

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 433 of 2009

[Arising out of WP(C)No. 2333 of 2007 of Delhi High Court]

Nb. Raj Kumar Singh

...Petitioner

Versus

Union of India & Others

...Respondent

For the Petitioner : Shri S.S.Dahiya, Advocate

For the Respondents: Shri Ankur Chibber, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)

JUDGMENT

1. Petitioner vide his petition has prayed that impugned order dated 10.2.2007 passed by Chief Record Officer, Army Physical Training Corps., Abhilekh Karyalaya, APTC records, Pune may be quashed and the respondent may be directed to

grant a special family pension instead of ordinary family pension w.e.f. 7.4.1997 and interest @ 9% p.a.

2. Petitioner is a widow of Nb/Sub Raj Kumar Singh. The petitioner's husband joined Indian Army on 19.6.1976 and enrolled in the Jat Regiment as a Sepoy. At the time of entry into the service, petitioner's husband was hale and hearty. During the service he was posted and transferred to various parts of the country. Petitioner's husband was posted to 14 Gorkha Training Centre, Subathu (Shimla Hills). Petitioner's husband fell sick in September, 1996 and at the unit level he could not be treated. Thereafter he was transferred to Chandigarh Army Command Hospital. There also the medical authorities could not appreciate the medical problem faced by her husband and his health started deteriorating. Petitioner's husband had a boil near the ankle in the leg and had become painful and unbearable. Petitioner's husband was then shifted for treatment to Delhi Cantt. Army Hospital and doctors there after examining him found that he was suffering from "NEUTROPENIC SEPTICEMIA". It is alleged that because of not treating the petitioner's husband properly, he developed a

septic which aggravated and ultimately petitioner's husband expired on 6.4.1997 because of medical negligence. But according to Doctors, petitioner died because of "NEUTROPENIC SEPTICEMIA". Doctors differed on the cause of death. One doctor opined the cause of death due to "NEUTROPENIC SEPTICEMIA" and another opined cause of death to be because of "ACUTE MYELOID LEUKEMIA".

3. Petitioner received the pension on 24.4.1998 after long correspondence and she was only sanctioned ordinary family pension @ Rs.770/- pm from 7.4.97 to 6.4.2004 or date of re-marriage, whichever is earlier and thereafter Rs.450/- p.m. from 7.4.2004 till widowhood. Petitioner's grievance was that she is entitled to a special family pension. In this connection, petitioner has drawn our attention to the Service Regulation No. 213 which lays down that if death is due to or hastened by-

- (a) a wound, injury or disease which was attributable to military service OR

- (b) The aggravation by military service or a wound, injury or disease which existed before or arose during military service.
- 4. Rates of special family pension are higher than that of ordinary family pension. Therefore, the grievance of the petitioner was that her husband died in the service and his death was hastened because of non-diagnosing the correct remedy in time as such it is attributable to military service, therefore she is entitled to the special family pension.
- 5. Petition was contested by the Respondent and respondent in their reply took the stand that the petitioner's husband died because of the "ACUTE MYELOID LEUKEMIA" and cause of death is neither attributable nor aggravated by military service. The disease was systematic disorder not related to military service of the deceased. The deceased widow was granted enhanced rate of ordinary family pension @

Rs.2388/- p.m. from 7.4.1997 to 6.4.2004 and thereafter, normal rate of ordinary family pension @ Rs.1433/- p.m. from 7.4.2004 till widowhood. In addition to that Rs.1,34,082/- on account of Death-cum-Retirement gratuity. Rs.99,895/- on account of Armed Forces Personnel Provide Fund. Rs.62,887/- on account of closing balance of Pay and Allowance. Rs.30,000/- on account of Death Link Insurance accumulation benefit. Rs.1,65,000/- on account of Army Group Insurance cover benefit. Rs.40,152/- on account of Army Group Insurance Scheme maturity benefits.

6. It was also submitted that because the petitioner died due to a disease which is neither attributable nor aggravated by military service, therefore, she is not entitled to special family pension under Service Regulation 213.
7. A rejoinder was also filed and in the rejoinder it is pointed out that the respondent has not correctly appreciated the

facts. The petitioner has expired because of "NEUTROPENIC SEPTICEMIA" and another cause given is the "ACUTE MYELOID LEUKEMIA". It is also pointed out that as per the Army Rules and Regulations, the claimant is not required to prove the condition of entitlement. She will receive the benefit of any reasonable doubt. It is also pointed out that '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 individual's acceptance of military service'.

8. We heard both the learned counsel of the parties and perused the records. Infact, the immediate cause of death of petitioner was "SEPTICEMIA", but the deeper melody was on account of "ACUTE MYELOID LEUKEMIA". As per the Medical Certificate: Cause of Death of All Ranks, it is clearly mention that the disease or condition directly leading to death was 'ACUTE MYELOID LEUKEMIA'. The certificate has been given by Classified Specialist Medicine (Medical Oncologist).

9. The "SEPTICEMIA" was nothing but because of the deeper melody of Leukemia which exhibited by a small boil at the ankle.
10. The Annexure III to Appendix-II of Entitlement Rules for Casualty Pensionary Awards, 1982 (Clause J -7) clearly lays down that diseases normally not affected by service and one of them is the Malignant disease (Cancer and Carcinoma). Leukemia is nothing but part of the Malignant disease and it has been clearly mentioned that such disease does not arise and affected on account of military service.
11. Therefore, the rules on subject are very clear that as per the finding under the Entitlement Rules for Casualty Pensionary Awards, 1982 clearly lays down that leukemia is not normally affected by the service. Similarly is the finding given by the medical board also. Leukemia is a disease which is because of certain bodily changes in the system and it is very difficult to know

apparent cause of it, but it doesn't arise on account of normal military service. Therefore, it is apparent that the cause of death of husband of the petitioner has nothing to do with the military service. Hence as a result of above discussion, we don't find any merit in the petition and the same is dismissed. No order as to cost.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
November, 2010