

A.F.R

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
COURT NO. 2

O.A. No. 125 of 2015**Tuesday, this the 02nd day of August, 2016**

**“Hon’ble Mr. Justice D.P.Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative
Member”**

Smt. Manoj Singh, wife of No. 2695194-A Late Gdr
Gyanendra Singh, Resident of Village & Post : Akohari,
Tehsil: Purwa, Dist: Unnao (UP), Pin : 209821

.... Applicant

Versus

1. Union of India, through the Secretary, MoD (Army), New Delhi - 110011.
2. Chief of Army Staff. Integrated HQrs, MoD (Army), New Delhi-110011.
3. Office of DGAFMS, Ministry of Defence, Pin: 908713 C/O 56 APO.
4. OIC Records, The Grenadiers Records, Pin: 908776, C/O 56 APO.
5. CO, No. 9 Grenadiers (Mewar), Pin: 910809, C/O 56 APO
6. PCDA(P), Drapadi Ghat, Allahabad - 211014.

...Respondents**Ld. Counsel appeared for the
Petitioner****- Shri S.K. Singh
Advocate****Ld. Counsel appeared for the
Respondents****-Mrs. Appoli Shrivastava
C.G.S.C**

ORDER (ORAL)

1. This is an Application filed by the Applicant under section 14 of the Armed Forces Tribunal Act seeking the relief of Special Family Pension on account of death of her husband namely, Late Grenadier Gyanendra Singh during the course of duty.

2. We have heard Shri Shailendra Kumar Singh, learned counsel for the Applicant and also Smt. Appoli Srivastava, learned counsel for the respondents, duly assisted by Surgeon Commander G. Parthsarthy and also Shri S.C.Saroj, Senior Accounts officer, PCDA (P) Allahabad.

3. Factual matrix of the case is that the husband of the Applicant namely, late Shri Gyanendra Singh was enrolled in the Indian Army as Grenadier/Sepoy on 06.01.2000. During the course of service, he breathed his last on 24.01.2010 on account of cardiac arrest. The chart encapsulating details of field service performed in various theatres by the deceased during various operations conducted by the Army are summarised as under:

1. OP Rhino	-15.11.2000
2. OP Rakshak	-07.04.2001
3. OP Rhino	-21.05.2002
4. OP Falcon	-23.04.2006

4. At the time of cardiac arrest, the husband of the Applicant was posted at Mamun Cantt, which is situated near Pathankot (Punjab). Admittedly, the cardiac arrest befell when the deceased was on duty. After his death, the Applicant, widow of the deceased, applied for special family pension, which was denied to her. The provisions with regard to Special Family Pension are contained in Para 213 of the Pension Regulations, which being relevant are reproduced below.

"213- A special family pension may be granted to the family of an individual his death was due to or hastened by-

(a) A wound injury or disease which was attributable to military service,

OR

(b) The aggravation by military service of a wound, injury or disease which existed before or arose during military service."

5. On the count of entitlement of Applicant to special family pension, learned counsel for the Applicant vehemently argued and submitted that the Applicant is entitled for special family pension for the reason that cardiac arrest befell the deceased at the time when he was discharging duties. In repudiation of the above submission, learned counsel or the respondents drew

our attention to Para 47 of the Circular titled "Guide to Medical officer". Being germane to the controversy involved in this case, Para 47 is reproduced below.

"47. **Ischaemic Heart Disease (IHD).** *IHD is a spectrum of Clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded.*

Prolonged stress and strain hastens atherosclerosis by triggering of neuro-hormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias.

The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance and child education and lack of security for family, Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while

servicing in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Entitlement in Ischemic heart disease will be decided as follows:-

- (a) Attributability will be conceded where: myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while servicing in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-1 will be considered as attributable to mil service.*
- (b) Aggravation will be conceded in cases in which there is evidence of:-*

IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking Neither attributability nor aggravation can be conceded in such cases.

6. Learned counsel for the respondents as well Surgeon Commander namely, Shri G. Parthsarthy heavily placed credence on clause (a) of Para 47 of the Guide to Medical officers, which envisages that attributability will be considered where myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional and physical strain, provided that the intervals between the incident and the development of symptoms are approximately 24 to 48 hours.

