

**RESERVED**  
**(Court No. 2)**

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

**ORIGINAL APPLICATION NO. 785 OF 2023**

Monday, this the 15<sup>th</sup> day of January, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Lt Gen Anil Puri, Member (A)”**

Smt Babita Chand, widow of Late No 4193836-P Rank-Nk, Vinod Chand, R/o Block No 61/3, Nirbhay Vihar, Near Race Course, Lucknow Cantt-02.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, Ministry of Defence, Government of India, South block, New Delhi-110011.
3. Officer-in-Charge, Records Kumaon Regt, C/o 56 APO.
4. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Mrs Anju Singh**, Advocate  
Central Govt Counsel.

**ORDER**

1. By means of this O.A., the applicant has prayed for grant of Special Family Pension w.e.f. the next date of death of her husband i.e. 16.09.2020. Applicant has made following prayers:-

(i) To grant Special Family pension w.e.f. 16.09.2020.

(ii) To pay difference of arrear of Special Family Pension along with 12% interest w.e.f. 16.09.2020 till it is actually paid.

(iii) To pay ex-gratia amount of Rs 10,000,00/- along with 12% interest w.e.f. 16.09.2020 till it is actually paid.

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

2. In brief, the facts of the case are that applicant's husband was enrolled in the Army on 19.07.1999 and he had completed more than 21 years of colour service. He died on 15.09.2020 at 0615 hrs in Command Hospital (Central Command), Lucknow due to 'Aspiration Pneumonitis Astrocytoma Grade-II (Operated)'. The applicant is in receipt of Ordinary Family Pension w.e.f. 16.09.2020. The medical certificate was issued for the cause of death of her husband mentioning the disease leading to his death as 'Aspiration Pneumonitis Astrocytoma Grade-II (Operated)'. Admittedly, the medical opinion is to the effect that the said disease is neither attributable to nor aggravated by Army service.

3. Heard learned counsel for the parties and perused the record.

4. The arguments of learned counsel for the applicant is that since at the time of entering into the Army, the husband of the applicant was not suffering from the disease, which was the cause of his death and ultimately proved to be fatal, therefore, such disease must be deemed to have been attributable to or aggravated by Military service entitling the applicant for grant of Special Family Pension. It has also been argued that the applicant must be given the benefit of the deeming provision, which has been enunciated by the Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316. It is also stated that applicant's case is covered by clause (i) of Regulation 105 of Pension Regulations for the Army, 2008 (Part-I) and, also vide order dated 02.02.2022 passed by AFT, Chandigarh in O.A. No. 146 of 2015, ***Smt Rekha Devi vs Union of India & Ors***.

5. On behalf of the respondents, it is submitted that the applicant is not entitled to Special Family Pension because the disease of applicant's husband i.e. 'Aspiration Pneumonitis Astrocytoma Grade-II (Operated)' has no connection with the Army duty and has not been held to be attributable to or aggravated by Military service. On behalf of the respondents, reliance has been placed on Para 105 of Pension Regulations for the Army-2008 (Part-I) as per which Special Family Pension may be granted to the next of kin of service personnel if his death occurred in the circumstances mentioned in category 'B' and

'C' of Regulation 82 of these Regulations due to or hastened by (i) a wound, injury or disease which was attributable to military service or (ii) was due to aggravation by service of a wound, injury or disease which existed before or arose during service and in case of death after retirement/discharge, provided that the service personnel had retired/discharged otherwise than voluntarily/at own request on compassionate grounds before completion of terms of engagement.

6. On the strength of above regulation, it is argued that there must be connection of death between the disease and Army duty.

7. Learned counsel for the applicant during the course of arguments has drawn our attention towards the Medical Board proceedings, which shows that applicant's husband was suffering from 'Aspiration Pneumonitis Astrocytoma Grade-II (Operated)' which was caused due to stress and strain of military service but learned counsel for the applicant during the course of arguments could not bring to our notice any document or medical record or medical authority, wherein the disease of the husband of the applicant, which ultimately proved to be fatal, can be said to be attributable to or hastened the stress or strain by Military service.

8. On behalf of the respondents, Annexure CA-6 has been filed, whereby Special Family Pension claim of the applicant has been denied on the ground that his death was neither attributable to nor aggravated by military service (NANA). For convenience sake, extract of letter dated 10.03.2023 is reproduced as under:-

*“1. Refer to your petition dated nil.*

*2. It is intimated that your husband was died on 15 Sep 2020 at Command Hospital, Lucknow due to Aspiration Pneumonitis and Astrocytoma Grxade-II (Optd) (probable cause of death due to illness).*

*3. As per opinion of AFMSF-93 (Part-II) (Version 2002) issued by Command Hospital, Lucknow death of your husband was considered as neither attributable to nor aggravated by military service. Accordingly, ordinary family pension has been granted in favour of you vide PCDA (P), Prayagraj PPO No 169202100075 suffix 3000 dated 27 Jan 2021.”*

9. While filing rejoinder affidavit, applicant has stated that her husband died due to disease contracted in service because of continued exposure to hostile work environment in extreme weather conditions or occupational hazards as such, same is attributable to military service. He has also argued that though the Medical Board has held the disease of the husband of the applicant could be neither attributable to nor aggravated by military service, but keeping in view of the Hon'ble Supreme Court's judgment in the case of **Dharamvir Singh** (supra), his death is attributable to/aggravated by military service and therefore, applicant is entitled for Special Family Pension.

