e-Court

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 488 of 2021

Tuesday, this the 08th day of February, 2022

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

Smt Dilmani widow of No 6450218 Naik (late) Mohd Saheed, resident of Village-Singhpur, Post-Singhpur, District-Rae Bareili (UP), Pin-229304.

…. Applicant

Ld. Counsel for the Applicant: **Shri R Chandra**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.

2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office, New Delhi-11.

3. The Officer-in-Charge, Defence Security Corps Record, PIN-901227, C/o 56 APO.

4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-211014 (U.P.).

... Respondents

Ld. Counsel for the Respondents: **Dr. Shailendra Sharma Atal**, Advocate.

ORDER (Oral)

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) The Hon'ble Tribunal may be pleased to set aside the order dated 20.09.1994 (Annexure A-1).*
>
> *(b) The Hon'ble Tribunal may be pleased to direct the respondents to grant special family pension to the applicant w.e.f. 21.11.1991 along with its arrears with interest at the rate of 17 percent per annum.*
>
> *(c) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case are that the applicant's husband was enrolled in the Defence Security Corps (DSC) on 02.07.1982 and he died on 20.11.1991 while under treatment in Military Hospital due to 'Haemorrhagic Cerebrovascular Accident/Pontine Haemorrhage'. Death of her husband was considered as neither attributable to nor aggravated by military service (NANA) by the competent authority. Consequent to death of her husband she was paid Ordinary Family Pension which she is in receipt of vide PPO No F/NA/366/93 dated 08.02.1993. Special Family Pension claim was rejected vide order dated 28.01.1993. Thereafter, appeal was also rejected vide letter dated 26.09.1994 conveying her that she is not entitled to Special Family Pension. However, on 26.07.2017 she represented the matter to Chief of

the Army Staff but nothing has been heard till date. 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 20.11.1991, 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 the disease "Haemorrhagic Cerebrovascular Accident/Pontine Haemorrhage" occurred to applicant's husband while in service therefore, she is entitled to Special Family Pension. Learned counsel for the applicant pleaded for grant of Special Family Pension to the applicant.

4. On the other hand, submission of learned counsel for the respondents is that the pension sanctioning authority and appellate authority have considered applicant's death as NANA due to "Haemorrhagic Cerebrovascular Accident/Pontine Haemorrhage" being not related to military service, Special Family Pension in this case is not entitled to the applicant in terms of Regulation 213 of the Pension Regulations for the

Army, 1961 (Part-I). His further submission is that the applicant is only entitled to Ordinary Family Pension which she is already in receipt of vide PPO No F/NA/366/93. He pleaded for dismissal of O.A.

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

6. It is not in dispute that applicant's husband died on 20.11.1991 due to 'Haemorrhagic Cerebrovascular Accident/Pontine Haemorrhage' while on active service in a service hospital at Allahabad. After her husband's death she was granted Ordinary Family Pension vide PPO No F/NA/366/93 in addition to other applicable dues. Her claim for grant of Special Family Pension was rejected vide order dated 28.01.1993 and appeal 31.05.1993 was also rejected vide order dated 20.09.1994 (Annexure R-3) on the grounds of NANA.

7. During the course of hearing, 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).*
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> *(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)].*
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> *(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).*
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> *(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)].*
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> *(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 shadow 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 applicant's husband 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 authority certifies that a disease is neither 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 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 as in these cases also the disease while in service got aggravated and applicants were granted Special Family Pension, therefore the applicant should be entitled to Special Family Pension.

11. We also observe that husband of the applicant suffered from "Haemorrhagic Cerebrovascular Accident/Pontine Haemorrhage" and died in a service hospital while on active service on 20.11.1991 during treatment and probable cause of death has been mentioned as 'severe hypertension'. Thus, the opinion of respondents that the aforesaid disease was not attributable to military service is incorrect on the ground that

applicant's husband died due to "Haemorrhagic Cerebrovascular Accident/Pontine Haemorrhage" which in medical terms is most commonly due to long standing poorly controlled chronic hypertension. Therefore, an inference may be drawn that the disease with which applicant's husband suffered was aggravated by military service.

12. We also find that there are catena of judgments of the Tribunals/Hon'ble High Courts/Hon'ble Supreme Court 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 entitled to grant Special Family Pension.

13. From the aforesaid, we find that applicant's husband suffered with "Haemorrhagic Cerebrovascular Accident/Pontine Haemorrhage" while on active service and thereafter, he died due to aforesaid disease. In our view the circumstances in which applicant's husband died strengthen her eligibility for grant of Special Family Pension.

14. Respondents' contention (Annexure R-3) that medical opinion is not in favour of applicant, is on unfounded grounds as with regard to non attributability no reason has been assigned while endorsing the term 'not related to military service'.

15. In this case we would like to mention that none of the parties have produced copy of Court of Inquiry report including its opinion and findings to establish cause of death. In the instant case applicant is in receipt of Ordinary Family Pension but she is entitled to Special Family Pension on account of death of applicant's husband while on duty.

16. We are of the view that death of applicant's husband is attributable to military service as he died while on bonafide military duty. In view of the above, we **allow** this O.A. and direct the respondents to release Special Family Pension to applicant w.e.f. date of death of her husband. Since the applicant is already in receipt of Ordinary Family Pension, difference of arrears on account of grant of Special Family Pension may be worked out and paid to the applicant within four months.

17. Let entire amount be paid to the applicant within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% p.a.

18. No order as to costs.

19. Pending application(s), if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 08.02.2022
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