

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

O.A. No. 1533 of 2017

With

M.A. No. 2255 of 2018

In the matter of :

Smt. Sukh Varsha Sharma
Wd/o Late Maj R.K. Sharda

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri S.M. Dalal, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan,
Advocate

CORAM:

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

O R D E R

M.A. No. 2255 of 2018 :

Vide this application, the applicant seeks condonation of 9675 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 1533 of 2017:

By way of the present application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant who is the wife of the late officer, Major R.K. Sharda (hereinafter referred to as 'late officer'), is seeking following reliefs :

(a). Quash order dated 13 Jul 2017 being arbitrary and perverse.

(b) Quash order dated 24 Nov 1989 being arbitrary and cryptic.

(c) Declare death of applicant's husband as attributable to military service as the same has causal connection with military service.

(d) Direct the respondents to grant Special Family Pension to the applicant w.e.f. 02 Apr 1989 with further direction to pay interest @ 12% PA over the arrears.

(e) Pass any other or further order(s) which this Hon'ble Tribunal considers appropriate in the facts and circumstances of this case.

2. The facts of the case in brief are that the late husband of the applicant was commissioned as a SSCO in the Indian Army on 12.01.1969 and passed away on 02.04.1989 due to 'Myocardial Infarction with Ventricular Fibrillation' at 7, Air

Force Hospital, Kanpur. The death of the officer was opined as 'Physical Casualty' and it was considered as 'aggravated due to stress and strain of military. The claim of the applicant for grant of Special Family Pension was rejected and thus she was granted all terminal benefits including ordinary family pension. The first appeal preferred by the applicant dated 29.04.2017 was rejected vide letter dated 13.07.2017. Hence, this OA has been filed primarily for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that at the time of joining the service, the late officer was found medically and physically fully fit and no note was made in his medical documents to the effect that he was suffering from any disease at that time. Thus, any medical disability contracted by him during the course of his service should be treated as attributable/aggravated by the stresses and strains of his service. Learned counsel explained the strenuous and stressful schedule of duties performed by the applicant at various geographical conditions during his postings, such as he was posted to High Altitude Area/Field Areas, (peace/field) which included operational requirement,

challenging climatic conditions etc.; that, in the year 1988, the late officer actively participated in 'OP PAWAN' in Sri Lanka and performed duties of Bn Second-in-Command of 5, RAJRIF involving exceptional stress and strain under battle field conditions in a foreign land; that all this put tremendous pressure on the applicant and took a toll on his health and the late officer suffered heart problem.

4. It is the case of the applicant that on 02.04.1989, her husband, late officer, suddenly developed difficulty in breathing and uneasiness and was admitted to the 7, Air Force Hospital, Kanpur at 04:20 A.M. and he was diagnosed as a case of Myocardial Infarction with Ventricular Fibrillation. Learned counsel further submitted that at the hospital, the late officer was not attended by a Cardiologist but was attended by a Duty Medical Officer and even at 10:00 A.M. the late officer was attended to by a Classified Specialist in Medicine and not by a cardiologist and the late officer passed away at 05:20 P.M. on same day i.e. 02.04.1989. Learned counsel contended that the report along with the death certificate indicated that the death was aggravated due to stress and strain of military duty.

5. Learned counsel submitted that the copy of the death certificate along with remarks of the Commanding Officer of AF Hospital dated 27.05.1989 was supplied to the applicant, however, copy of the opinion of the DMO/CO AF Hospital qua death of the late officer was not provided to her despite an RTI application filed for the purpose. The counsel further added that the applicant was informed by the MoD vide letter dated 24.11.1989 that the death of her husband was considered 'neither attributable to nor aggravated by military service' and she was granted ordinary family pension. However, copy of the letter regarding rejection of the claim of the applicant for the grant of Special Family Pension and copy of the opinion of the competent medical authority regarding cause of death of her husband were not supplied to her.

6. Learned counsel for the applicant further submitted that the respondents failed to appreciate the provisions contemplated under Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of death or discharge from service in low medical

category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. Learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]**, which has been considered and taken note of by the Hon'ble Apex Court in many judgments, wherein the Hon'ble Supreme Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disability noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. Hence, learned counsel contended that the applicant was entitled to Special Family Pension.

7. The respondents have filed the counter affidavit and learned counsel for the respondents admitted that the death of the officer due to Myocardial Infarction, was considered as 'Physical Casualty' and was held as 'aggravated by military service' and that when the late officer was admitted to the AF Hospital on 02.04.1989 at 0420 Hrs., he was immediately given treatment and was attended to by duty medical officer. However, at 0430 Hrs., the late officer was attended to by a classified specialist in medicine, which fact is evident from the medical case sheet of the late officer available on record and on the same day, the husband of the applicant died. It was also submitted that as per the relevant regulations, the applicant was granted all terminal benefits including ordinary family pension. In view of these circumstances, learned counsel prayed that the OA may be disposed accordingly.

8. We have heard learned counsel for the parties and have gone through the records. In this case, we primarily have to answer two basic questions as to whether the disability/death of the late husband of the applicant is attributable to or aggravated by service and whether the

Special Family Pension claim of the applicant is admissible or not ?

