

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

Suppl.

1.

OA 286/2019 with MA 782/2019

Smt Bharti Maggu W/o

Late Col Alok Maggu

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Anil Srivastava, Advocate

For Respondents : Mr. Y. P. Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

06.12.2023

Vide our detailed order of even date; we have allowed the OA 286/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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**For Applicant : Mr. Anil Srivastava, Advocate**  
**For Respondents : Mr. Y.P. Singh, Advocate**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**OA 286/2019**

The applicant vide the present OA seeks the following  
prayers:-

*“(a) Direct the respondents to grant Special family pension to the Applicant w.e.f. the date of the death of the applicant’s husband in 18.02.2000 with 12% interest on the arrears thereof after deducting the amount already received as ordinary family pension.*

*(b To direct the respondents to grant the ‘Ex Gratia amount’ of Rs 1000000/- (Ten Lakhs Only), to the applicant; the death being deemed to have been caused on duty.*

*(c) That the applicant be awarded cost of the litigation @ Rs 50000/-.*

*(d) To pass any such other and/ or further order or orders as this Hon’ble Tribunal may deem fit and proper in the interest of justice and in the facts and circumstances of the case.”*

2. Col Alok Maggu No. IC-40615N, the late husband of the applicant Smt Bharti Maggo was commissioned in the Indian Army on 12.06.1982 (PC) and died on 27.05.2013 at the IGMH Hospital, Shimla due to Acute Stemi (ST Elevation) Myocardial Infarction (With Failed Thrombolysis and Cardiac Arrest). The death of the officer was declared as 'Physical Casualty' and considered as NANA by the competent authority. The applicant being his next of kin was granted all terminal benefits including the enhanced rate of Ordinary Family Pension.

3. The applicant's claim for grant of Special Family Pension was rejected vide the letter dated 19.12.2013 No. B/38031/24/AG/PS-4 (Imp-1) stating to the effect:-

*"1. The Competent Authority, after examining the case in the light of relevant rules and medical/administrative provisions, has decided that cause of death i.e. Acute Stemi (ST Elevation) Myocardial Infarction. (With Failed Thrombolysis and Cardiac Arrest) of the above named officer is not connected with Military service and is, therefore, neither attributable to nor aggravated by Military service."*

4. The said rejection of the grant of the Special Family Pension was conveyed to the applicant vide letter dated 20.01.2014 no. 12681/IC-54613/T-9/MP 5(b).

5. No First Appeal against this rejection of the grant of Special Family Pension vide letter dated 19.12.2013 communicated to the applicant on 20.01.2014 was filed by the applicant. However, taking into account the factum that the OA is pending consideration since its institution on 20.02.2019, we consider it appropriate to take up the OA for consideration in terms of Section 21(1) of the AFT Act, 2007.

### ***CONTENTIONS OF THE PARTIES***

6. The applicant submits that her late husband was commissioned in the Bengal Sappers (Corps of Engineers) of the Indian Army on 12.06.1982 after a thorough medical examination by a competent Medical Board which had found him fit in all respects. The applicant has further submitted that her late husband attended various counter insurgency operations and served in various field/HAA/peace stations with full dedication and was posted at Shimla in 'Project Deepak' as Director (Estimating). The applicant further submits that on 26.02.2013 in the afternoon whilst so posted at Shimla the applicant's husband felt breathlessness/ heaviness and reported to the A&E department, Military Hospital Jutogh but after necessary medical examination by the medical officers on duty, he was sent back home as nothing abnormal was detected but the next morning at around



5.00 a.m. he was again taken to the Military Hospital at around 0630 hrs on 27.05.2013 with complaint of severe retrosternal chest pain alongwith sweating. The applicant submits that the ECG done at that time was indicated of inferolateral Myocardial Infarction and TROPT test was negative, which is indicative of the onset of the heart attack having started possibly a few hours ago. *Inter alia* the applicant submits that the CKMB (Heart Muscle Specific Enzyme) too was 85IU/ml which the applicant submits supports the status and duration of the onset of a heart attack. Though the applicant's husband is indicated to have been provided with treatment on being shifted to IGMC Shimla for emergency temporary pacing and rescue PCI after stabilization, he developed a cardiac arrest and could not be revived and was declared dead at 1010 hrs on 27.05.2013 at IGMC Shimla.

7. The applicant submits that her late husband's death occurred whilst on duty and thus his death is attributable to military service and in as much as it took place whilst on duty being posted at Shimla in Project Deepak, it has to be held to be attributable to military service in terms of category B or category C of the Govt. of India letter dated 31.01.2001 and thus the applicant is entitled to the grant of the Special Family Pension. The applicant further submits that there is a causal

connection and nexus between the nature of the duty and the incidence which caused the death of her late husband. The applicant further submits that she is also entitled to *ex gratia* payment as per the then admissible rate.

