

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

D.

OA 1604/2017 with MA 1193/2017

Mrs. Mahavir Kaur (W/o Late Sgt Yash Pal Singh) Applicant
VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Dr. V.S Mahndiyan, Advocate with
Ms. Apoorva Mahndiyan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
01.04.2024

Vide our detailed order of even date we have allowed the OA 1604/2017. 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 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, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN C.P. MOHANTY)
MEMBER (A)

KT/TS

COURT NO. 2, ARMED FORCES TRIBUNAL
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OA No. 1604/2017 with MA 1193/2017

Mrs. Mahavir Kaur W/o

Late Sgt Yash Pal Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Ms. Shruti Rawat, proxy for
Mr. S.S. Pandey, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM :

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

HON'BLE LT. GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 1193/2017

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 3566 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371** and in **Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017** and the reasons mentioned, the MA 1193/2017 is allowed despite opposition on behalf of the



respondents and the delay of 3566 days in filing the OA 1604/2017 is thus condoned. The MA is disposed of accordingly.

OA 1604/2017

1. The applicant vide the present O.A 1604/2017 has made the following prayers:-

“(a) Call for the records based on which the Respondents have rejected the request of the Applicant for the Special Family Pension and issued orders time to time to this effect including the order dated 01.10.2007 rejecting the second Appeal of the Applicant and thereafter quash the said orders including the order dated 01.10.2007.

(b) Direct the Respondents to pay the Applicant Special Family Pension treating the death of her deceased husband as attributable to service and also pay her the difference of pension after grant of Special Family Pension in place of Ordinary Family Pension as arrears alongwith interest @18% per annum from the date when such payment was due till its actual payment.

(c) Issue any other order which the Hon’ble Tribunal deems fit as deem appropriate in the facts and circumstances.”

2. The Late Sgt Yash Pal Singh, the spouse of the applicant’s herein i.e. Mrs. Mahavir Kaur, was enrolled on 26.03.1987 and expired on 10.10.2001 whilst in service as a result of acute myocardial infarction. The applicant is recorded as the Next of Kin(NOK). The competent authority i.e. PCDA(P), Allahabad, considered the cause of death as being not attributable to military service vide adjudication Memo No: Gts/AF-Cell/2002/Adj/Fam/1106/195 dated 28.08.2002 and thus the applicant’s claim for special family pension was rejected

by the adjudicating authority and she was sanctioned ordinary family pension along with death cum retirement gratuity vide PPO No. 08/14/B/F/P/821/2002. The first and second appeal for grant of special family pension was rejected on 23.11.2006 and 01.10.2007, with the first appeal having been rejected stating to the effect that the death of the applicant's husband was held to be neither attributable to nor aggravated due to Air Force Service, and thus the applicant's claim for special family pension was not maintainable in terms of Regulation-189 of the Pension Regulations for the Air Force, 1961(Part-I). The second appeal was rejected vide letter dated 01.10.2007 stating to the effect that the Defence Minister's Appellate Committee on Pension had not found any ground to alter the decision of the First Appellate Committee as communicated to the applicant vide letter no. AirHQ/41005/ Sgt/SFP/ PA-III dated 23.11.2006.

CONTENTIONS OF THE PARTIES

3. The applicant submits that her late husband was enrolled in the Indian Air Force on 26.03.1987 in a fit condition and was not suffering from any disease, whatsoever and was allotted the trade of Radio Fitter and was posted in field, peace and counter insurgency areas and was promoted from time to time up to the rank of Sgt. It is further submitted by the applicant that her late husband after having

