

**A.F.R**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH,**  
**LUCKNOW**  
**COURT NO. 2**

**O.A. No. 312 of 2013**

**Monday, this the 4<sup>th</sup> day of July, 2016**

**"Hon'ble Mr. Justice Devi Prasad Singh, Judicial Member**  
**Hon'ble Air Marshal Anil Chopra, Administrative Member"**

B.K. Tyagi, aged about 68 years, Father of late Flt Lt Dishant Tyagi (26477) MED, R/o C-9/B Sarvodaya Colony, Near Jail Chungi, Meerut, U.P. – 250 001

**.....Applicant**

Versus

1. Union of India through the Secretary, Ministry of Defence Finance, South Block, New Delhi.
2. Union of India through the Secretary, Ministry of Defence South Block, New Delhi.
3. The Chief of Air Staff, Air Force Headquarters, Vayu Bhawan, Rafi Marg, New Delhi.
4. Directorate of PP & R, Air Headquarters, Ministry of Defence, West Block- VI, R.K. Puram, New Delhi – 110 066.

**....Respondents**

**Learned Counsel for Applicant**

**- Shri Veer Raghav Chaubey  
Advocate**

**Ld. Counsel appeared for the Respondents**

**-Dr. Shailendra Sharma Atal,  
Advocate, Sr. Central Govt.  
Standing Counsel**

**JUDGMENT (ORAL)**

1. Present Original Application has been filed on behalf of the Applicant under Section 14 of the Armed Forces Tribunal Act, 2007, being aggrieved by refusal to pay dependant pension to the parent (father) of the deceased on the ground that the death of the deceased namely, Late Flight Lt Dishant Tyagi was not attributable to the Air Force Service.
2. We have heard Shri Veer Raghav Chaubey learned counsel for the Applicant and Dr. Shailendra Sharma Atal, Senior Standing counsel appearing for Union of India. We have also been taken through the materials on record.
3. Matrix of necessary facts is that Flight Lt Dishant Tyagi, son of the Applicant was commissioned in the Indian Air Force in Medical Branch on 14.08.2001 and at the relevant time, he was posted at Air Force Station, Begumpet, Secunderabad. The deceased used to partake lunch/dinner/super from the Air Force Mess. The Air Force Mess remains open till 10.30 pm. On the fateful day i.e. on 31.05.2003, the deceased was the Duty Medical Officer, and he got an urgent call from the Station Medical Centre of Air Force Station at 7 pm as a result of which he rushed to S.M.C and discharged

his duties as Duty Medical Officer till 11 p.m. By the time, he came back from duty, the Mess was already closed and hence he had no option except to go out for partaking meal outside the Air Force Campus. It appears, the deceased requested his colleague Flight Lt Harjeet Singh to accompany him. Both the deceased and Flight Lt Harjeet Singh left on a motor cycle. Flight Lt Harjeet Singh, it is stated, was driving the motor cycle while the deceased was the pillion rider. On way back after taking meal, the motor cycle on which the deceased was pillion rider, met with an accident in which deceased suffered serious injuries and succumbed to injuries. It is stated that after the accident, the deceased was rushed to Apollo Hospital where the Doctors attending on him, declared him brought dead.

4. In the instant case, in all, four Court of Inquiry were held. The first Court of Inquiry held on 02.06.2003 converged to the conclusion that the death of the deceased was not attributable to Air Force Service. The Subsequent Court of Inquiry held on 22.09.2003 also opined that the death of deceased was not to be treated as attributable to Air Force Service. The third Court of Inquiry was held on 15.03.2004 to review the earlier Court of Inquiry and