8. Reliance was *inter alia* placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union Of India & Ors*** (Civil Appeal No. 4949/2013) to contend to the effect that the death of the applicant's late husband has to be held to be attributable to military service.

9. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264 on para 12 to 15 thereof to contend to the effect that the member of the Armed Forces is presumed to be in sound physical and mental condition at the time of induction into service if there is no note or record to the contrary made at the time of such entry and that in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. *Inter alia* the applicant submits that in the terms of the said verdict in ***Rajbir Singh*** (Supra) it has been specifically stipulated to the effect that the provision for payment of

disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have succumbed to a disability even before the completion of the tenure in the Armed Forces and it has thus been submitted on behalf of the applicant that the applicant is entitled to the grant of the Special Family Pension.

10. Reliance was also placed on behalf of the applicant on the order dated 05.04.2017 of the AFT, PB, New Delhi in OA 799/2016 in the case of *Jyotsna Bhatnagar vs. Union of India & Ors.* in which case the applicant thereof who was posted as the Director Ex Serviceman Contributory Health Scheme at Nagpur whilst discharging his duties fell sick and reported on 26.07.2014 to the Station Medicare Centre at Nagpur and felt uncomfortable on the night between 26.07.2014 and 27.07.2014 and complained of breathing problem and heaviness and was taken to the Station Medicare Centre, Nagpur but unfortunately was declared dead due to Coronary Artery disease and was held that he suffered from the stress and strain of service which could not be adjudged on the basis of charter of 14 days duties which simplicitor did not indicate the stress and strain of work done by the husband of the applicant and the applicant was held entitled to the grant of the Special Family Pension.

11. Reliance was also placed on behalf of the applicant on letter No. 20(1)/98/(D)(Pen/Services) dated 22.09.1998 which provisions relate to the condition governing the payment of *ex gratia* and to the letter no. 20(1)/98/(D)(Pen/Services) dated 21.10.2008 issued by the Govt. of India, Ministry of Defence D(Pay/Services) in which case in the case of death occurring due to accidents in course of duties in terms of the 6<sup>th</sup> Central Pay Commission, the existing rate of *ex gratia* lumpsum compensation to the next of kin of the deceased has been revised to Rs. 10 lakhs which letter takes effect from 01.01.2006.

12. The respondents on the other hand place reliance on the Regulation 105 of the Pension Regulation for the Army 2008 to submit to the effect

***“(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.”***

13. The respondents also placed reliance on the policy on grant of the Special Family Pension detailed in para 4.1 of the MoD letter No. 1 (2)/97/D (Pen-C) dated 31.01.2001 to submit to the effect that widows of service personnel who die in service in circumstances given in Category B and C which read 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 a hostile work environment, 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 organized sports events/adventure activities/expeditions/training.,

are those entitled for consideration for the grant of the Special Family Pension.

14. The respondents further submit that the applicant's late husband had been thoroughly examined by the Duty Medical Officer and the required tests were done that is ECG and SPO2 which were normal at that time as per the applicant's own statement and for raised Blood Pressure, the officer has advised to see Medical Specialist after recording his serial Blood Pressure in the MI room for 3 days. The respondents also submit that prompt action had been taken to evacuate the officer by unit who was on part of annual leave from 01.05.2013 to 24.05 2013 with suffix on 25 and 26 May 2013 being Gazetted Holiday and Sunday by the hospital staff of the Military Hospital including the Special Care Unit which was on standby to start immediate treatment and that all required medical treatment was given to the husband of the applicant for saving his life and also further treatment for him being shifted to IGMC Hospital. The respondents submit that the applicant's late husband was on annual leave from 01.05.2013 to 24.05.2013 with permission to suffix the leave on 25

and 26 May, 2013 being a Gazetted Holiday and Sunday and thus in view of the Charter of Duties of 14 days preceding the date of the incident that is 27.05.2013, the competent medical authority had rightly opined the death of the applicant's late husband has being neither attributable to nor aggravated by military service.

### **ANALYSIS**

15. That the applicant's late husband died whilst in harness in the Indian Army whilst he was posted at Shimla in Project Deepak as Director (Estimating) is not refuted in as much as the respondents through their counter affidavit have stated to the effect that the averments made in para 4.4 of the OA required no comments being a matter of record.