completed his tenure in Delhi in 41 Sqn, Air Force was posted to Air Force Station, Sulur but was asked to stay for two months and was detailed for preparation of the Air Craft for a competition in view of the Air Force Day celebration on 08.10.2001 and the husband of the applicant was also tasked to work day and night on a snagged Dornier Air Craft and he made special efforts to prepare the Air Craft for the Air Force day parade which was a grand success on 08.10.2001 but due to the same, he was completely exhausted due to such hard work for prolonged period and on 10.10.2001 at about 0100 Hrs, he complained of Chest pain and died the same day at about 0230 Hrs with the cause of death as diagnosed as "Acute Myocardial Infarction". The applicant further submits that rejection of her claim for Special Family Pension and of her first and second appeals by the respondents is wholly illegal, unreasonable and in violation of her fundamental rights. It is submitted by the applicant that her late husband served the respondents for almost 15 years in a fit state, in a most exemplary manner and had been inducted into the Indian Air Force after a thorough medical examination with no note of any disease and had also been subjected to a rigorous medical examination during training. The applicant submits that in terms of the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union Of India*

&Ors (Civil Appeal No. 4949/2013); **UOI &Ors. Vs. Rajbir Singh** (2015) 12 SCC 264, it has been categorically observed to the effect that the Entitlement Rules for Casualty Pensionary Awards, 1982 provide that a presumption is to be drawn in favour of the claimant if the disease resulting into death has arisen due to service conditions whilst in service and that the said disability or death in such circumstances has to be held to be attributable to/ aggravated by military service. The applicant further submits that the respondents had ignored to take into account that prior to manifestation of the disease, the applicant was working in stressful conditions and that for a period of 15 years since his joining in the Indian Air Force, he had remained in a fit medical condition and thus the presumption and benefit of doubt should have been extended to the applicant.

4. Reliance was also placed on behalf of the applicant on Para-4 of the Appendix 2 to Para 3 of Pension Regulations 1961 to submit to the effect that in deciding on the issue of entitlement all evidences of reasonable doubt will be given to the claimant.

5. Oral submissions were addressed on behalf of the applicant to similar effect. Inter alia it is submitted on behalf of the applicant that the contentions raised by the applicant through the OA in relation to the stressful duties performed by the applicant's late husband have not

been refuted by the respondents through the Counter Affidavit dated 13.03.2018 filed on their behalf.

6. On behalf of the respondents, it was contended to the effect that the applicant is in receipt of the ordinary family pension as well as Death Cum Retirement Gratuity(DCRG). Though the applicant's husband was in service on the date of his death and on the date when he suffered the Acute Myocardial Infarction, nevertheless his death was considered neither attributable to nor aggravated to military service in terms of Para-8 of the Entitlement Rules for Casualty Pensionary Awards, 1982 as there was no causal connection with the death of the deceased airman with military service, in as much as the applicant's late husband did not expire during the course of performance of actual duty. Reliance in relation thereto was placed on behalf of the respondents on Para-12(a) of Entitlement Rules for Casualty Pensionary Awards, 1982 to submit to the effect that for the admissibility of special family pension, the performance of official task or a task, failure to do which would constitute the offence, triable under the disciplinary code applicable to him is a task which would entitle the applicant to grant of special family pension. The respondents submit that in the instant case, the applicant's late husband complained of Chest Pain at about 0100 hrs on 10.10.2001

and expired on the same day at about 0230 hrs at Base Hospital Delhi Cantt. The respondents thus prayed that the OA be dismissed.

ANALYSIS

7. That the applicant's husband was inducted into the Air Force on 26.03.1987 and expired on 10.10.2001 whilst he was serving the Indian Air Force is not refuted by the respondents. That the applicant's late husband after having completed his tenure in Delhi in 41 Sqn, Air Force, was posted to Air Force Station, Sulur and had been asked to stay for two months for preparation of a snagged Dornier Air Craft for the Air Force Day celebration on 08.10.2001 is not refuted by the respondents. That the applicant's late husband expired on 10.10.2001 at 0100 Hrs pursuant to complaint of a chest pain and with the death having been diagnosed due to Acute Myocardial Infarction is also brought forth through the averments in the counter affidavit of the respondents.