7. Alongwith O.A, the Applicant has also filed undisputed chart with regard to duty assigned to the deceased during last 14 days. The details of duties as contained in the chart are enumerated below.

- (a) 11 Jan 2010
- (b) 12 Jan 2010
- (c) 13 Jan 2010
- (d) 14 Jan 2010
- (e) 15 Jan 2010
- (f) 16 Jan 2010
- (g) 17 Jan 2010
- (h) 18 Jan 2010
- (i) 19 Jan 2010
- (j) 20 Jan 2010
- (k) 21 Jan 2010
- (l) 22 Jan 2010

(m) 23 Jan 2010

(n) 24 Jan 2010

Attending Gdr to L/NK promotion cadre as trg pgme and performing sentry duties at Zorawar Range Guard Picket No 6."

8. A plain reading of the aforesaid chart clearly shows that the deceased was performing Sentry duty at Zorawar Range Guard Picket No 6 on the fateful day.

9. Now the question that crops up for consideration is whether the Applicant is entitled for Special Family Pension. In this connection, we feel called to say that in case, an analogy is drawn from the judgment of Hon'ble Apex Court in the case of **Dharamvir Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316, and Sukhvinder Singh reported in 2014 STPL (WEB) 468 SC**, according to which in case a person dies on account of disease or for any injury after joining the Army, he shall be entitled for disability pension, then by applying the same analogy to the present case, the Applicant may be entitled to the special family pension.

10. Before proceeding further it is worthwhile to mention that by letter dated 21.05.2011, the respondents forwarded the service particulars of the deceased. In the said letter in column no 9, the cause

of death was mentioned as heart attack. In column No 10, the death was mentioned as attributable to military service (Annexure no. A-8 to the OA). By another letter dated 08.06.2012, which was issued in response to the Application preferred by the Applicant, the service particulars of the deceased were once again forwarded to the Applicant but it was with a difference. In Column No 10 expression "NOT ATTRIBUTABLE TO MILITARY SERVICE" was mentioned. This clearly indicates that in the interim period the status of the disease (heart attack) of the Applicant's husband was changed from attributable to Military service to "NOT attributable to military service".

11. However, it may be appropriate to interpret the provisions with regard to payment of special family pension. It is well settled proposition of law that while interpreting the statutory provisions, meaning should be assigned to each and every word, section by section, word by word alongwith punctuation and nothing should be left redundant.

12. Keeping in view the aforesaid settled proposition of law, Para 213 of the Pension Regulations should be interpreted. A plain reading shows that a wound, injury or disease which is attributable to military service or aggravated by military service which existed before or

arose during military service shall make entitled the dependents to avail of special family pension. A combined reading of clause (a) and (b) shows that even if a person suffers a wound, injury or disease and it begins while serving Army, then he/she will be entitled to special family pension. The framers of Pension Regulations consistently used the **word "arose during military service"** which means that in case during the course of military service, a person suffers from disease and later-on dies because of it, then he/she shall be entitled to special family pension. The same inference may be drawn from the Guide to Medical Officers relied upon by the respondents which envisages that in case a person suffers from severe trauma or exceptional mental, emotional and physical strain provided that the intervals between the incident and the development of symptoms are approximately 24 to 48 hours, then he/she shall be entitled to family pension. Further the provisions show that in case Myocardial infarction arises during service in the time relationship to service compulsion, then he/she shall be entitled to special family pension. Accordingly, a combined reading of Pension Regulations as well as Guide to Medical officer of the Army reveals that beginning of disease is during the course of military

service and later-on, in case a person suffers from such disease then he/she shall be entitled to special family pension.

