

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

80.

OA 1523/2018 WITH MA 1594/2018

Smt. Darshan Devi Wd/o Applicant
Ex Nb Sub Jagbir Singh Kakran
Versus
Union of India & Ors. Respondents

For Applicant : Mr. U S Maurya, Advocate
For Respondents : Mr. Sarvan Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
09.05.2024

MA 1594/2018

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

OA 1523/2018

2. Claiming Special Family Pension in accordance to the rule on account of death of her husband while in service and on account of aliment aggravated and attributed by the military service, the applicant has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, and the relief claimed in Para 8 reads as under:

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- “(a) Impugned orders dated 10.11.2017 be set aside to the extent this order deny the grant of Special Family Pension to the applicant as admissible to her.*
- (b) Direct respondents to grant Special Family Pension wef 11.12.1996 (next date of the death of applicant husband) instead of Ordinary Family Pension with interest at the rate of 12% per annum.*
- (c) The applicant be granted any other relief which this Hon’ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case.”*

3. Facts in nutshell indicate that the applicant is a widow of Late Nb Sub Jagbir Singh Kakran, bearing No.JC-640497H. The husband of the applicant was enrolled in the Indian Army on 14.08.1981 as a Sepoy in the Army Service Corps and after rendering 15 years and 03 months of service, he was placed in Low Medical Category CEE (T) on 13.11.1996 due to “Focal Dystonia (RT)” and according to the opinion of the Medical Board, the disease was contracted in service due to Stress and Strain of Military Service. Later, the applicant’s husband died while at service at Army Hospital, Delhi Cantt on 10.12.1996. After the death of the applicant’s husband, she was granted Ordinary Family Pension and her claim for Special Family Pension was denied by the Integrated HQ of MoD (Army) and the Medical Advisor (Pensions), Allahabad, on the ground that the death of the applicant’s husband had no casual connection with military service.

However, no physical examination or post mortem of the body was conducted.

4. The learned counsel for the applicant invited our attention to the opinion of the Medical Board dated 13.11.1996, when the applicant's husband was declared and placed in the Low Medical Category and in Part-II of the report of the Medical Board the following opinions are given by the Board:

(a) Was the disability contracted in service?

Answer:- Yes.

(b) Was it contracted in circumstances over which he had no control? Answer:- Yes.

It is further stated that the stress and strain of military service is the direct attribute because of which the ailment occurred and aggravation was also because of military service. Based on the aforesaid assessment, the applicant's husband was placed under low medical category. However, when the Medical Board was conducted on 02.06.1994, the applicant's husband was diagnosed with Compressive Myelopathy and it was reported that he was unable to move his right hand, he was found to be in the low medical category and in Para 12 and 13 of the report of the Medical Board the following

opinions are recorded by the Medical Board which examined his body on 21.01.1997:

"12. Do you consider the disability/death is attributable to service? (Give reasons) The condition of the JCO which subsequently led to his death was acquired when the JCO was in service.

*13. Do you consider the disability/death aggravated by service? (Give reasons).
It was observed that the JCO's condition deteriorated at a very fast when he was serving at this unit."*

5. It is, therefore, the case of the applicant that as her husband sustained the disability on account of stress and strain of military service, it falls under the category of eligibility as per the Para 85 of the Pension Regulations of the Army, 1961, Part-I which reads as under:

"Special family pensionary awards-when admissible

85. A special family pension to the widow of an officer and special children's allowance to his legitimate children under 18 years of age, or dependants pension to his/her parents or brothers/sisters may be granted if his/her death was due to or hastened by either a wound, injury or disease which was attributable to military service or the aggravation by military service of a wound, injury or disease which existed before or arose during military service, provided that:-

(a) in the event of death after retirement, the officer did not retire voluntarily;

And provided further that-

(b) in the case of pension for a widow and allowance for a child-

(i) the officer married before joining the service or while on the active list and before he received the wound or injury or before he was removed from duty on account of the disease;

(ii) when death is due to disease, the officer survived his marriage by at least a year, unless it can be

shown that he was manifestly in good health at the time of his marriage; and

(iii) subject to any exception which the President may approve in a particular case under regulation 90 the widow was not separated from her husband at the time of his death.

(c) in the case of a pension for parents-

(i) the officer left neither a widow, nor children eligible for pension or allowance; and

(ii) the parent/parents were largely dependent on the officer at the time of his/her death or the father is dead or, if living, is incapable of self-support through age or infirmity and the pecuniary and other circumstances of the parent/parents are such as, in the opinion of the President to justify the grant."