8. It is essential to advert to letter no. 1(2)/97/D(Pen-C) dated 31.01.2001 issued by the Government of India, Ministry of Defence which relates to

“SUBJECT:IMPLEMENTATION OF THE GOVERNMENT
DECISIONS ON THE RECOMMENDATIONS OF THE FIFTH
CENTRAL PAY COMMISSION REGARDING DISABILITY

PENSION/WAR INJURY PENSION SPECIAL FAMILY
PENSION/LIBERALISED FAMILY PENSION/ DEPENDENT
PENSION/ LIBERALISED DEPENDENT PENSION FOR THE
ARMED FORCES OFFICERS AND PERSONNEL BELOW
OFFICER RANK RETIRING, INVALIDING OR DYING IN
HARNESS ON OR AFTER 1.1.1996” and which applies to Armed

Forces Personnel who were in service on 01.01.1996 or joined/joins service thereafter and Part-II thereof relates to pensionary benefits on death/ disability in attributable or aggravated cases. Category (b) &(c) thereof in the said letter provides to the effect:-

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

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/ aggravated causes, the cases will be broadly categorised 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.

”

9. The grant of Family Pensionary benefits in attributable/ aggravated cases is stipulated in Para-5 of the said letter to the effect:-

“ PART III- FAMILY PENSIONARY BENEFITS IN
ATTRIBUTABLE/AGGRAVATED CASES ”

5. Special Family Pension (SFP)

5.1 *In case of death of an Armed Forces Personnel under the circumstances mentioned in category "B" or "C" of Para 4 above, Special Family Pension shall continue to be admissible to the families of such personnel under the same conditions as in force hitherto. There shall be no condition of minimum service on the date of death for grant of Special Family Pension.*

5.2 *The Special Family Pension shall be calculated at the uniform rate of 60% of Reckonable Emoluments as defined in para 3 above, subject to a minimum of Rs. 2550/-, irrespective of whether widow has child(ren) or not. There shall be no maximum ceiling on Special Family Pension. Ministry of Defence order No. F. PC 1(2)/97/D(Pen-C) dated 22.9.99 stands amended accordingly.*

5.3 *In case the children become the beneficiary, the Special Family Pension at same rate (ie., 60% of Reckonable Emoluments) shall be admissible to the senior most eligible child till he/she attains the age of 25 years or upto the date of his/her marriage whichever is earlier. Thereafter Special Family Pension shall pass on to next eligible child.*

Notes.

(i) *Widowed/divorced daughters upto the age of 25 years or marriage whichever is earlier shall also be included in the definition of family for the purpose of Special Family Pension.*

(ii) *in case the eligible child is physically or mentally handicapped and unable to earn a livelihood, the Special Family Pension would be admissible for life to such a child subject to same conditions as in force hitherto.*

5.4 *In case of personnel below officer rank, the existing provisions of nominating anyone from the eligible members of the family (except dependent*

brothers/sisters) for the first life award of Special Family Pension and of transferring the same in full to the widow regardless of her financial position in the event of death of parents, where they were nominated as the original awardees, shall continue.

5.5 Families of SSCOs and ECOS who die under circumstances mentioned in category 'B' & 'C' of para 4.1 above shall also be entitled to Special Family Pension as per para 5.1 above.

5.6 Dependant Pension in respect of Officers(including MNS Officers, TA Officers & ECOS/SSCOS): Dependent pension shall be admissible to the parent(s)/eligible brothers and sisters(in the absence of parents) of the deceased Officers, who die under circumstances as mentioned in para 5.1 above as a bachelor or widower without children, at a rate equal to 50% of notional Special Family Pension that would have been admissible as per para 5.2 above.

Notes: (1) Condition as laid down in para 5.3 above regarding age limit and marriage shall equally apply to dependant brothers/sisters for grant of dependent pension which shall be paid to the senior most eligible brother/sister at a time.

(2) The condition regarding means limit was dispensed with vide MOD letter No.1(5)/87/D (Pen/Ser) dt. 30.10.87. Status-quo (ante will continue.

