

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 78 of 2019**Friday, this the 17th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt. Usha Singh
Widow of Ex Sgt Late Mahendra Singh Gautam
R/o 192 C Harginder Nagar-II,
Kanpur Nagar-208007

..... Applicant

Counsel for the Applicant : **Shri Virat Anand Singh**, Advocate
Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Air Staff, Integrated Headquarter of Ministry of Defence (AF), DHQ PO, new Delhi – 110011.
3. Directorate of Air Veterans, AFRO Buildings, Subroto Park, New Delhi – 10.
4. Principal Controller of Defence Account, Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the Respondents : **Shri Shyam Singh**,
Central Govt. Counsel**ORDER**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

“(i) To direct the respondents to consider Applicant's claim for Special family pension and pay the difference of arrear of pension with interest.

“(ii) To pass such other order(s) which their Lordships may deem fit and proper in the existing facts and circumstances of the case.

(iii) Allow this application with cost of rupees 50,000/-."

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Air Force on 19.01.1988 and died in Military Hospital, Ambala Cantt on 17.10.2012 due to 'CARCINOMA ORAL CAVITY' and 'CORONARY ARTERY DISEASE'. The husband of the applicant was initially detected ID Cardio Artery Disease and placed in LMC A4G4 (T-24) vide AFMSF-15 dated 06.07.2006. He was reviewed regularly and was placed in LMC A4G3 vide AFMSF-15 dated 01.07.2011. The husband of the applicant reported at MH Ambala for non healing of ulcer from recurrent cheek bite for four years and swelling in left jaw. He was transferred to CH (WC) Chandimandir and Army Hospital (R&R) on 05.07.2012 for evaluation and management. On evaluation he was found to have a Squamous Cell Carcinoma of Oral Cavity. He underwent a 'commandos' operation on 18.06.2012 at CHWC Chandimandir. Histopathology showed a squamous cell carcinoma with all margins free and positive for tumor cells. He was treated with adjuvant radiotherapy upto 13.09.2012 alongwith 4 cycles of concurrent chemotherapy. His condition deteriorated and he developed feature of sepsis and multi organs dysfunction. On 17.10.2012, the husband of the applicant had sudden cardio-respiratory arrest and was declared dead at 1230 hrs on 17.10.2012. The cause of death was Metastatic Carcinoma Oral Cavity. His disability was considered as neither attributable to nor aggravated by service as per column-11 of Section A and Section C of AFMSF-93, Part-II and the same was approved by

JDMS (MB) Air HQ, RK Puram, New Delhi dated 07.02.2013. The competent authority has considered the cause of death of deceased soldier as neither attributable to nor aggravated by Air Force service, therefore, claim for special family pension was rejected by the adjudicating authority vide AFRO letter dated 06.03.2013 and ordinary family pension at enhanced rate @ Rs. 9175/- and a sum of Rs. 9,40,380/- on account of death cum retirement gratuity (DCRG) was sanctioned vide PPO No. 08/14/F/P/637/2013. The applicant preferred first and second appeals against rejection of special family pension and both appeals were considered and subsequently rejected by the competent appellate committee vide order dated 12.06.2014 and 29.02.2016 respectively stating that death of the soldier due to disability "Metastatic Carcinoma Oral Cavity" is neither attributable to nor aggravated by military service and the circumstances which are not in any way connected to duties of Air Force service as per Para 12, Chap VI, GMO 2002, amendment 2008. Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that committee had erroneously went wrong for arriving at such decision as the finding has absolutely overlooked the Aggravation Factor. He further submitted that applicant's husband was, as stated, a chronic gutka chewer, he should have been warned in annual medical check-ups and also should have been issued notices for this, rather respondents allowed him to consume the same, hence, it is a case of Aggravation. Besides this, as per the findings of the committee, the deceased soldier

reported at the last stage of disease, thus, he had crossed the initial stage and respondents made him work under the disease, thus a case of Aggravation. Since, the applicant's husband had died while in service due to disease, it should be considered as aggravated by military service. Learned counsel for the applicant pleaded that husband of applicant was suffering from the disease for which he was under treatment in military hospital and died during service period, therefore, his death is attributable to military service and therefore, applicant should be paid special family pension.