16. Though undoubtedly on the date of demise of the applicant's husband that is on 27.05.2013 when he was taken to the medical hospital around 0630 hrs, it was the day after he resumed his duties after having been on annual leave from 01.05.2013 to 24.05.2013 with the dates of 25 and 26 May, 2013 having been allowed to be suffixed being a Gazetted Holiday and Sunday, but the factum of the applicant's late husband having been commissioned in the Indian Army on 12.06.1982 and of having suffered from the **Acute Stemi**



**(ST Elevation) Myocardial Infarction (with Failed Tyrombolysis and Cardiac Arrest)** after 31 years of service in the Indian Army coupled with the factum that the averments made by the applicant through para 4.3 of the OA which reads as under :-

*“ 4.3 That during the service, the Applicant's husband has attended various counter insurgency operations and served in various filed/HAA/peace stations with full dedication. In consideration of his sincerity, hard work and dedication, the applicant was promoted from time to time to the rank of Col.”,*

having not been refuted by the respondents who vide their counter affidavit dated 23.08.2019 state to the effect :-

*“11. That the content of Para 4.3 requires no comments being matter of record.”,*

the factum that the applicant's late husband attended various counter insurgency operations and served in various Field/HAA/Peace stations has not been refuted.

17. The death in the instant case of the applicant which has arisen due to myocardial infraction which falls for consideration within the ambit of Para 47 of the GMO (Military Pensions) 2008 which reads as under :-

*“47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process*

of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service. Entitlement in Ischemic heart disease will be decided as follows:-

(a) *Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service. Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.* (b) *Aggravation will be conceded in cases in which there is evidence of:- IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be*

*conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions. There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases.”, (emphasis supplied)*

makes it apparent thereby that service in field and high altitude areas apart from physical hardship imposes considerable mental stress on the personnel of the Armed Force.

18. In the circumstances of the instant case it is essential to advert to the observations made in Para 10 and 11 of the order dated 05.04.2017 of this Tribunal in the case of **Jyotsna Bhatnagar** (Supra) in OA 799/2016 which reads to the effect :-

*“10. The cause of death, which was Coronary Artery Disease cannot occur spontaneously, and it has happened over a period of time. The respondents actions of taking into account the last 14 days charter of duties without taking into account the measures of duties, performed by the applicant's husband prior to the aforesaid period of 14 days before his death, would be incorrect. Therefore, it has to be concluded that the applicant's husband suffered from stress and strain of service which cannot be adjudged on the basis of charter of 14 days duties.*

*11. The Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India and others (2013) 7 SCC 316 having regard to the entitlement Rules has held that when a person entered the service without any disease or disability, the disability or disease occurred to him has to be treated as attributable to service as the presumption is required to be drawn in favour of the applicant, which presumption is however rebuttable by the*

*respondents. It is the duty of the respondents to demonstrate otherwise. In the instant case except on the strength of 14 days charter of duties which do not indicate the stress and strain of work by the husband of the applicant, no attempt has been made to substantiate that the cause of death was not due to cumulative stress and strain of service through the applicant's career as an air crew."*

19. There is nothing that the respondents have placed on record to indicate any contributory factors from the side of the late officer, and thus the respondents cannot contend that attributability and aggravation cannot be conceded in the instant case for the causation of the disability is neither hereditary nor has it been contended that the applicant was a smoker. In these circumstances the presumption that arises in favour of the deceased Armed Force Personnel of his disability and consequential death being due to a myocardial infarction due to the stress and strain of military service and continued exposure to the hostile work environmental and occupation hazardous squarely falls within the ambit of category B of para 4.1 of the MoD letter No. 1 (2)/97/D (Pen-C) dated 31.01.2001. In the circumstances the applicant is held entitled to the grant of the Special Family Pension from the date of demise of her late husband IC-40615 N Col Alok Maggu.

20. The date of demise of applicant's late husband being 27.05.2013, she is entitled to the grant of the Special Family Pension after deduction of the amount already received as Ordinary Family Pension.

21. We are fortified in view of our order dated 16.05.2023 in OA 2396/2019 in the case of *Smt Vidya Devi W/O Late Sep Dharampal Yadav vs. UOI & Ors.* thereof to the effect :-

"14.

