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

OA 659/2017 WITH MA 559/2017

Smt. Kamlesh Devi ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. Y.P. Singh, Advocate

CORAM :

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

ORDER

MA 559/2017

This is an application filed under Section 22 of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1795 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 559/2017 is allowed despite opposition on behalf of the respondents and the delay of 1795 days in filing the OA 659/2017 is thus condoned. The MA is disposed of accordingly.

2. 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.

3. The husband of the applicant joined the Indian Army on 10.07.1985 and was discharged on 31.03.2005 after rendering 19 years 08 months and 16 days of qualifying service. He further got re-enrolled in DSC on 20.03.2007 and during the aforesaid engagement passed away on 04.011.2011, with the cause of death recorded in Court of Inquiry as "Found Dead - Cause Unknown which is not attributable to military service", in the absence of any post mortem report. The competent authority had considered the case of death as has occurred during sick leave with no cause known and held it to be neither attributable nor aggravated by service, and therefore, the applicant was held to be not eligible for grant of Special Family Pension. The applicant is in receipt of enhanced rate of Family Pension from Army side vide PPO No S/063957/2004(Army) and a second family

pension from DSC side. She has also been granted DCRG vide PPO No F/NA/011658/2012 (Army).

4. 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.

5. 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."*

6. 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 individual (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.

7. On a perusal of the Court of Inquiry, we find that the applicant was admitted in Command Hospital, Chandimandir from 11.08.2011 to 21.10.2011 as a case of Moderate Depressive Episode, post which he was granted sick leave from 22.10.2011 to 02.12.2011. We find that the husband of the applicant expired on 04.11.2011 due to unknown cause, almost 12 days after being granted sick leave, thereby ruling out any immediate causal connection with military service. Moreover detailed Report raised by the unit of the applicant dated 01.12.2011 has classified the death as Natural Death while recording the death to have been on 04.11.2011 at 0600hrs at his home Nihalgarh while on six weeks sick leave.

8. Furthermore, it would be extraneous attempt to presume the attributability of death to the military service, in absence of any post mortem report leading to absence of inconclusive proof, and thus, it would not be prudent to exercise judicial overreach in such a case, with nothing on record to support the case of the applicant.

9. In light of the above observations, we are of the opinion that the present OA is devoid of merits, and hence, is liable to be dismissed.

10. Consequently, OA 659/2017 is dismissed.

11. No order as to costs.

12. Pending miscellaneous application, if any, also stands closed.

Pronounced in the open Court on the 26 day of July, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/akc/