4. Learned counsel for the applicant also placed reliance on the judgment of AFT (RB) Chandigarh in T.A. No. 108 of 2009 arising out of CWP No. 12963 of 2007, **Smt Murti Devi vs. Union of India and Ors**, decided on 12.05.2014 and pleaded that applicant's case is also similar in nature and therefore, she should also be considered for grant of special family pension.

5. Per contra, learned counsel for the respondents submitted that the husband of the applicant had sudden cardio-respiratory arrest and was declared dead at 1230 hrs on 17.10.2012 and the cause of death was Metastatic Carcinoma Oral Cavity. His disability was considered as neither attributable to nor aggravated by service as per column-11 of Section A and Section C of AFMSF-93, Part-II which was approved by JDMS (MB) Air HQ, RK Puram, New Delhi dated 07.02.2013. The competent authority has considered the cause of death of deceased soldier as neither attributable to nor aggravated by Air Force service, therefore, claim for special family pension was rejected by the

adjudicating authority vide letter dated 06.03.2013 and ordinary family pension at enhanced rate @ Rs. 9175/- and a sum of Rs. 9,40,380/- on account of death cum retirement gratuity (DCRG) was sanctioned vide PPO No. 08/14/F/P/637/2013.

6. Learned counsel for the respondents further submitted that death of the soldier due to disability is neither attributable to nor aggravated by military service and the circumstances which are not in any way connected to duties of military service. For grant of special family pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the death and military service. He further submitted that unless there is any causal connection between the death and military service, armed forces personnel cannot be allowed special family pension merely on the reason that applicant's husband died from the disease sustained during service. Since the death of applicant's husband during long treatment in Military Hospitals is not related to the duties of military services, hence, applicant is not entitled for special family pension in terms of Regulations 189 of the Pension Regulations for the Air Force, 1961.

7. We have heard learned counsel for the parties and have also perused the record.

8. We observe that Second Appellate Committee has rejected second appeal of the applicant for the reasons as stated in para 2 of their letter dated 29.02.2016:-

“The individual presented in Sep 2012 with a non healing ulcer and swelling left jaw. He was diagnosed to have

Carcinoma Oral Cavity and underwent surgery followed by adjuvant chemotherapy and radiotherapy for the same. However, the malignancy had metastasized locoregionally and distally. Histopathology confirmed the malignancy to be moderately differentiated squamous cell carcinoma which is known to be associated with tobacco chewing and smoking. In the instant case, the individual was a chronic Guthka chewer and there is no evidence of any other service related cause of the disease. He received adequate treatment and fatal outcome was a nature progression of the advanced disease, hence the ID is conceded as neither attributable to nor aggravated by military service (Para 12, Chap VI, GMO 2002, amendment 2008). He was also a case of Coronary Artery disease, however onset was in 2006 while serving in Peace, hence neither attributable to nor aggravated by service”.

9. The respondents have denied special family pension to the applicant on the reason that for getting special family pension, there must be some causal connection between the death and military service/duty, and this being lacking in applicant's case, as there was no causal connection between the disease (Mouth Cancer) caused due to Guthka chewing which resulted to death and military service, she is not entitled for special family pension in terms of Regulations 189 of the Pension Regulations for the Air Force, 1961.

10. It is pertinent to mention here that judgment relied up by the applicant in Para 4 above is not relevant in this case being different in nature. In the case relied upon by the applicant, the first disease of the applicant's husband was considered as aggravated by military service whereas in the present case, disease/disability of applicant's husband is considered as neither attributable to nor aggravated by service (NANA).

11. We have considered the applicant's case and find that applicant's husband died during long treatment in Military Hospitals

due to disease 'Metastatic Carcinoma Oral Cavity' and sudden cardio-respiratory arrest which is not in any way connected to military service. Since, the death of applicant's husband is under the circumstances which are not in any way connected to duties of military service, therefore, applicant is not entitled to special family pension.

12. In the result, we hold that the claim of special family pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

13. No order as to cost.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: Sept., 2021

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