

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 71 of 2020

Tuesday, this the 30th day of November, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Vitana Devi widow of No. 14653136-Y Late Sep Surya Pal
R/o -Vill-Pure Dangar, Tehsil-Dalmau, District-Rae Bareilly
(U.P)

.... Applicant

Ld. Counsel for the: **Shri Parijaat Belaura**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarter Ministry of Defence, Government of India, South Block, New Delhi-110011.
3. Officer In Charge, EME Records, Secunderabad, Telengana-5000021.
4. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (U.P)

... Respondents

Ld. Counsel for the **Shri Rajiv Pandey**, Advocate
Respondents.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

(a) To grant Special Family Pension w.e.f. 01.05.2013.

(b) To pay difference of arrear of Special Family Pension along with 12% interest from 01.05.2019 till it is actually paid.

(c) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.

(d) To grant Ex-gratia compensation of Rs 10,00,000/- (Rupees ten lac only).

2. Brief facts of the case are that the applicant's husband was enrolled in the Indian Army on 28.05.2002 and he died on 30.04.2013 while under treatment in Command Hospital, Central Command, Lucknow due to "CARCINOMA GALL BLADDER (METASTATIC)". Death of her husband was considered as neither attributable to nor aggravated by military service (NANA) by the medical authority as per AFMSF-93 dated 20.07.2013. Consequent to death of her husband she was paid dues (Rs 27,03,823/-) applicable to NOK. She is in receipt of Ordinary Family Pension vide PPO No F/NA20170/2014 dated 21.02.2014. Vide letter dated 09.11.2013 it was conveyed to her that she is not entitled to Special Family Pension in terms of para 213 of Pension Regulations for the Army, 1961 (Part-II).

However, on 09.03.2019 she represented the matter to EME Records but it was rejected vide order dated 16.07.2019. It is in this perspective that this O.A. has been filed for grant of Special Family Pension.

3. Submission of learned counsel for the applicant is that since applicant's husband died in harness on 30.04.2013, therefore, she is entitled to Special Family Pension. His further submission is that Pension Regulations for the Army, 1961 provides that Special Family Pension may be granted to the family of an officer if his/her death was due to or hastened by a wound, injury or disease which was attributable to military service or the aggravation by military service of a wound, injury or disease which existed before or arose during the military service. He submitted that disease "CARCINOMA GALL BLADDER (METASTATIC)" occurred to applicant's husband while in service therefore, she is entitled to Special Family Pension. Relying upon order dated 12.05.2017 passed by AFT, Chandimandir in O.A. No. 915 of 2015 in the case of **Smt Kamla Devi vs Union of India & Ors** and order dated 12.09.2018 passed by AFT, Principal Bench, New Delhi in O.A. No. 303 of 2016 in the case of **Smt Ranjana Kumari vs Union of India & Ors**, learned counsel for the applicant pleaded that applicant be also granted Special Family Pension on the basis of aforesaid pronouncements.

4. On the other hand, submission of learned counsel for the respondents is that the medical authorities have considered applicant's death as NANA by the competent authority due to "CARCINOMA GALL BLADDER (METASTATIC)" being not related to military service, Special Family Pension in this case is not entitled to applicant in terms of Regulation 213 of the Pension Regulations for the Army, 1961 (Part-I). His further submission is that applicant is only entitled to Ordinary Family Pension which she is already in receipt of vide PPO dated 21.02.2014. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. We find that applicant's husband was suffering from "CARCINOMA GALL BLADDER (METASTATIC)" and while undergoing treatment he expired on 30.04.2013. We also find that on account of illness of her husband she was allotted family accommodation at Lucknow which she occupied on 28.04.2013 but her husband remained in Command Hospital, Lucknow and succumbed to his illness on 30.04.2013. After her husband's death she was granted Ordinary Family Pension in addition to other applicable dues. Her claim for grant of Special Family Pension was rejected on the grounds of NANA.

7. Contention of learned counsel for the applicant that the Hon'ble Apex Court in its judgment in the case of ***Dharamvir Singh vs Union of India & Ors***, (civil appeal No 4949 of 2013, reported in 2013 AIR SCW 4236, has observed that the assessment of any disability as attributable to or aggravated by military service is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, as shown in Appendix II, Govt of India, MoD letter No 1(1) 81 D(Pen-C) dated 20.06.1986, and General Rules of Guide to Medical Officers (Military Pensions) 2002 is sustainable on following points:-

"(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service,

a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)].