13. Surgeon Commander G. Parthsarthy while assisting the Tribunal very fairly admits that myocardial infarction does not occur in a day. It takes a long time depending upon the facts and circumstances of each case. It may begin a year before or six months before or anytime keeping in view the physical ability, the circumstances and variety of other factors pertaining to the person concerned. In case, on this touchstone, the disease of the husband of the Applicant is tested, it may not be ruled out that the husband of the Applicant was suffering from cardiac disease since long and because of which cardiac arrest took place on 24.01.2010. Apart from the above, from the duties assigned to the husband of Applicant in previous stages (supra), it would transpire that he had participated in many operations of the Indian Army and it cannot be ruled out that cardiac disease could have begun during those period, when he was assigned to be part of military operations of the Indian Army for the cause of country. The respondents should not have confined themselves to duties in the last 14 days and should have looked into the background of

the entire service career of the husband of the Applicant spanning over 10 years. Since the breeding of the disease takes longer time to develop into a full fledged disease resulting in cardiac arrest, according to the own admission of Shri G Parthsarthy, Surgeon Commander, and according to the provisions contained in the Guide to Medical officers, we feel constrained to say that the respondents have not taken into reckoning the previous duties assigned to the husband of the Applicant during military operations from time to time and jumped to the conclusions by confining themselves to duties assigned to him during the last few days. We feel, had they looked into the entire service career of the husband of the Applicant including his participation in Military operations as contained in the chart, there would have been no reason to record a finding that the Applicant was not entitled to payment of special family pension.

14. Apart from above, the cause of myocardial infarction depends upon variety of factors which include occlusion of one or more coronary arteries, and it takes much time to reach a danger point. In Bansal's Concise Medical Dictionary, myocardial infarction has been defined as under:-

"Heart attack. Necrosis of an area of the myocardium following occlusion of one or more of the coronary arteries, characterized by severe pain in the middle of the chest behind the sternum which may radiate to the shoulder, neck, left arm, fourth and fifth fingers of the left hand, the back or the jaw and usually accompanied by nausea, vomiting, sweating, low blood pressure and breathlessness."

In view of the above, ordinarily foundation of myocardial infarction is not one day event but it depends upon development spread into passage of time.

15. It may be noted here that court of inquiry recorded a finding that the Applicant's death was attributable to military service. As per policy when death occurs while in service and it is declared as attributable to military service, then the widow is entitled to special family pension. The finding of the court of inquiry seems to be based on well knit reasoning and the same should not have been reversed without recording the finding while dealing with the matter keeping in view of the Pension Regulations. In connection with it Para 4 of the counter affidavit being relevant is reproduced below.

"4. That death of the Applicant's husband was declared as attributable to military service by

Court of Inquiry held at 9 Grenadiers as per direction of Commander 15 Infantry Brigade. As per policy where death occurs while in service it is declared as Attributable to Military Service and in such cases widow of deceased is entitled for Special Family Pension. Accordingly, Special Family Pension claim of the Applicant was forwarded to PCDA(A), Allahabad vide the Grenadiers Records Letter No. 2695194/SR/F-Pen dated 02.07.2010. However, Principal Controller of Defence Account (Pension) returned the claim vide their letter No. G-4/07/10/60/VII/G-709/10 dated 17.08.2010, stating that (i) Individual died due to constitutional disease. (ii) Medical opinion not as per classification of disease. (iii) Claim is returned for seeking opinion from DGAFMS as per classification of disease. Accordingly, the Grenadiers Records processed the case to DGAFMS, Ministry of Defence, New Delhi vide letter No. 2695194/SR/F-Pen dated 3.9.2010 for seeking opinion as per classification of disease. The Special Family Pension claim of deceased soldier was rejected by Office of the DGFMS, MoD vide letter No. 16050/DGAFMS/MA(Pens)/Initial dated 29.10.2010 stating that "this office does not agree with opinion given vide AFMSF-93 (Part-II)/COI/Injury report regarding attributability/aggravation aspect. On perusal of documents it is seen that deceased was posted to Peace Station at the time of death. Cause of death as per post mortem report is "ACUTE MYOCARDIAL INFRACTION" which is due to underlying atherosclerosis. There is no evidence