6. It is the case of the applicant that the injury or disease which led to the death of her husband was attributable to military service, aggravation of the ailment was also on account of military service and, therefore, the applicant is entitled to Special Family Pension in the aforesaid category.

7. Placing reliance on the judgments rendered by the Hon'ble Supreme Court in the cases of Union of India Vs. Rajbir Singh in Civil Appeal No.2904/2011 dated 13.02.2015 and Dharamvir Singh Vs. Union of India and others [(2013) 7 SCC 316], learned counsel for applicant argued that the applicant's husband's ailment was contracted on account of the stress and strain of the military service and it is attributable to and aggravated by the

military service and, therefore, the applicant is entitled to the benefit of Special Family Pension.

8. Learned counsel for the applicant further argued that even though the Medical Board had opined that the disease was attributable to and aggravated by military service when the claim was processed for grant of pension by the Records Office, however, when the matter went to the Finance Department, the Special Family Pension has been denied to the applicant on the ground that the death is not connected with military service and it is neither attributable nor aggravated by the military service and, therefore, the same has been rejected.

9. It is the case of the applicant that the Administrative Authorities and in particular the Accounts Department cannot reject the claim of the applicant on such consideration. Relying upon the judgment of the AFT, Regional Bench, Chandigarh, in OA 3104/2013, *Dharamvir Singh* Vs. *Union of India and others* decided on 17.07.2015 and the case decided by the Hon'ble Supreme Court in Civil Appeal No.264/1991, decided on 14.01.1993 titled *Ex Sapper Mohinder Singh* Vs. *Union of India*, learned counsel for the applicant argued that once the Medical Board and the Medical Authorities have recorded a particular opinion

with regard to a disability of the employee concerned, the Administrative Authorities or the Pension Payment Authorities cannot overrule the same and come to a different opinion and say that the ailment is not attributable to military service. It was argued that the opinion of the Medical Board is final and it cannot be in any manner interfered with.

10. Learned counsel for the respondents refuted the aforesaid and pointed out that the individual, namely, the applicant's husband was admitted to the Military Hospital and died on account of a cardiac arrest on 10.12.1996. It was the normal ailment and there was nothing to hold that it was attributable to military service. The respondents admitted that the applicant is the wife of the deceased soldier and is nominated as his next of kin in the records of the establishment. It was further stated in Para 7 of the counter affidavit which reads as under:

"7 Accordingly, Family Pension Claim of the applicant was processed to Controller of Defence Accounts (Pensions), Allahabad by ASC Records (South) vide letter No JC-640497/27/FP dated 08 Aug 1997. On adjudication, Medical Advisor (Pension) attached to PCDA (P) Allahabad, after due consideration of service/medical documents of the deceased JCO has rejected the claim for Special Family Pension vide their letter No G-4/8/97/5500/V/167 dated 30 Sep 1997 stating that the death of the JCO was due to a wound/ injury disease which is neither attributable to nor aggravated by his military service. Medical Advisor (Pension) during his adjudication has held that 'FD Malignant disorder unconnected with service' and Special

Family Pension claim rejected. However, the applicant was granted enhanced rate of Ordinary Family Pension @ Rs 790/- per month with effect from 11 Dec 1996 to 10 Dec 2003 and normal rate of Ordinary Family Pension @ Rs 450/- per month with effect from 11 Dec 2003 to till widowhood vide PCDA (P) Allahabad PPO NO F/NA/007224/97 (Army) dated 07 Dec 1997."

11. That being so, it is the case of the respondents that the PCDA (P), Allahabad, on adjudication by the Medical Advisor (Pension) had rejected the claim by holding it to be neither attributable to nor aggravated by military service and, therefore, only Ordinary Family Pension was granted and the claim for Special Family Pension was rejected.

12. We have heard learned counsel for the parties at length and the only issue warranting consideration is as to whether the aliment of the applicant's husband resulting in his death can be termed as attributable to or aggravated by military service which ultimately resulted in his death while in service and, therefore, whether the applicant is entitled to Special Family Pension under Para 85 of the Pension Regulations of the Army, 1961, Part-I?