8. Also, on attributability of service, para 423 (a), (b) and (c) of Regulations for the Medical Services of Armed Forces, 1983 is relevant which for convenience sake is reproduced as under:-

“(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a show of doubt. If the evidence is so strong against the individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt. If on the other hand the evidence is so evenly balanced so as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(b) The cause of a disability or death resulting from wound or injury will be regarded as attributable to service if the wound/injury was sustained during the actual performance of ‘duty’ in Armed Forces. In case of injuries, which were self-inflicted or due to an individual’s own serious negligence or misconduct, the board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c) The cause of disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease, which has led to an individual's discharge or death, will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."

9. In the case in hand, we find that husband of applicant entered into service in a medically fit condition, thus a presumption can be drawn that he had no disease at the time of enrolment. Further, if the medical or military authority certifies that a disease is not attributable to nor aggravated by military service, then such opinion should also express cogent reasons for holding so, which in this case has not been done. Therefore, in the absence of such reasons, the disability/disease must be assessed as attributable to/aggravated by military service, and applicant should be entitled to Special Family Pension.

10. Further, we also observe that learned counsel for the applicant has made reliance on order dated 12.09.2018 passed by AFT, Principal Bench, New Delhi in the case of **Smt Kamla Devi vs Union of India & Ors** and order dated 12.09.2018 passed by AFT, Chandimandir in the case of **Smt Ranjana**

Kumari vs Union of India & Ors, we find that the case in hand is identical with the aforesaid cases, therefore applicant should be entitled to Special Family Pension.

11. We also observe that husband of the applicant was suffering from "CARCINOMA GALL BLADDER (METASTATIC)" and para 10 (a) (ii) (aa) of Guide to Medical Officers, 2002 refers to cancer of the urinary bladder, which disease is not covered under above guidelines. Thus the opinion of the medical officer that the aforesaid disease was not attributable to military service is incorrect on the ground that applicant's husband died due to "CARCINOMA GALL BLADDER (METASTATIC)" on 30.04.2013 while undergoing treatment at Command Hospital, Lucknow.

12. We find that there are catena of judgments of the Tribunals/High Courts/Supreme Courts to support her claim on the point of attributability, therefore, death of her husband was attributable to military service, enabling her to grant of Special Family Pension and in view of this she is also entitled to grant of Ex-gratia grant of Rs 10 lac.

13. We have also found that the medical literature related to cancer reads as under:-

"The term 'malignancy' refers to the presence of cancerous cells that have the ability to spread to other sites in the body (metastasize) or to invade nearby (locally) and destroy tissues. Malignant cells tend to have

fast, uncontrolled growth and do not die normally due to changes in their genetic makeup.”

14. From the aforesaid, we find that applicant's husband suffered with "CARCINOMA GALL BLADDER (METASTATIC)" while in service and thereafter death on active service which also makes applicant entitled for grant of Special Family Pension.

15. Respondents' contention that medical opinion is not in favour of applicant is on unfounded grounds as with regard to non attributability no reason has been assigned by the medical officer while endorsing the term 'not related to military service'.

16. Additionally, we find more support from the judgment of the Division Bench of Delhi High Court in the case of **Smt Reshma Devi vs Union of India & Ors**, Writ Petition No SC/121/2019 decided on 11.12.2019 wherein the fact and circumstances are similar to the case in hand. There is no medical opinion as to when actually the cancer started developing in the body and when it was detected and spread. However, we are of the view that in view of posting of applicant's husband while serving in different parts of the country, he may have developed the cancer due to the service conditions and it can very well be presumed from the Rules and Regulations that a presumption can be drawn that the disease had developed while in service.

17. In view of the above, we conclude that the death of applicant's husband was attributable to military service and applicant is entitled to Special Family Pension.

18. The respondents are directed to calculate and grant Special Family Pension to applicant from three years preceding the date of filing of the present O.A. which was filed on 24.10.2019.

19. With the aforesaid observation, applicant is also entitled to grant of Ex-gratia of Rs 10 lac.

20. The respondents are further directed to pay the aforesaid amount within a period of three months from today. Default will invite interest @ 8% p.a.

21. O.A. is allowed accordingly.

22. No order as to costs.

23. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 30.11.2021
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