

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 10 of 2022

Wednesday, this the 4th day of October, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

Smt. Rajeshwari Devi
W/o Late Hav Ram Vir Singh Chouhan (14253509N)
R/o A-474, Durga Gali, Mandawali,
New Delhi – 110092

..... Applicant

Counsel for the Applicant : **Shri Rahul Pal**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), DHQ PO, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), New Delhi – 110011.
3. Senior Record Officer, The Records Signals, C/o 56 APO, 908770.
4. Zila Sainik Kalyan Evam Punarvas Adhikari Firozabad, UP-283203.
5. PCDA (Pension), Draupadi Ghat, Allahabad -211014.

.....Respondents

Ld. Counsel for the Respondents: **Dr. Shailendra Sharma Atal**,
Central Govt. Standing Counsel

ORDER

1. The applicant filed O.A. No. 1582 of 2018 before the Armed Forces Tribunal (PB), New Delhi under Section 14 of the Armed Forces Tribunal Act, 2007 which has been transferred to this

Tribunal and registered as T.A. No. 10 of 2022. The applicant has prayed for the following reliefs :-

- “(a) To direct the respondents to produce all medical documents of the Applicant’s husband, late Hav. Ramvir Singh No. 14253509 from the time of his enrolment to the time of his death along with medical report on the attributability of his death due to military service.
- (b) To direct the respondents to bring all medical documents on record of how suddenly within short span of time he has come to brain tumour while posted in Bhutan.
- (c) To direct the respondents to grant special family pension to the applicant from the date of death of her husband along with arrears at 18%.
- (d) To direct the respondents to pay ex-gratia lump sum compensation to the applicant.
- (e) To pass any other such direction as deemed fit by this Hon’ble Tribunal in the facts and circumstances of the case.”

2. Brief facts of the case are that husband of the applicant was enrolled in the Army on 17.12.1983. While serving with Indian Military Training Team (IMTRAT), Bhutan, husband of the applicant died on 11.02.2000 during bonafide military duty. The cause of death was reported to be Malignant Astrocytoma which was considered as aggravated by service being husband of the applicant was stationed in High Altitude Area (HAA). The applicant was sanctioned ordinary family pension from 05.12.2000 instead of

Special Family Pension. The applicant approached her PDA in July 2004 for revision of her family pension but the same was denied by the PDA stating that 'No revision is required' vide letter dated 30.09.2004. Thereafter in 2011 & 2014, the applicant approached to Zila Sainik Board/ Zila Sainik Kalyan Avam Punravas Adhikari, Firozabad (UP) for revision of pension but no reply was received by the applicant. Thereafter, applicant submitted first appeal dated 04.06.2018 for grant of special family pension but the respondents vide letter dated 29.06.2018 returned the appeal of the applicant with an objection to explain the delay and also to give an undertaking that she has no objection to grant of pensionary award from the date of appeal. The applicant submitted her detailed application dated 20.07.2018 but no action was taken by the respondents to redress her grievance. Aggrieved by non grant of Special Family Pension the applicant has filed this Transferred Application.

3. Learned counsel for the applicant submitted that husband of the applicant was enrolled in the Indian Army on 17.12.1983. While serving with IMTRAT, Bhutan, husband of the applicant died on 11.02.2000. The cause of death was reported to be Brain Tumour (Intracranial Space Occupying Lesion). The medical reports have not been provided to the applicant; however, it seems that husband of the applicant died due to cancer in brain, called Astrocytomas. The husband of the applicant was in active service at the time of his death, however, this disease was never found in his medical

examination or was never informed to the applicant. The applicant was erroneously sanctioned ordinary family pension from 05.12.2000 instead of Special Family Pension though her husband died in duty/service.

4. Learned counsel for the applicant further submitted that applicant approached her PDA in July 2004 for revision of her family pension but the same was denied by the PDA stating that 'No revision is required' vide letter dated 30.09.2004. Thereafter in 2011, the applicant approached to Zila Sainik Board but no relief was granted. The applicant approached the Zila Sainik Kalyan Avam Punarvas Adhikari, Firozabad (UP) on 28.04.2014 for revision of pension but no reply received yet. Thereafter, applicant submitted first appeal dated 04.06.2018 against grant of ordinary family pension instead of special family pension but the respondents vide letter dated 29.06.2018 returned the appeal of the applicant with an objection to explain the delay in her case and also to give an undertaking that she has no objection to grant of pensionary award from the date of appeal. The applicant submitted her detailed application dated 20.07.2018 but no action was taken by the respondents to redress her grievance. The action of the respondents is unfair, illegal and unduly harsh in non grant of special family pension to the applicant on account of the fact that applicant's husband died in service in HAA and death was aggravated by military service.