13. Admittedly in the medical examination conducted on 13.11.1996 (Annexure A-3) and in the medical examination undertaken on 02.06.1994 (Annexure A-4 Contd.), the opinions of the Medical Board as have been reproduced in the preceding paragraphs clearly shows that

the disability was contracted while the soldier was in service, it was contracted in circumstances over which he has no control, it is attributable to military service and it arose on account of stress and strain of military service. This is the opinion of the Medical Board which conducted the examination of the deceased soldier on 13.11.1996. Further in the examination conducted on 21.01.1997, after the death of the applicant's husband, it is clearly indicated that the disability was diagnosed and it developed while performing duties of a Gp JCO. He was put in low medical category and his condition deteriorated while in service and it is attributable to military service. Once the expert medical board had given an opinion in this regard holding the ailment to be attributable to and aggravated by military service, the question is as to whether the Pension Paying Authority or the Medical Advisor in the Pension Payment Office can give a different opinion? This question is no more in dispute and has been decided by the Hon'ble Supreme Court in the case of *Ex Sapper Mohinder Singh* (supra) wherein it has been held that the findings given by the Medical Authorities regarding the claim for disability pension is to be respected by the pension disbursing authorities like CCDA, PCDA (Pensions), Allahabad, etc. and intervention of

such authorities with the findings of duly constituted RMBs deserves to be quashed and set aside. The aforesaid decision of the Hon'ble Supreme has been relied upon by the Hon'ble Punjab and Haryana High Court in the case of *Ex Havildar Babu Singh* Vs. *Union of India and others*, CWP No.3296/2003 decided on 26.04.2006 and after taking note of the law laid down in the case of *Ex Sapper Mohinder Singh* (supra), the Hon'ble Punjab and Haryana High Court decides the issue in the following manner:

"From the above mentioned facts and the stand taken by the parties before us, the controversy that falls for determination by us lie in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to the detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

14. While considering the issue a Coordinate Bench of this Tribunal, i.e., Regional Bench, Chandigarh in the case of *Dharamvir Singh* (supra) on 17.07.2015, has relied upon the judgment of the Hon'ble Supreme Court in the case of *Ex Sapper Mohinder Singh* (supra) and the judgment of the Hon'ble Punjab and Haryana High Court in the case of *Ex*

Havildar Babu Singh (supra) and in Para 8 has indicated that in the following five cases:

- (i) *Swaran Singh* Vs. *Union of India & others*, OA No.1989 of 2013, decided on 12.08.2014;
- (ii) *Jai Singh Dhaka* Vs. *Union of India*, OA No.3350 of 2013, decided on 05.05.2015;
- (iii) *Ram Lok* Vs. *Union of India*, OA No.2382 of 2012, decided on 11.03.2015;
- (iv) *Surjan Singh* Vs. *Union of India*, OA No.1243 of 2013, decided on 05.05.2015; and
- (v) *Diwan Singh* Vs. *Union of India*, OA No.859 of 2014, decided on 30.06.2015.

this Tribunal has also taken the same view and in identical petitions wherein the claim was rejected on the basis of the advice of the pension department has been quashed.

15. Keeping in view the legal position, the facts and circumstances of the case and the principles as discussed hereinabove, we are of the considered view that in this case once the expert medical board had given an opinion with regard to the ailment and disease of the deceased soldier being attributable and aggravated by the military service, the Pension Payment Authorities in the office of PCDA (P), Allahabad, had no jurisdiction, authority or sanction of law

for taking a different view and rejecting the claim by overruling the medical expert's opinion. The medical expert's opinion is a final opinion and cannot be interfered with until and unless there are counter medical opinions to the contrary. Nothing of the sort being available in the present case, we see no reason to disagree with the opinion of the Medical Board with regard to the specific findings recorded by them pertaining to attributability and aggravatability of the ailment.

16. Therefore, finding the action of the respondents to be unsustainable both on law and fact, we allow this OA and quash the impugned order dated 10.11.2017 (Annexure A-1) and hold that the applicant's husband Late Nb Sub Jagbir Singh Kakran, died while in service on account of ailment and disease which was attributable to and aggravated by military service. That being so, the applicant is entitled to Special Family Pension in accordance to the provisions of Para 85 of the Pension Regulations of the Army, 1961, Part-I and respondents are directed to grant the said benefit to the applicant w.e.f. 11.12.1996, i.e., the next day of death of her husband, i.e., 10.12.1996, after making adjustment of the amount already paid against the Ordinary Family Pension to the applicant.

17. Accordingly, the respondents are directed to calculate, sanction and issue necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and the amount of arrears, if any, shall be paid by the respondents, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

18. In view of the aforesaid, the OA stands disposed of.

19. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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