10. Learned counsel for the applicant could not place before us any law, rule, authority or medical authority, on the basis of which it can be prima facie shown that 'Aspiration Pneumonitis Astrocytoma Grade-II (Operated)' could have been caused by stress and strain of the Army service and the report of the Medical Board, on the face of it, is incorrect. Further, for attributability, learned counsel for the applicant has placed reliance on para 24.2 of judgment of **Dharamvir**

**Singh** (supra). On scrutiny, we find that the said case was only regarding the disability pension and not with regard to grant of Special Family Pension. For convenience sake, Para 24.2 of the said judgment, is reproduced as under:

*“24.2. A disease which has led to an individual’s discharge or death will ordinarily be treated to have been arisen in service, if no note of it was made at the time of the individual’s acceptance for service in the Armed Forces.”*

11. Bare perusal of this Para shows that Hon’ble Apex Court has not held that in each and every case, it shall be deemed to be attributable to Army service, but it has only said that ordinarily such presumption shall be raised. Thus, decision has to be taken keeping in view the facts and material available on record in each case. Admittedly, in the instant case, there is absolutely no material on record to indicate that disease of the applicant’s husband could have been caused due to stress and strains of Army service.

12. Placing reliance on order dated 02.02.2022 passed by AFT, Chandimandir in the case of **Smt Rekha Devi vs UOI & Ors** (M.A. No. 466 of 2015 and O.A. No. 146 of 2015), learned counsel for the applicant pleaded for grant of Special Family Pension to the applicant. We have perused the aforesaid order and we are of the view that in that case AFT, Chandigarh Bench, considering onset of ‘Astrocytoma’ due to exposure of radiation, has discarded medical opinion and declared the disease as attributable to military service, but in the instant case applicant’s husband being enrolled in the

Kumaon Regiment of the Indian Army had no occasion to direct exposure to radiation. Therefore, in our opinion the disease with which applicant's husband was infected and later died had no relation to Army service.

13. Grant of Special Family Pension is governed by Para 82 (category 'B' and 'C') of Pension Regulations for the Army-2008 (Part-I) which is reproduced as under:-

**Category B.** Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

**Category C.** Death or disability due to accidents in the performance of duties such as: (i) Accidents while travelling on duty in Government vehicles or public/private transport. (ii) Accidents during air journeys (iii) Mishaps at sea while on duty. (iv) Electrocution while on duty etc. (v) Accidents during participation in organised sports events/adventure activities/expeditions or training.

14. In the instant case, death in respect of applicant's husband as per medical record is neither attributable to nor aggravated by military service and he has not died because of any injuries sustained during

military service, but he died because of a particular disease, which is virtually one of the species of Cancer.

15. It is clear that stress, strain or hard physical duty is not a cause of such disease and exact cause of this disease is unknown to mankind. Hence, such disease can't be said to be attributable to or aggravated by Army service. So, the report of Medical Officer has to be accepted as correct as there is no material to show the same to be incorrect. The Medical Officer in AFMSF-93 (Part-II) (Version 2002) has endorsed the following remarks on 26.12.2020:-

*“Individual was a case of Astrocytoma which caused seizures leading to Aspiration Pneumonia which caused death. Death is neither attributable to nor aggravated by service as per paras 9-12 of GMO-2008.”*

16. Admittedly, in the instant case, the competent Medical Board has held that the disease of applicant's husband was to be neither attributable to nor aggravated by military service (NANA). The disease, with which applicant's husband was suffering, is virtually a cancer and we all know that the reason causing cancer are not yet known to the mankind. Once the reason, which causes cancer are known to mankind, then it would not take much time to find out the treatment of the same. When reason to cause a particular disease is not known, then how it can be presumed that the same has been caused by stress and strain of Army service and that too in absence of any medical opinion.

17. In view of the discussions made herein above we do not find any merit in this O.A.

18. Accordingly, this O.A. deserves to be dismissed and is hereby **dismissed**.

19. No order as to costs.

20. Miscellaneous application (s), if any, stand disposed off.

**(Lt Gen Anil Puri)**  
**Member (A)**  
Dated: 15.01.2024  
*rathore*

**(Justice Anil Kumar)**  
**Member (J)**

RESERVED

(Court No 2)

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

ORIGINAL APPLICATION NO 785 OF 2023

Smt Babita Chand

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India &amp; Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="488 1540 626 1575"><u>15.01.2024</u></p> <p data-bbox="488 1577 1101 1612"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="488 1615 1013 1650"><u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p data-bbox="583 1712 862 1747">Judgment pronounced.</p> <p data-bbox="583 1766 997 1800">O. A. No. <b>785</b> of 2023 is dismissed.</p> <p data-bbox="583 1819 1385 1854">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="505 1962 764 2029">(Lt Gen Anil Puri) Member (A)</p> <p data-bbox="488 2032 574 2067"><i>rathore</i></p> <p data-bbox="1170 1962 1474 2029">(Justice Anil Kumar) Member (J)</p>