of injection/embolic phenomenon or service in field/HAA/CI Ops area or any service related exceptional Stress and Strain (In the 14 days charter of duties and AFMSF 16 Part I) hence cause of death considered as Neither Attributable to Nor Aggravated by service". The decision of DGAFMS, Ministry of Defence was communicated to the Applicant by The Grenadiers Records vide letter No. 2695194/SR/F-Pen (I) dated 12.11.2010 with an advice to prefer an appeal against rejection of Special Family Pension within 6 months if she is not satisfied with the decision of DGAFMS, Ministry of Defence. Since claim of Special Family Pension was rejected by Principal Controller of Defence Accounts (Pension), therefore claim for grant of Ordinary Family Pension was submitted by the Grenadiers Records vide letter No. 2695194/SR/F-Pen dated 13.11.2010 alongwith DGAFMS, Ministry of Defence letter No. 16050/DGAFMS/MA (Pens)/Initial dated 29.10.2010 to Principal Controller of Defence Accounts (Pension), Allahabad. Accordingly, ordinary family pension was granted to the Applicant by Principal Controller of Defence Accounts (Pension), Allahabad vide Pension Payment Order No. F/NA/011005/2011 dated 7.3.2011. The Applicant has not submitted any appeal against rejection of Special Family Pension till date."

16. It is not disputed that the court of inquiry had recorded the finding that the disease was attributable to and aggravated by military service. But esoterically,

the finding of the court of inquiry and recommendations of Commander 15 Infantry Brigade dated 02.07.2010 fell short of acceptability by the PCDA (P) Allahabad, which for reasons best known to them, referred the matter to the DGAFMS for its view. The DGAFMS in turn reversed the opinion of the Court of Inquiry. The DGAFMS reversed the opinion of the Court of Inquiry and Bde Cdr merely taking into accounts the duties performed by the husband of the Applicant during the last 14 days immediately before the cardiac arrest. It also held that the husband of the Applicant was posted at peace station and was not assigned any duty which may be held to be hazardous in nature. Such finding without delving into service profile vis a vis the disease from which the husband of the Applicant was suffering, seems to be an exercise without sufficient application of mind. It goes without saying that whenever a higher forum is inclined to reverse the finding of forum like court of Inquiry and the Brigade Commander, the order must be padded out with appropriate reasons indicating the reasons to reverse the recommendation of Court of Inquiry and Brigade Commander. In case reason is not assigned while reversing the order of lower formation how and on what ground the higher authority has not agreed

with the decision of the lower formation would not be known, and it shall then amount to arbitrary exercise of power hit by Article 14 of the Constitution of India. The difference of opinion must be pin-pointed by the higher authority which has not been done in the present case. In our view, the DGAFMS has recorded a contrary view mechanically without applying mind to the nature of disease from which the husband of the Applicant was suffering and without taking into consideration the duties discharged by the deceased during the entire service career. In such cases, comprehensive opinion must be formed keeping in view the entire service career of the husband of the Applicant which could have escalated into full fledged heart ailment.

17. In our opinion, DGAFMS should not ordinarily have reversed the opinion of the Court of Inquiry and Brigade Commander merely on the basis of opinion expressed by PCDA (P). It is a common feature that the PCDA (P) is referring back the matter mechanically and that too without assigning any reason. Referring the matter to higher authority disagreeing with the opinion of the Court of Inquiry and recommendation of Brigade Commander in our opinion tends to cause mental pain and agony to Army personnel. In case, the

PCDA (P) feels that the opinion has been given collusively or is based on unfounded facts or against the records, then such matter be referred back for correction but in case genuine opinion of the court of inquiry is submitted to PCDA (P), then ordinarily in such cases the PCDA (P) is not expected to refer it to the DGAFMS for opinion. In the case like the present one, where injustice to the Applicant is writ large, we may impose exemplary cost recoverable from those found responsible for such arbitrary and unwarranted action resulting in mental and physical agony to the Army personnel. However, on the persistent plea of the learned counsel for the respondents that it was not deliberate and it happened long back and now the PCDA (P) is strictly adhering to the opinion of the Medical Board, we refrain from imposing any exemplary cost.

18. In the above conspectus, we are of the view that the Applicant is entitled for Special Family Pension. The decision taken by the respondents denying Special Family Pension and reversing the finding of court of inquiry and recommendations of the Brigade Commander is held to be an arbitrary exercise of power coupled with non application of mind.

19. Accordingly, we allow the OA and set aside the impugned order dated 29.10.2010 and direct the respondents to pay special family pension studied with all consequential benefits expeditiously within a period not exceeding four months from today. The respondents shall communicate the order forthwith to appropriate authority.

20. There shall be no order as to costs.

(Air Marshal Anil Chopra)

Member (A)

MH/-

(Justice D.P. Singh)

Member (J)