

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1587 of 2020

In the matter of :

**Smt. Shukla Avtar W/o
Late Lt Col Avtar Krishna**

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Anil Srivastava with Ms. Ruchi
Sharma, Advocates

For Respondents : Dr. Vijendra Singh Mahndiyan,
Advocate

CORAM:

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

***“(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 i.e. 21.08.1976 with 9% interest on the arrears thereof after deducting the amount already received by her as enhanced/ordinary family pension.

- (b) To direct the respondents to grant the 'Ex Gratia amount' as admissible at the time of death of the applicant's husband, to the applicant; the death being deemed to have been caused on duty and as such attributable to or aggravated by Military Service.*
- (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. The matter was reserved for orders on 13.09.2023. However, there being an error in the order,

the matter was again listed on 01.11.2023, on which date, the learned counsel for the applicant clarified that the prayer made in the OA is confined to seeking the grant of Special Family Pension alone and accordingly all other prayers except prayer (a) are rendered otiose.

BRIEF FACTS

3. The applicant's husband, Col Avtar Krishna, since deceased (hereinafter referred to as 'deceased officer'), having been found medically and physically fit, was commissioned in the Indian Army on 07.06.1953. It is the case of the applicant that whilst the deceased officer was posted in Jodhpur as CEME Southern Command Troops, on 21.08.1976, he had suffered a massive heart attack and died in harness at the Command Hospital, Jodhpur. As the applicant was granted ordinary family pension, she sent a representation dated 26.04.2019 to the Chief of the Army Staff for grant of Special Family Pension (SFP) and Ex-Gratia compensation. When no response was received, the applicant filed the present OA. In the interest of justice, in terms of Section 21(2)(b)

of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that at the time of joining the Army, the deceased officer was declared fully fit physically and mentally and was in SHAPE-1 and no note was made in his medical documents to the effect that he was suffering from any disease at that time and thus any disease/disability contracted during the period of service is attributable to military service only. The learned counsel submitted that the death of the deceased officer took place while he was on active duty and as such it is attributable and falls under Category 'B' of the GoI, MoD letter dated 31.01.2001 and there is causal connection between the nature of the duty and the incidence which caused the death of the deceased officer, hence the respondents should have declared the death of the deceased officer as attributable to or at least aggravated by military service. In support of his contentions, the learned counsel placed

reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316]***.

5. *Per contra*, the learned counsel for the respondents justified the action of the respondents and submitted that the applicant died on 21.08.1976 and as per Para 619 (C) of the Regulations for the Army, 1987 (Revised Edition), the service records of the deceased officer and all the medical documents have been weeded out. The respondents vide their counter affidavit dated 05.04.2021 denied receipt of the representation dated 26.04.2019 sent by the applicant to the AG/MP-5(B)/PS-4, however, submitted that as intimated vide AG/MP-5(b) letter dated 14.10.2020, the claim for special family pension has already been rejected vide letter No. 218588/76 dated 21.05.1977. The respondents, therefore, prayed for dismissal of the OA.

6. The applicant filed a rejoinder to the reply filed by the respondents and submitted that the respondents have intentionally hidden or selectively disclosed the

records of the deceased officer. The learned counsel of the applicant reiterating the submissions made in the OA, pleaded for determining/adjudication of the claim for grant of Special Family Pension in cases of death due to disease while in service, certain documents are required in terms of Para 13(b) of Appendix 'C' to Integrated HQ of MoD (Army) letter No. B/40122/MA/(P)/AG/PS-5 dated 20.07.2006, such as postmortem report, past medical record and opinion of the DGAFMS on the cause/circumstances of the death of the officer, Court of Inquiry and opinion, service record 14 days' charter duties and complete posting profile etc. and the respondents may be directed to produce the same. The learned counsel further submitted that as per Category 'B' of Para 4.1 of MoD policy letter dated 31.01.2001 entitles the applicant for Special Family Pension as the cause of death was the disease contracted because of continued exposure to a hostile work environment, extreme weather conditions etc.