5.7 Second life award in respect of PBOR including NCs(E): Second Life Awards (Special Family Pension) shall be admissible to the parent(s) of the deceased irrespective of single or both and in the absence of the parents, to the eligible brothers and sisters of the deceased, at the rates specified in para 5.6 above and the condition specified in the note thereunder.

5.8. Special Family Pension on Remarriage of Widow:- Special Family Pension on remarriage of widow, shall be regulated as follows:

(a) Commissioned Officers

(i) If she has child(ren) :-

(aa) If she continues to support children after remarriage

(ab) If she does not support children after remarriage

Full Special Family Pension to continue to widow.

Ordinary Family Pension(OFP) equal to 30% of emoluments last drawn to the re-married widow;

- (ii) If widow has no children 50% of the Special Family Pension to the eligible children.
Full Special Family Pension to continue to widow

(b) PBOR

(i) If Special Family Pension is sanctioned to the Widow
Same provisions as applicable to officers.

(ii) Where first life award is sanctioned to parents:

- | | |
|---|--|
| (aa) If widow continues to support child(ren) after remarriage of has no issues | 50% of SFP to parents
50% of SFP to widow |
| (ab) If widow does not support children after re-marriage but the children are supported by the parents | Full SFP to parents
Ordinary Family Pension to widow |
| (ac) If children are not supported either by the re-married widow or the parents. | 50% of SFP to parents
50% of SFP to eligible children
Ordinary Family Pension to widow |
| (ad) On death of disqualification of parents and the widow supports the children or has no issues | Full SFP to widow |
| (ae) On death of disqualification of parents and the widow does not support the children | Full SFP to eligible children
Ordinary Family Pension to widow |

10. It is thus apparent that in terms of Para-5.1 of Para-5 in Part-III of the said letter, in case of death of an Armed Forces Personnel under the circumstances mentioned in category "B" or "C" of Para-4.1, special family pension is admissible to the families of such personnel without any condition of minimum service on the date of death for grant of Special Family Pension. Category "B" of Para 4.1 of the said letter already adverted to herein above, expressly stipulates

that the death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities fall within the ambit of the grant of pensionary benefits and that the 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 thereof. **In the instant case, the demise of the late husband of the applicant was on 10.10.2001 after more than 14½ years of the service in the Indian Air Force as a Radio Fitter and who had also been assigned duties for the preparation of the Air Craft for the Air Force Day parade on 08.10.2001 for which he had to work day and night as claimed on his behalf which has not been refuted by the respondents through their counter affidavit, coupled with the factum that the applicant's late husband suffered from no disability whatsoever at the time of induction in the Indian Air Force.**

11. It is essential to observe further that Annexure-1 to Chapter-IV of the Classification of the disease to the Entitlement Rules for Casualty Pensionary Awards, 1982 as applicable to the instant case (as the demise of the applicant was on 10.10.2001) vide Para-2 thereof

stipulates categorically that Myocardial Infarction is a disease and a form of IHD affected by stress and strain.

12. Thus it is apparent that the death of the applicant's late husband which was due to Acute Myocardial Infarction and in the circumstances of the instant case, where the demise of the applicant's late husband was after almost 14½ years of induction in the Indian Air Force and soon after completion of stressful task like preparation of Air Craft for a competition on 08.10.2001 for the Air Force Day Parade, the same has to be held to be attributable to and aggravated by military service. In view thereof, the applicant is entitled to the grant of Special Family Pension in terms of Para-4.1(b) of Part-II of the letter dated 31.01.2001 read with Para-5.1 of the Part-III of the said letter.

CONCLUSION

13. The OA 1604/2017 is allowed. The applicant is thus entitled to the grant of Special Family pension from the date of the demise of her husband on 10.10.2001, which however in the facts and circumstances of the instant case shall commence to run from three years prior to the institution of the present OA.

14. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three

months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on the 1 day of April, 2024.

[LT. GEN C.P. MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/