9. As far as the first question related to attributability/aggravation of disability to military service is concerned, we have noted that in the year 1988, the late officer had participated in 'Op PAWAN' in Sri Lanka, which put tremendous stress on the health of the late officer. The late officer returned to India from Sri Lanka in November/December, 1988. On 02.04.1989 at about 04:20 AM, the late officer was admitted to the hospital at Kanpur on complaint of difficulty in breathing and uneasiness and was diagnosed as a case of Myocardial Infarction with Ventricular Fibrillation.

10. On going through the Medical Case Sheet of the late officer, it is seen that the officer had complained of pain in chest and uneasiness since 2300 Hrs of 01.04.1989 i.e. the previous night before he was brought by his cousin to the hospital at 04:20 Hrs. on 02.04.1989. He was admitted immediately given treatment. It is evident that the death of the late officer was aggravated by stress and strain of service

as he suffered from the heart attack just one month after returning from Sri Lanka, where he was posted.

11. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]***, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be

on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

12. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008', which take effect from 01.01.2008 provide vide Paras 6, 7, 10 and 11 thereof as under:

"6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

Onus of proof:

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

- i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*
- ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

(b) Disease:

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-

- (a) that the disease has arisen during the period of military service, and*
- (b) that the disease has been caused by the conditions of employment in military service.*

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) when the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitude etc."

13. Furthermore, Regulation 423 of the Regulations for the Medical Services of the Armed Forces, 2010 which relates to 'Attributability to Service' 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 favour, 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."

has not been obliterated.

14. In Para 47 of Chapter VI of the Guide to Medical Officers (Military Pensions) 2002, amended 2008 (hereinafter referred to as 'GMO (MP) 2008', various factors including prolonged stress and strain and physical hardship caused by serving in field and high altitude areas have been given which cause the heart diseases to the army personnel. It would be

relevant to reproduce Para 47 of the GMO (MP) 2008, which is 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....."

[Emphasis supplied]

15. In the present case, it is not disputed that the applicant had been on various field and peace area postings. In the year 1988, the late officer was posted on a field posting in Sri Lanka and participated in Op Pawan there as part of IPKF. He also had earlier served in various high

altitude/field areas during his service career having diverse climatic and environmental conditions and he had performed strenuous and stressful duties. Moreover, it has already been observed by the Tribunal in large number of cases that peace area postings in military service have their own pressure of rigorous military training and associated stress and strain, physically and mentally, of the service and to state that there is no evidence of stress and strain of service in peace station should not be considered for the purpose of granting disability pension. It may also be taken into consideration that the most of the personnel of the armed forces, during their service, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Moreover, there is no note made in his medical documents that he was suffering from any disease at the time of joining the service. There is no record to show that the applicant has suffered the disabilities due to hereditary or unhealthy life style or there is any family history thereof.

16. We find that the Certificate of attributability (Page 31) dated 28.06.1989 signed by K.P. Das, Group Captain,



Commanding Officer, No. 7 Air Forces Hospital, it is mentioned that severe physical stress in the field in Sri Lanka from 29.07.1987 to 01.12.1988 and similar activity in the local unit from 19.03.1989 to 01.04.1989 (as per AFMSF-81) might have aggravated the medical condition of the deceased officer. The medical case sheet dated 02.03.1989 also does not show any past medical history. Although the deceased officer was reported to be a heavy smoker but the stress and strain of duties performed by the deceased officer in the field areas in his prolonged service tenure, especially his tenure in Sri Lanka, participating in the Op Pawan as part of IPKF cannot be overlooked. There is catena of judgments rendered by the Hon'ble Supreme Court/ High Courts and various orders of the Tribunal to support the claim of the applicant on the point of attributability and, therefore, in our view, death of her husband was attributable to military service, and as the husband of the applicant died due to myocardial infarction i.e. heart attack while in service and he died while on active service, hence, as per Regulation 213 of the Pension Regulations for the Army, 1961, which reads as under :

"Special Family Pension

213. A special family pension may be granted to the family of an individual if his death was due to or hastened by –

(a) a wound, injury or disease which was attributable to military service

Or

(b) the aggravation by military service of a wound, injury or disease which existed before or arose during military service."

Thus, in the present case, as the death of the late officer has been held as attributable to and aggravated by military service, in our view, the applicant is entitled to grant of Special Family Pension.

17. We are, therefore, of the considered view that the benefit of doubt in these circumstances should be given to the applicant in view of above judgments and settled law on the point of attributability/aggravation and the disability suffered by the husband of the applicant, which led to his death, should be held attributable to/aggravated by the military service.

18. In view of the aforesaid judicial pronouncements and the parameters referred to above, we are of the considered view that there is a causal connection with the death of the applicant's husband and the military service and thus the death of the applicant's husband is attributable to and aggravated by the military service and the applicant is entitled to grant of special family pension.

CONCLUSION

19. Therefore, the OA 1533 of 2017 is allowed. The respondents are directed to grant Special Family Pension to the applicant from the date of death of her husband. However, as there is inordinate delay in filing the present OA, the arrears are restricted to three years prior to the date of filing of the OA i.e. 28.08.2017.

20. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

21. There is no order as to costs.

Pronounced in open Court on this 16 day of
February, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN P.M. HARIZ]
MEMBER (A)**

/ng/