ANALYSIS

7. We have heard the learned counsel for the parties and perused the available material on record.

8. It is an undisputed fact that the husband of the applicant died on 21.08.1976 due to a massive heart attack whilst he was posted at Jaipur. It is also not disputed that there is an inordinate delay in approaching this Tribunal for the relief. That apart, no relevant documents related to the death or service qua the deceased officer, except the Death certificate, has been produced by any of the parties. On perusal of the medical certificate of cause of death filed as Annexure A-2, we find that the deceased officer was recorded to be *brought in dead on 21.08.76 at 1900 hrs.* and the disease or condition directly leading to death has been indicated as "SUDDEN CARDIAC ARREST DUE TO ACUTE MYOCARDIAL INFARCTION". The fact that the deceased officer was brought in dead is indicated in the death certificate. There is no detail adduced by the applicant as to how, when and where the deceased officer suffered a

heart attack and to show the detail in support of her contention that her husband was not attended by the doctor at the military hospital at Jodhpur for quite some time and hence he died. In fact, the death certificate shows that the husband of the applicant was brought in dead, which the applicant could have challenged earlier. Although the onus of proof lies on the respondents, however, no sufficient evidence has been adduced by the applicant also. Due to the records relating to the deceased officer having been weeded out in terms of the relevant rules and regulations, we are unable to conclude that the death of the deceased officer was attributable to or aggravated by the military service. Special Family Pension can be granted for the death which has nexus between the cause of death and the military service/duty.

9. The claim of the applicant was rejected for the reason that the service record of the applicant had been destroyed after certain period of retention. In this regard, we may refer to the judgment of the Hon'ble High Court of Delhi in **Shri Deo Prakash Vs. Union of India and**

others [W.P. (C) No.6141 of 1999] decided on 15.02.2008, wherein it was held that if the record was destroyed, it cannot be said that there was any wrong by the respondents. The entries in the Long Rolls are required to be preserved permanently. The requirement is to record the date and cause of becoming non-effective, but even the Long Rolls are not primary evidence and do not reflect medical details required for a decision on granting any type of pension. The primary medical record is not available after 25 years. The primary medical evidence related to the disability and cause of death having been destroyed, it is not possible to take a view that the cause of death of the applicant was attributable to military service.

10. Viewed thus, the contention raised by the learned counsel for the applicant for grant of Special Family Pension is misconceived for the reason that the statutory provision contained in letter dated 31.01.2001 is mandatory and cannot be overlooked while deciding the issue. No relevant materials have been produced before

us to indicate that the death of the deceased officer was caused due to the disease which was attributable to military service. There is no evidence, let alone a substantive evidence to establish the cause of death to be attributable to or aggravated by service.

11. We are fortified in our view in view of the judgment of the Hon'ble High Court of Delhi dated 08.09.2020 in **Ex JWO Kewal Krishan Vij Vs. Union of India & Ors.** [W.P. (C) No. 6093/2020] wherein the High Court dealt with the issue of delay and laches due to which the medical records were weeded out as per rules and dismissed the petition upholding the order of this Tribunal dated 17.03.2020 in O.A. No. 1051 of 2018, wherein the medical documents and evidence which had been destroyed after the expiry of retention period and the prayer for granting the disability pension had been denied.

12. Although in the present case, we have already allowed the application seeking condonation of delay in filing the OA vide order dated 06.01.2023, however, in

the absence of any medical or service records of the deceased officer, which have already been weeded out in terms of the relevant provisions of the Army Regulations, we are unable to even consider the prayer of the applicant. With regard to the delay and negligence in seeking remedial measures, we may refer to the judgment dated 08.07.2010 rendered by the Hon'ble Supreme Court in ***Balwant Singh Vs. Jagdish & Ors. [Civil Appeal No. 1166 of 2006]*** wherein it was laid down that if a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

CONCLUSION

13. In view of the aforesaid facts and circumstances and also the guidelines laid down by the Hon'ble Supreme Court and the Hon'ble High Court of Delhi as referred to hereinabove, we hold that as the medical documents of the applicant have been destroyed/weeded out after the prescribed period of retention in terms of the

relevant Army Regulations and as no decision can be taken in vacuum on attributability or aggravation of the cause of death without perusing the relevant records and in the absence thereof, as detailed hereinabove, we can grant no relief to the applicant.

14. The OA 1587/2020 is thus dismissed.

15. There shall be no order as to costs.

Pronounced in the open Court on this 6 day
of December, 2023.

~~[REAR ADMIRAL DHIREN VIG]~~
~~MEMBER (A)~~

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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