duty at 102 SQN AF (Bareilly). He was evacuated to CH Lucknow where evaluation revealed a ischemic stroke in the right MCA territory. He was managed conservatively and recovered slowly over eight months but needed one person support to ambulate. He was subsequently invalided out in Cat EEE in Aug’83. He has maintained the improvement with conservative therapy and presently ambulates without support with a slight circumduction on the left side. He also has symptomatic seizures noted during first year of stroke and has been on regular AED (Dialantin 300 mg OD) . Last seizure reported in Aug 10. **No history of trauma or fever at onset of stroke. Does not smoke or consume alcohol. No strokes or TIA reported in the past or after the stroke. No DVT/PTE/Procoagulant state noted. No family history of stroke in Young No.NIDDM/HTN/IHD noted.**

20. From a careful perusal of these two reports, we find that there was no family history of stroke or any history of trauma or fever at onset of stroke. It is also found that patient did not smoke or consume alcohol and the disease occurred when the applicant was on duty. However, the overall medical opinion is somewhat different which states that since no stress or strain of service was there, nor was there any evidence of infection or physical/mechanical trauma precipitating the disease, therefore, the disability was neither attributable nor aggravated by service.

21. We however find that Para 14 of ‘Guide to Manual Guide to Medical Officers’ has been quoted by the Specialist in his opinion in the medical board proceedings as brought out above, wherein possibility of aggravation due to stress has been ruled out by him on the ground that the applicant was posted in a peace station (Bareilly) and not in any high altitude area. The specialist and

the members of the medical board, who were all doctors in an army hospital in Delhi, have concluded that the nature of work and his charter of duty in a peace station did not involve any undue stress. It is not understood as to how the medical board could come to such a conclusion that his duty did not involve any undue stress without obtaining an opinion from the commanding officer or an executive officer/Record Officer from the Air Force. In fact the medical board proceedings (AFMS-16) has a printed format as Part III of the said form at page 3 mentioning, 'STATEMENT OF COMMANDING OFFICER' with a signature block of the CO underneath. The above page of the board proceedings has been left blank. There is no statement from either the commanding officer or the Air Force Record officer or from any other executive officer from the Air Force station Bareilly. As argued by the Id counsel for the applicant, that Bareilly Air Force station was an active fighter base and the applicant's trade (ac engine fitter) demanded extreme stress and fatigue, which was not denied by the respondents. We also note that the appeal medical board dated 29 Nov 2010, which is before us in original, could not have had the privilege of the previous medical board proceedings because it was destroyed as stated by the respondents. Therefore the medical board of 29 Nov 2010 has based its opinion without any credible input from the CO or OC Records regarding the intensity and frequency of stress and strain that the applicant was subjected to while posted in Bareilly AF station in an operational unit (102 Ops Unit, as stated in Para 1 of page 1 of the ibid medical board proceedings). We are thus of the view that the medical board has not applied its mind before concluding that the applicant's disability was not aggravated due to stress and strain of service, since the Board found no evidence of such stress. We are of the view that the Board made no efforts to obtain any evidence (Statement from CO/ OC Records) while going ahead with a blank Part III of the board proceedings. It is difficult to attribute such omission as inadvertent.

22. It is worth reiterating that the commanding officer who can clearly and definitely certify as to whether there was stress or strain of service or whether the individual even though posted in peace area, was required as an engine technician/fitter to fly to advance locations for operational purposes. It is also to be noted that the latest medical board was held long 25 years after the

invalidation of the individual. By this time, the applicant ought to have undergone treatment and his conditions may or may not have improved. Therefore, by examining a person after long 25-26 years of the onset of the disease, without the previous medical documents/boards, it is difficult for the present medical board of Nov 2010 to opine the exact reason for the onset of the disease. It is not in dispute that the applicant had rendered only about 6 years of service and, therefore, the onset was at very young age which normally does not happen for such type of disease except the reasons as enumerated in the medical board report. There may be reason for stress or strain of service or physical effects of heat or occasional high altitude duty even for short duration, which might have caused the disease or precipitated its early onset. Whether the applicant was performing any strenuous or operational duty, was not stated by the concerned commanding officer; yet the medical board on their own concluded absence of any such conditions in his service. Although, Mr. Mukherjee, Id. adv. for the respondents, has tried to argue that the commanding officer, who was there at the relevant point of time, in all probability, would have retired, we are of the view the respondents should have obtained the comments of the present incumbent, because the commanding officer can only certify about the character of duties of an engine technician/ fitter and what level of stress and strain he had to withstand. In the absence of any such opinion, we are of the considered view that benefit of doubt should go to the applicant after taking into account the specialist's opinion and also the fact that the applicant has died on account of the ibid disability.