*In the instant case, in terms of Para-47, Chap VI of GMO 2002 amended in 2008, which forms the basis of denial of the claim for Special family pension as relied upon on behalf of the respondents itself, it is indicated that prolonged stress and strain and autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. The said Para-47 which deals with Ischaemic Heart Disease (IHD) already referred to herein above, also stipulates that considerable mental stress of solitude and separation from the family also leaves the individual tense and anxious. The Entitlement for Ischaemic Heart Disease (IHD) in terms of Para-47 of GMO 2002 amended in 2008, relied upon on behalf of the respondents themselves, stipulates that attributability will be conceded where a myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours."*..,

in which case the cause of death of the serving Sepoy having been opined to be **Shock Secondary Myocardial Infarction** that is a heart attack, was held to be due to circumstances aggravated by military service with the applicant thereof that is the spouse of the deceased Sepoy having been held entitled to the Special Family Pension in terms of Rule 213 of the Pension Regulation for the Army 1961, in as much as the late Sepoy's disability was held to have apparently aggravated during military service and did not exist as per the records of the respondents at the time of induction into the military service.

22. In relation to the same it is essential to advert to Regulation 423 of the Regulations for the Medical Services of the Armed Forces 2010 which relates to 'Attributability to Service' and provides as under:-

*"423.(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or 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 Area/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 evidences 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 an individual as to leave only a remote possibility in his/her favor, 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 be so evenly balanced 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 case occurring in Field Service/Active Service areas.*

*(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. 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 a 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.*

*(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical*



*Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.*

(e). *To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :*

- (i) *AFMSF – 16 (Version – 2002) in all cases*
- (ii) *IAFY – 2006 in all cases of injuries.*

(f). *In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."*

*(emphasis supplied),*

and has not been obliterated.

23. Vide order dated 23.03.2023, the AFT(RB), Lucknow in the case of *Sony Kushwaha Widow of Nk Late Nagendra Singh Kushwaha vs. UOI & Ors.* in OA 53/2023 has likewise granted Special Family Pension to the widow of the late Armed Forces Personnel who died in harness with **Coronary Insufficiency Associated with Hypertrophied Heart** with para 6 thereof being to the effect :-

“6. Para 4.1 of Government of India, Ministry of Defence letter dated 31.01.2001 (Annexure A-24) deals with attributability and aggravation of cases for grant of pensionary benefits on death/disability which reads as under:-

**PART II-PENSIONARY BENEFITS ON DEATH/  
DISABILITY IN ATTRIBUTABLE/AGGRAVATED CASES**

1. to 3. XXXX XXXX XXXX

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorized as follows:-

**Category A**

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

**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 a hostile work environment, 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 organized sports events/adventure activities/ expeditions/training.

**Category D**

Death or disability due to acts of violence/attack by terrorists, anti- social elements, etc, whether on duty other than

*operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.*

*Category E*

*Death or disability arising as a result of:-*

- a) Enemy action in international war.*
- b) Action during deployment with a peace keeping mission abroad.*
- c) Border skirmishes*
- (e) On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating mine-field laid by enemy or own forces in operational areas near international borders or the line of control.*
- f) War like situations, including cases which are attributable to/aggravated by:-*
  - (i) Extremist acts, exploding mines etc., while on way to an operational area*
  - (ii) Battle inoculation training exercises or demonstration with live ammunition.*
  - (iii) Kidnapping by extremists while on operational duty.*
- (g) An act of violence/attack by extremists, anti-social elements etc while on operational duty.*
- (h) Action against extremists, antisocial elements, etc. Detach/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*
- (1) Operations specially notified by the Govt. from time to time.*

*4.2 Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.*

*Notes:- (1)*

*The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*

*(11) The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time*

*In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/ discharge/invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defence letter No. 1(1)99/D/(Pen/Ser) dated 7.7.99. Defence letter no. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as amended /modified vide Ministry of Defence letter No. 1 (1)99/D(Pen/Ser) dated 07.06.99."*

However, though the applicant's late husband died while in harness and it stands established that the death was attributable to and aggravated by military service, nevertheless the death of the deceased armed force personnel does not fall within the ambit of the category of death stated in the letter no. 20(1)/98/D(Pen/Service) dated 22.09.1998, nor within the ambit of the category of the death stated in letter no. 20(1)/98/D(Pen/Services) dated 21.10.2008, in as much as the death of the late deceased armed force personnel in the instant case, *did not occur due to any accident in the course of his duties, nor did the death take place in the course of duties attributable to acts of violence by terrorists etc, nor during enemy action in war or border skirmishes, nor in action against militants, terrorists etc., during enemy action in international war or war like engagements*

*specifically notified.* Thus the applicant is not entitled to the grant of any ex-gratia payment.

### **CONCLUSION**

24. In view thereof, the OA 286/2019 is partly allowed. The applicant is held entitled to the grant of the Special Family Pension as prayed from the date of the death of her husband that is 27.05.2013.

25. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum on the arrears due from the date of this order.

Pronounced in the open Court on the 6<sup>th</sup> day of December, 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

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