rectify certain observations raised by HQ TC in Feb 2004. This time, again, there was no recommendation about the death of the deceased being attributable to Air Force Service. The fourth Court of Inquiry was held on 26.07.2004 in which entire facts and circumstances leading to accident were delved into and in ultimate analysis, it was opined that the deceased on the relevant date and time was on duty and that his death was attributable to Air Force Service keeping in view the beneficiary spirit of Entitlement Rules for Casualty Pensionary Award 1982 and also having regard to the fact that the officer was not alive to defend/explain the circumstances under which he had gone out for dinner. As a consequence of the recommendations made by the 4<sup>th</sup> Court of Inquiry, the matter was processed and the records were forwarded to Ministry of Defence which issued a letter in Dec 2005 enumerating therein that the death of the deceased officer was attributable to Air Force Services. As a result, necessary pension papers were obtained and forwarded to Deputy C.D.A (AF) in March 2006 for grant of Dependent Pension. It appears that Dy. CDA (AF) referred the matter to CDA (AF) and in Oct 2008 Dy. CDA (AF) intimated that the case had been referred to CGDA. The CGDA then referred the matter to Ministry of Defence (Fin/Pen) in

Feb 2010. This time the concurrence granted by Ministry of Defence was withdrawn with the approval of Secretary Defence (Finance). The Applicant was accordingly intimated about withdrawal of Government sanction by means of letter dated 19.08.2011. On receipt of the aforesaid letter, the Applicant preferred a representation with the request to reconsider the case for award of Dependent Pension asserting that the deceased met with accident and died during the course of duty and his death was attributable to Air Force Service. It was also represented by the Applicant that had the Mess been open, there could have been no need for the Applicant to go outside for taking meal alongwith his colleague. It was also represented that under any rule or any provision, there was no prohibition to take meal outside the premises of Air Force in case contingency arose. However, the representation submitted by the Applicant could not find favour with the authorities that be, and the respondents reiterated their earlier decision whereby finding was recorded by Ministry of Defence that death of the deceased was not attributable to Air Force Services.

5. Rule 74 of the Air Force Dependent Pension Rules postulates that dependent pension may be paid in case

death is due to or hastened by either a wound injury or disease which was attributable to air force service, or the aggravation by air force service of a wound, injury or disease which existed before or arose during air force service. For ready reference, Rule 74 being relevant is excerpted below.

"74. A special family pension to the widow of an officer and special Children's allowance to his legitimate children under 18 years of age, or dependants pension to his parents of brothers/sisters, may be granted if his death was due to or hastened by either or wound, injury or disease which was attributable to air force service, or the aggravation by air force service of a wound, injury or disease which existed before or arose during air force service.....

6. A plain reading of the aforesaid Rule shows that Dependant Pension may be granted in case death is due to or hastened by either a wound or injury which is attributable to Air Force Service. If a plain reading of the aforesaid provision is considered literally, it means that in case death took place during the course of Air Force Service due to or hastened by either a wound or injury or disease it may be attributable to Air Force Service and a person nominated as dependant may be entitled to pension. It is well settled principles of

interpretative law that while interpreting statutory provisions, meaning should be given to each and every word and no word should be made redundant in case the provision contained in Rule 74 is considered.

7. The framers of Rule in their wisdom have considered the attributability with the condition preceded by word "due to or hastened by either or wound or injury or disease". The use of word "hastened" means not only during the course of service but in case an injury is caused and the person dies on account of Air Force Service or if the causation generated on account of Air Force Service then it shall be deemed to be aggravated by Air Force Service.

8. In Oxford dictionary and thesaurus Vol 3, the word "hasten" or "hastiness" has been defined as under:

"hasten-verb (cause to) proceed or go quickly.

Hastiness noun

1. Abrupt, brief, brisk, fast, hurried, immediate, instantaneous, quick, rapid, short, speedy, sudden, swift. 2. careless, cursory, foolhardy, headlong, hot-headed, hurried, ill-considered, impetuous, impulsive, incautious, pell-mell, perfunctory, precipitate, rash, reckless,

rushed, slapdash, summary (justice), superficial, thoughtless, unthinking.”

Keeping in view the aforesaid definition of word “hasten” there appears to be no room for doubt that causation to go outside for dinner was germane on account of discharge of duty in air force during late night by which time the MESS was closed. The word ‘or’ used in Rule 74 (supra) is in dis-conjunction and means the injuries caused were either incidental to air force service or because of air force service or disease. In the present case, the foundation of the entire episode was late night air force service compelling the deceased to go out for dinner on account of closure of MESS.

