

**Court No. 1**

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

**ORIGINAL APPLICATION No. 715 of 2020**

Friday, this the 01<sup>st</sup> day of October, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Radha Devi, W/o Late Brijesh Kumar Singh (DFT/SKT) No 1064064H, R/o Village – Haidarpur, Post Mahoi, District-Farrukhabad (U.P.)

..... Applicant

Counsel for the Applicant : **Shri Ashok Kumar, Advocate**  
Versus

1. Union of India through Secretary Ministry of Defence, South Block, New Delhi- 110011.
2. Incharge, Record Office Kavachit Corps Abhilekh Armoured Corps Records, PIN- 900476, C/o 56 APO.
3. The Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Counsel for the Respondents : **Shri Namit Sharma,**  
**Central Govt. Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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) This Hon’ble Court may graciously be pleased to quash the impugned order dated 21.11.2017 (Annexure No A-2) passed by the Respondent No 2.*
- “(ii) This Hon’ble Court may graciously be pleased to direct the respondents to give special family pension to the applicant along with its arrear w.e.f. 21.05..1996 toward the services of her husband who had died during his service period on 21.05.1996 due to SUBARACHNOIA HAEMORRHAGE WITH ANTCRIOR COMMUNICATING ANEURYSM (OPTD) (CANCER) and also revise the same in accordance with rules of department.*
- “(iii) This Hon’ble Court may further be pleased to pass such other and/ or further order as deem fit, proper and necessary in the circumstances of this case.*
- “(iv) Award costs to the applicant.”*

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 16.01.1980. While posted in 75 Armd Regt at Jodhpur, he was admitted in Mil Hospital, Jodhpur, subsequently transferred to Army Hospital, Delhi and on 21.05.1996 husband of the applicant died due to disease **“SUBARACHNOD HAEMORRHAGE WITH ANTERIOR COMMUNICATING ANEURYSM (OPTD)”**. Applicant was granted

ordinary family pension after death of her husband. Applicant prayed for grant of Special Family Pension as death of husband took place while he was on duty. Her prayer for grant of Special Family Pension was rejected by the respondents vide letter dated 21.11.2017. Being aggrieved, the applicant has filed Original Application for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that husband of the applicant was enrolled in the army on 16.01.1980. Unit of the husband of the applicant was taking part in Battle Training at Jodhpur. Due to continuous exposure to Battle Training, husband of the applicant became sick and ultimately died in Army Hospital Delhi Cantt on 21.05.1996 due to disease **“SUBARACHNOD HAEMORRHAGE WITH ANTERIOR COMMUNICATING ANEURYSM (OPTD)”**. Learned counsel for the applicant claimed that death of the husband of applicant was found as attributable to military service. After death of deceased soldier, applicant is getting family pension. Learned counsel for the applicant submitted that para 82 (B) of Pension Regulation for the Army 2008, clearly indicates that “disease contracted, injuries sustained or cause of death if accepted by medical authority or competent authority attributable to or aggravated by military service, the individual may be granted disability pension/special family pension. Applicant sent appeal for grant of Special Family Pension vide her letter dated

10.11.2017, but her prayer was rejected. Learned counsel for the applicant further submitted that Section 213 of Pension Regulations for the Army, 1961 provides that special family pension may be granted to the family of an individual if 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.*

4. Learned counsel for the applicant pleaded that in view of aforesaid rulings, death of husband of applicant should be treated attributable to military service and special family pension to be granted to the applicant.

5. Per contra, learned counsel for the respondents submitted that it is not disputed that husband of applicant died on 21.05.1996 at Army Hospital, Delhi Cantt due to disease "**SUBARACHNOD HAEMORRHAGE WITH ANTERIOR COMMUNICATING ANEURYSM (OPTD)**". Her claim for grant of special family pension was considered but death of husband of the applicant was found as not attributable to military service for reasons 'Being a systematic disorder not related to service', hence her claim was rejected and she was granted family pension.

6. Learned counsel for the respondents further submitted that it is evident from enclosed medical and service documents that death of the husband of the applicant was found as not connected with military service, hence death was conceded as not attributable to military service by competent authority. Learned counsel for the respondents has annexed a certificate along with counter affidavit which states that reason of death of the husband of the applicant was "systematic disorder not related to service". Learned counsel for the respondents submitted that in view of subject case being against existing Govt policy, O.A. does not have any substance and merit in the principles of natural justice, hence the same deserves to be dismissed in the interest of justice.

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

8. The question crops up whether the death of husband of the applicant can be treated as attributable to military service and whether applicant is entitled for grant of Special Family Pension or not?

9. Conditions for grant of Special Family Pension are governed by Regulation 105 of the Pension Regulations for the Army (Part-1), 2008 which reads as under:-

(a) *Special family pension may be granted to the family of service personnel if his death occurred in the circumstances mentioned in category B and category 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/discharged. Provided that the service personnel had retired/discharged otherwise than voluntarily/ at own request on compassionate grounds before completion of terms of engagement.*

(b) *The question whether death is attributed to or aggravated by military service shall be determined under the Entitlement Rule For Casualty Pensionary Awards, 1982 contained in APPENDIX-IV to these Regulations.*

*Category – B and C of Regulation 82 Pension Regulations for Army (Part-1), 2008 reads as under:-*

(i) *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.*

(ii) *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 organized sports events/adventure activities/expeditions or training.*

10. It is a case where the death of the deceased soldier was considered as not connected with military service, hence applicant was granted family pension and Special Family Pension was denied to her.

11. After having heard the submissions of learned counsel of both sides we find that certain facts are admitted to both the parties. Husband of the applicant while in service died on 21.05.1996 due to disease "**SUBARACHNOD HAEMORRHAGE WITH ANTERIOR COMMUNICATING ANEURYSM (OPTD)**" and applicant was granted family pension after death of her husband. The respondents denied Special Family Pension to the applicant due to reason that death of husband of the applicant was considered as not attributable to military service being a systematic disorder and not related to military service, hence she was not entitled for the same.

12. This question has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the Hon'ble Apex Court and it has been held that for grant of special family pension, death should be attributable to military service.

13. We have considered the applicant's case and we find that death of husband of the applicant was considered as not attributable to military service being not connected with his military

duties in any manner, hence applicant is not entitled to special family pension.

14. In the result, we hold that applicant does not fulfill criteria for grant of Special Family Pension and her claim has rightly been rejected by the respondents which needs no interference.

Resultantly, O.A. is **dismissed**.

15. No order as to cost.

16. Pending applications, if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: October, 2021  
ukt