23. It is true that ordinarily, opinion of the medical board has to be accepted and cannot be questioned but the Hon'ble Apex Court has held in a very recent decision that such medical opinion is no doubt to be honoured but not worshipped. The court or tribunal can embark on examining the validity of medical opinion in appropriate cases. It will be useful to quote the relevant portion (para 11) of the judgement of the Hon'ble Supreme Court in Veer Pal Singh –vs- Secretary, Ministry of Defence reported in AIR 2013 SC 2827 as below :

“ 11. Although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the experts deserves respect and not worship and the Courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.”

24. The medical board has based their opinion in the context of Para 14 Guide to Medical Officers (Medical Pensions) issued by Govt. of India, 2008 Edn. It will be useful to quote the relevant portion as under:-

“14. **Cerebrovascular Accident (Stroke).** Stroke or cerebrovascular accident is a disease of acute onset leading to neurological deficit such as hemiplegia caused by intravascular events. Cerebral infarction following thrombosis and embolism accounts for a large number of cases whereas cerebral hemorrhage is the cause only in a few cases. Atherosclerotic thrombosis is of gradual onset and any permanent neurologic deficit is preceded by TIAs (Transient Ischaemic Attacks).

TIAs result mostly from embolism of thrombus or platelet material from an extra cerebral artery (Internal Carotid) and sometimes due to stenosis of a major artery, altering hemodynamics in the event of change of posture and exertion.

Mural thrombus from the heart in IHD and SBE and ulcerated plaques of atherosclerotic arteries are the principal source of embolism.

Among other causes, physical trauma (heat) and mechanical trauma and arteritis associated with infection like TB, connective tissue disorder (PAN, SLE) can give rise to stroke. Service in HAA can precipitate stroke by virtue of hypercoagulable state.

About half of the strokes caused by cerebral hemorrhage are due to subarachnoid hemorrhage from rupture of a berry aneurysm (Circle of Willis) and less commonly due to arteriovenous malformation. Remaining cases of hemorrhage in cerebral substance are due to rupture of small perforating arteries/arterioles weakened by hypertension or atheromatous degenerations.

The majority cases exhibit greater degree of hemiparesis, dysphasia (if dominant hemisphere is involved), hemianaesthesia and hemianopia. In some cases ataxia, cranial nerve palsy, myasthenia may be the presentation depending on the territory of brain involved.

It will be appropriate to award attributability if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service.

Aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field.

It nearly takes 6 months for complete recovery. However, cases showing no sign of improvement up to two years and unlikely to improve further and should be labeled as permanent.”

25. As already stated above, the medical board has mainly relied on the above guidelines, as marked by bolding. We have also indicated that in the absence of opinion of commanding officer it is difficult to hold that there was no evidence of physical trauma (heat) or mechanical trauma or exceptional stress and strain of service considering the charters of duty that the applicant was performing at an active fighter base like Bareilly while posted in an operational unit (102 Ops Unit). It is quite evident that the above Appeal Medical Board has relied on assumptions and presumptions with regard to the possible stress that the applicant was subjected to while posted in 102 Ops Unit at Bareilly Air Force Station. The peculiar facts of the case, we have to bear in mind that the applicant has since died and no further medical examination is possible; all the contemporaneous records have been destroyed. In this context, Para 4 of Entitlement Rules for air force personnel as in appendix II of Pension Regulations for the Air Force, 1961, Part I, by Capt. R.S.Dhull, 2010-11 Edn. may be referred to :-

“4. In deciding on the issues of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases.”

26. On a consideration of peculiar facts and circumstances of the case, we are of considered opinion that in this case, the applicant, since deceased, should get benefit of doubt and consequentially, he is entitled to get disability pension with effect from the date as indicated in the order of the Hon’ble Delhi High Court quoted above till his death. Thereafter, the widow (substituted applicant No. 1) is entitled to get family pension taking into account the service element of the disability pension that would become entitled to her deceased husband as per rules as a consequential benefit to this Order.

27. In the result, the OA is allowed by issuing the following directions:-

- a) The deceased applicant Haraprasanna Das is held entitled to get disability pension at the rate of 50% as assessed by the medical board w.e.f. three years from the date of filing of writ petition No. WP © 3899/2004 before the Hon'ble Delhi High Court till his death on 7.3.12. The respondents shall pay the ibid arrears of disability pension to Smt. Renubala Dash; widow of deceased soldier (substituted applicant No. 1)
- b) Thereafter, his widow i.e. substituted applicant NO. 1 shall be granted family pension on the service element of the disability pension in accordance with rules w.e.f. 8.3.2012.
- c) This exercise be completed and payment made in terms of the above order within four months from the date of communication of this order failing which interest @ 10% per annum will accrue on the admissible amount.
- d) There will be no order as to costs.

28. Let the original records be returned to the respondents on proper receipt.

29. Let a plain copy of the order duly countersigned by the Tribunal officer be furnished to both parties on observance of due formalities.

(LT. GEN. K.P.D.SAMANTA)
MEMBER(ADMINISTRATIVE)

(JUSTICE R.N.RAY)
MEMBER(JUDICIAL)