5. Learned counsel for the applicant further submitted that as per Govt. of India, Ministry of Defence letter dated 31.01.2001, for determining pensionary benefits for death or disability, Category B under this classification states that, *“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 a hostile environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.”* Thus, case of the applicant falls under Category B as applicant lost her husband due to military service wherein his disease was contracted while in service and his death was hastened during posting in High Altitude Area (HAA) which is considered as aggravated by military service. The applicant is entitled to receive special family pension as per Entitlement Rules for Casualty Pensionary Awards, 1982. He placed reliance on the judgment of AFT (PB) New Delhi in OA No. 1257 of 2017, **Smt. Suman Devi vs. Union of India & Others**. He further submitted that it is unfair and discriminatory on the part of the respondents and also against policy and the settled principles of law to deny special family pension to the applicant. He pleaded for grant of special family pension to the applicant from the date of death of her husband.

6. On the other hand, learned counsel for the respondents submitted that husband of the applicant was enrolled in the Army on 17.12.1983 and died on 11.02.2000 while serving with IMTRAT,

Bhutan. The final diagnosis as per post-mortem report is Malignant Astrocytoma which was not attributable but as the cause leading to death was Cerebral Oedema/Comnggestrom, considered as aggravated by service being the soldier was stationed in HAA. Consequent upon death of husband of the applicant on 11.02.2000 in the attendance of MO Det Paro, a Court of Inquest was ordered by Commandant, IMTRAT to investigate the circumstance of death on 11.02.2000 which assembled at MH HAA on 20.02.2000 and opined that (i) Husband of the applicant was on bonafide military duty, (ii) The death was probably because of cerebral hemisphere, (iii) The circumstances of death do not suggest any foul play & (iv) The exact cause of death of husband of the petitioner should be established by a post mortem examination. The post mortem examination of husband of the applicant was conducted by Maj Ajay Malik, Graded Specialist, Pathology on 13.02.2000 at MH HAA and the cause of death diagnosed was Malignant Astrocytoma of left cerebral hemisphere (Temporal Lobe) causing a rise in intracranial tension followed by bemsillar hemiation leading to death. Accordingly, family pension claim in favour of the applicant was processed vide Signals Record letter dated 09.09.2000 and PCDA (P) Allahabad sanctioned ordinary family pension vide PPO dated 05.12.2000 which was amended/revised from time to time.

7. Learned counsel for the respondents further submitted that after elapse of 18 years from the death of husband, applicant sent a representation dated 26.02.2018 to Signals Records for revision of

her family pension which was suitably replied vide Signals Records letter dated 06.03.2018. Thereafter, applicant sent another representation dated 04.06.2018 which was also replied by Record Office vide letter dated 29.06.2018 with an advice to process first appeal alongwith delay explanation report. Instead of submitting first appeal, applicant again sent a representation dated 20.07.2018 which was replied by Signals Records vide letter dated 08.08.2018. He further submitted that as per para 5.1 of Govt. of India, Ministry of Defence letter dated 31.01.2001 read with para 105 of Pension Regulations for the Army Part-1 (2008), special family pension may be granted to the family of an individual, if his death/disability is due to or hastened by circumstances mentioned in Category B and C of para 4.1 of policy letter dated 31.01.2001 whereas in the instant case, husband of the applicant died on 11.02.2000 while serving with IMTRAT Signal Company, Bhutan. The final diagnosis as per post mortem report is found Malignant Astrocytoma which is not attributable but the cause leading to death is cerebral Oedema/Omggestom which is aggravated by service as individual was stationed in HAA, which does not have any causal connection with the military service. Therefore, applicant is not entitled for grant of special family pension being the cause of death does not have any casual connection to military service and not attributable to military service as per para 6 of Entitlement Rules, 2008.

8. We have heard learned counsel for the parties and perused the records.

9. Before proceeding further, we would like to determine whether applicant's husband was on duty when he died due to Malignant Astrocytoma. With regard to definition of "duty" we rely on Appendix II of Clause 12 of Entitlement Rules for Casualty Pensionary Awards which defines the word duty, which for convenience sake is reproduced as under:

"DUTY: 12. A person subject to the disciplinary code of the Armed Forces is on "duty":-

(a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him.

(b) When moving from one place of duty to another place of duty irrespective of the mode of movement.

(c) During the period of participation in recreation and other unit activities organised or permitted by Service Authorities and during the period of travelling in a body or singly by a prescribed or organised route.

Note:1

*(a) Personnel of the Armed Forces participating in
(i) Local/national / international sports tournaments as member of service teams, or,*

(ii) Mountaineering expeditions / gliding organised by service authorities, with the approval of Service Hqrs will be deemed to be "on duty" for purposes of these rules.

(b) Personnel of the Armed Forces participating in the above named sports tournaments or in privately organised mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be „on duty for purposes of these rules, even though prior permission of the competent service authorities may have been obtained by them.

(c) Injuries sustained by the personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, or disability arising from such injuries, will continue to be regarded as having occurred while „on duty for purposes of these rules.

Note: 2

The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional courses or exercises for the Defence

Services for the purpose of the grant of disability family pension on account of disability/death sustained during the courses.

(d) When proceeding from his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher, on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for the journey.

(e) When journeying by a reasonable route from one's quarter to and back from the appointed place of duty, under organised arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available.

(f) An accident which occurs when a man is not strictly on duty as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Thus for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed „on duty“ at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act.”