9. In the present case, the deceased was on duty as he had left to attend an emergency call at SMC. It is not disputed that the deceased used to take meal/dinner/lunch from the Mess of the Air Force. Admittedly, the MESS according to its own Rules, gets closed at 10.30 pm. There is no denying that the deceased had left without having dinner/meal from the MESS on account of emergency call where he discharged his duties upto 11 pm and when he came back at 11 pm, the MESS had already been closed at



10.30 pm. On account of closing of MESS, the deceased alongwith his colleague had to leave for dinner/meal on the motor cycle. On way back after taking dinner, the deceased, who was riding the pillion, met with an accident in which he succumbed to his injuries. In the circumstances, there is no room for doubt that on account of duty conferred by the Air Force Service, the Applicant could not take meal in the MESS within the prescribed time and in consequence thereof, he had no option except to go out of the Air Force Campus to have dinner. The situation and contingency compelled the deceased to go out for dinner on account of closing of mess hours. It brooks no dispute that neither any rule nor any provision nor any circular inhibited an officer to go out for dinner in case MESS is closed particularly when such a person was busy on duty. In such situation, the sequence of events shows that the deceased suffered massive injuries and succumbed to his injuries which by all reckoning are attributable to Air Force Service.

10. In the above conspectus, we fail to understand as to how and under what circumstances the death of the deceased was not considered as attributable to Air Force Service in case he had to go out to partake meal out of the Air Force Campus on account of closing of

MESS. There is no denying of the fact that it was because of discharge of duty late in the night that the deceased under compelling circumstances had to go out for partaking meal. In any case and for any reason, it cannot be held that injuries sustained by the deceased were not attributable to Air Force Service. Thus we are of the firm view that the deceased suffered the accident and succumbed to injuries in the course of duty and his death was attributable to Air Force Service.

11. We further fail to understand that in the instant case, repeated Court of Inquiries were held and why the decision taken by the Final Court of Inquiry in which it opined the death to be attributable to Air Force Service was turned down by the Ministry of Defence. No cogent and convincing reason has been assigned by the Ministry of Defence as to how and under what circumstances the injuries sustained by the deceased may not be attributable to Air Force Service though it is on record that the accident occurred as the deceased was busy upto 11 pm attending on an emergency patient and could only come back after closure of MESS and thus had to go out for dinner on account of closure of MESS which gets closed by 10.30 pm.

12. At the fag end of the arguments, a question was posed whether Applicant may be treated as Dependant of the deceased. Suffice it to say that apparently in the service record of late Flight Lt Dishant Tyagi, Applicant has been recorded as his dependant. In view of the service record, the Applicant seems entitled to dependant pension as dependant of the Applicant keeping in view the fact that death of the deceased was attributable to Air Force Service.

13. In the facts and circumstances of the case, we are of the view that gross injustice has been done by the respondents while denying Dependent Pension on account of death of the Flight Lt Dishant Tyagi. The matter has been protracting since 2003. In our considered view, it is a fit case wherein exemplary cost should be awarded to the Applicant in view of the law enunciated by Hon'ble the Apex Court reported in the case of ***Centre for Public Interest Litigation and others V. Union of India and others, (2012) 3 SCC 1.***

14. Accordingly, O.A is allowed and the impugned orders dated 30.12.2005 and 25.07.2012 (Annexure 2 and 6) are set aside with consequential benefits. In the facts and circumstances, we direct the respondents to pay dependent Pension alongwith interest at the rate

of 10% per annum expeditiously, say, within four months from today. The exemplary cost is quantified at Rs 50,000/- which shall be paid to the Applicant. The cost aforesaid shall be deposited with the Tribunal within four months. The Registrar of the Tribunal upon receipt of the cost, shall release the said amount by cheque to be issued in the name of the Applicant.

15. Before parting, it may be clarified that it would be open to the respondents to recover the costs from the person in the Ministry of Defence who has reversed the decision with regard to payment of pension.

16. There shall be no orders as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

MH/-