

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

M.

OA 2661/2022 with MA 3616/2022

Bindu Chadha widow of late Maj Sanjeev Chada

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Chaitanya Agarwal and
Mr. Vikas Bhardwaj, Advocates

For Respondents

: Mr. Sudhir Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER
03.11.2023

Vide our orders of even date, we have allowed the application. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

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OA 2661/2022

WITH

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Mrs. Bindu Chadha W/o
Late Maj Sanjeev Chadha
Versus
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. Chaitanya Aggarwal, Advocate
For Respondents : Mr. Sudhir Kumar, Advocate

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ORDER

MA 3616/2022

Keeping in view the averments made in the application and in the light of the decision in **Union of India and others Vs. Tarsem Singh** (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 2661/2022

3. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, seeking grant of Special Family Pension and other benefits as admissible to the applicant from the date of death of the husband.

4. Applicant joined the Indian Army on 11.06.1998, and expired on 03.09.2000 while on posting at HQ (Technical Group) EME, New Delhi with the cause of death recorded as 'Intra Cerebral Haemorrhage', but the Competent Authority had considered the case of death as neither attributable nor aggravated by service, and therefore, the applicant was held to be not eligible for grant of Special Family Pension.

Arguments by the Applicant

5. It is submitted by the Ld. Counsel for the applicants that the husband of the applicant was posted at HQ and the post-mortem report mentions the cause of death as 'Intra Cerebral Haemorrhage due to Hypertension' and was performing the duties which led to hypertension leading to his death and it does not matter if Hypertension was never detected when the officer was alive.

6. Ld. Counsel further submits that the Hypertension recorded as cause of death, which the husband was suffering when alive even if not detected, is attributable to army service based on the presumption principle laid down by Hon'ble Supreme Court in Dharamvir Singh v. UOI, as her husband underwent

extensive medical tests and did not have any Hypertension or any other disease.

7. Learned counsel for the applicant further submitted that the applicant's husband didn't have any habit of smoking or drinking and there is no recorded history of hypertension in his family either, while the applicant's husband served in various field and peace areas in different climatic conditions and there was continuous stress and strain of service.

Arguments by Respondents

8. Per Contra, Ld. Counsel for the Respondents submit that the applicant's husband was commissioned in the Army on 11.06.1988, and the officer was granted 33 days Part of Annual Leave w.e.f. 07.08.2000 to 08.09.2000 with permission to prefix on 05.08.2000 & 06.08.2000 and suffix on 09.09.2000 & 10.09.2000 and died on 03.09.2000 due to "Intra-Cerebral Haemorrhage due to Hypertension" and the death of the officer was classified as 'Physical Casualty' vide MP-5(D) Letter No. 12885/2000/MP-3 (d) dated 11.10.2000.

9. It is the case of the respondents that the claim for grant of Special Family Pension in favour of the applicant was processed to

AG/PS-4(E) for adjudication by the Competent Authority and the same was rejected vide letter no. B/38019/70/AG/PS-4(E) dated 29.03.2001.

10. Stressing further, Ld. Counsel submits that the Competent Authority has considered the cause of death of applicant's husband as neither attributable nor aggravated by the service, and the applicant's case not falling under Category 'B' of the Para 4.1 of the MoD letter no. 1(2)97/D/(Pen-C) dated 31.01.2001 and hence, the applicant (wife of Late Officer) is not eligible for grant of Special Family Pension.

Consideration

11. We have given our balanced consideration to the submissions of both parties and have gone through various documents/circulars brought to our notice and now, the only pertinent aspect for consideration remain as to whether the Applicant is entitled to get relief as sought for in the above mentioned OA for the reasons and grounds stated in the said Original Application.

12. Before proceeding to adjudicate the issue under consideration, it is relevant to examine the policy on the subject,

which leads us to Para 105 of the Pension Regulations for Army, 2008 (Part-I) reproduced as under:

(a). 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. A basic analysis of the aforesaid provision read with Category 'B' of the Regulation 82 of the Pension Regulations for Army, 2008 (Part-I) along with Para 4.1 of the MoD letter no. 1(2)97/D/(Pen-C) dated 31.01.2001 clarifies that if the disability which caused the death of the Officer (applicant's husband) had been held attributable to or aggravated by military service, applicant would have been entitled for grant of Special Family Pension, which would have been admissible in case of any injury, wound or disease.

14. It is indeed an irony that a service personnel rendering crucial 12 years of life to the Indian Army dies due to a disease which in no way can be held as not attributable to the military service by virtue of the fact that nothing was detected in the initial medical examination when he entered into service, and 12 years of

unblemished selfless service, is ironically considered less to reward attributability to the Officer.

15. While holding that the disability - Hypertension which caused the death of the Officer due to Intra-Cerebral Hemorrhage is attributable to service, and the applicant (wife of the Officer) is entitled to grant of Special Family Pension, we are of the considered opinion that a sympathetic view is required to be taken by the competent authority in such cases, not bound by mechanical manner of disposal of cases, where a service personnel has rendered almost a substantial part of his life to the Indian Army, but his family is not granted benefit of a beneficial provision for the sake of technical and mechanical mechanism being followed by the competent authority in such cases.

16. In light of the above observations, we allow the OA, directing the Respondents to grant Special Family Pension to the applicant within a period of two months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

17. No order as to costs.

18. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on the 3rd day of November, 2023.


(RAJENDRA MENON)
CHAIRPERSON


(C.P. MOHANTY)
MEMBER (A)

/ps