10. Regulation 213 of the Pension Regulations for the Army 1961 (Part-1) says that a 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.

11. Regulation 105 of the Pension Regulations for the Army, 2008 (Part-1) says that Special Family Pension may be granted to the family or service personnel if his death occurred in the circumstances mentioned in category B and category C of the Regulations 82 of these Regulations due to hastened by :-

- a- A wound, injury or disease which was attributable to military service or
- b- 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.”

12. In this regard, Certificate of Attributability issued by the respondents (Medical Department), being important/relevant, is reproduced as under :-

“In lieu of AFMSF-93 (Part-II)

CERTIFICATE OF ATTRIBUTABILITY : ALL ARMS

Certified that Name RAMVIR SINGH Service No. 14253509N Rank Hav Unit HQ IMTRAT, C/o 99 APO Died on 11.02.2000 hrs at 1530 hr

Diag :

Post Mortem Diag : MALIGNANT ASTROCYTOMA

The cause of death is / ~~is not attributable to~~ or aggravated by Military Service for the following reasons :-

The final diagnosis as per post mortem report is Malignant Astrocytoma not attributable but cause leading to death is cerebral oedema/omggestom which is aggravated by service as individual was stationed in HAA.

Station : C/o 99 APO

Dated : 11 Aug 2000

Sd/- x x x x x x
PANKAI P RAO
Major
Graded Specialist (Surg)

||

I concur with the above.

Station : Calcutta

Dated ; 24 Aug 2000

Sd/- x x x x x x
(R K Sinha)
Maj Gen
DDMS
HQ Eastern Command”

13. A Court of Inquest was held at MH HAA on 20.02.2000 and opinion of the court is as under :-

“1. The court is of the opinion that No. 14253509N Hav Ramvir Singh died at 1530 h on 11 Feb 2000 in the attendance of MR-5831H Maj Avtar Singh, MO det Paro.

2. He was on bonafide mil duty.

3. The death was probably because of cerebral malaria.

4. The circumstances of death do not suggest any foul play.

5. The exact cause of death of husband of the petitioner should be established by a post mortem examination”.

14. A Court of Inquiry was conducted at IMTRAT Sig Coy on 28.03.2000 and opinion of the court is as under :-

“1. The court is of the opinion that No. 14253509N Hav/Op Ciph Ramvir Singh of IMTRAT Sig Coy died at 1530h on 11 Feb 2000 in the attendance of MR-5831H Maj Avtar Narain, MO, Det IMTRAT (Paro).

2. No. 14253509N Hav/Op Ciph Ramvir Singh was on bonafide mil duty.

3. The circumstances of death do not suggest any foul play.

4. The post-mortem examination of late No 14253509N Hav/Op Ciph Ramvir Singh was conducted by MR-05752N Maj Ajay Malik, Graded Specialist, Pathology on 13 Feb 2000 at approx 1430h at MH HAA and the cause of death diagnosed was Malignant Astrocytoma of left cerebral hemisphere (Temporal Lobe) causing a rise in intracranial tension followed by tensillar herniation leading to death”.

15. This is a case where death of husband of the applicant was caused due to Malignant Astrocytoma while on bonafide military duty. The Court of Inquest and Court of Inquiry conducted separately have opined that circumstances of death do not suggest any foul play and death of deceased soldier as per Certificate of Attributability dated 11/24 August 2000, issued by the respondents is aggravated by military service as the deceased soldier was stationed in HAA.

16. Regulation 105 of the Pension Regulations for the Army, 2008 (Part-1) clearly specifies that Special Family Pension may be granted to the family or service personnel if his death occurred in the

circumstances mentioned in category B of the Regulation 82, “*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*”.

17. Thus, from the aforesaid observation/discussion/rules/regulations, we are of the view that deceased soldier was on bonafide military duty and cause leading to death is aggravated by service as the soldier was stationed in HAA, which is conceded by the respondents in their counter affidavit/medical documents, hence, the applicant is held entitled for grant of Special Family Pension instead of ordinary family pension.

18. In this case, ex-gratia lump sum compensation claimed by the applicant is not entitled to her as per rules on the subject. Hence, prayer in this regard is rejected.

19. In view of above, Transferred Application is **partly allowed**. Impugned order, if any, passed by the respondents is set aside. The respondents are directed to issue Corrigendum PPO to the extent that applicant is entitled to Special Family Pension instead of Ordinary Family Pension from the next date of death of her husband i.e. w.e.f. 12.02.2000. However, due to law of limitations settled by the Hon’ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of Special Family

Pension will be restricted to three years preceding the date of filing of the Original Application at AFT (PB), New Delhi. The date of filing of O.A is 14.09.2018. The respondents are directed to make necessary calculation as per the provisions of Special Family Pension and make payment to the applicant accordingly. The amount of Ordinary Family Pension which the applicant has already been paid shall be adjusted against the amount of Special Family Pension. The payment be made within a period of four months from the date of receipt of certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

20. No order as to costs.

21. Misc. Application(s), pending if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: October, 2023

SB

(Justice Anil Kumar)
Member (J)