

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

1. SUPPLEMENTARY

OA 1057/2017

Smt Rajanesh Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. V.S Kadian, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
27.03.2024

Vide our detailed order of even date, we have partially allowed the OA 1057/2017. 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 our 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, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

OA 1057/2017

The applicant vide the present OA makes the following prayers:-

- “(a) Quash and set aside the impugned letter no. B/38046/83/2016/AG/PS-4(Imp-II) dated 30.03.2017 and treat the death of the husband of the applicant as attributable to or aggravated by military service.*
- (b) Direct respondents to grant Special Family Pension with all consequential benefits to the applicant with due arrears with effect from the date of death of her husband with interest @12% per annum. And/or*
- (c) Direct respondents to grant Ex-gratia lump sum compensation to the applicant @ Rs 10 Lakhs with interest @12% per annum from the date of death of her husband. And/or*

(d)Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances."

2. The applicant Late LD Anil Kumar No. 15476319N was enrolled in the Army on 28.01.1999 and expired on 08.05.2015 at Military Hospital at Namkum due to fatal disability that is **"Disease of Heart and its Complications"**. The applicant's husband till then had rendered 16 years, 03 months and 10 days of service. As averred in the counter affidavit dated 28.09.2017 of the respondents, as per service records while serving 82 Armd Regt. On 08.05.2015 at 0315 hours, the late soldier complained of a chest pain and was immediately evacuated to Military Hospital, Namkum by 82 Armed Regt. At the Military Hospital, Namkum premises he suffered a 'Cardiac Arrest' and was admitted to the ICU and at about 0515 hours, he was declared dead by the Military Hospital, Namkum. A death certificate dated 20.07.2015 was issued by the Military Hospital, Namkum.

3. Vide Para 2 in the brief facts of the case in the counter affidavit of the respondents, it is stated to the effect :-

"As per AFMSF-93, Part II(Death Certificate) dated 20 Jul 2015 issued by Military Hospital, Namkum, the death of the applicant's husband was due to fatal disability viz

“DISEASE OF HEART AND ITS COMPLICATIONS”
which is constitutional disease being connected with military service and the same was regarded as ‘attributable to military service’ by the medical authorities.”

4. The **CERTIFICATE OF THE ATTRIBUTABILITY FATAL CASE** placed on the record by the respondents with the counter affidavit indicates the statement of the Commanding Officer vide Paras 6 and 11 thereof to the effect:-

“

6. Was he living with his family? If so – NO (a) Since when - NA (b) In Govt md accn or under own arrangements - NA
--

”

“

11. Do you consider the death is attributable to or aggravated by service? (Give reasons)? The death is attributable to military service, the individual died on 08 May 2015 at MH Namkum due to <u>DISEASE OF HEART AND ITS COMPLICATIONS.</u>

”

thus stating to the effect therein that the death of the applicant's late husband was attributable to military service and that the applicant's late husband died on 08.05.2015 at the Military Hospital, Namkum due to **“Disease of Heart and its Complications”**.

It is also indicated through this **CERTIFICATE OF ATTRIBUTABILITY FATAL CASE** as signed by the Commanding Officer of the late soldier that he was not living with his family and he was living in unit lines.

5. The statement of the Commanding Officer in Section D of this certificate of attributability also states to the effect :-

“

SECTION -D

STATEMENT OF COMMANDING OFFICER

The cause of death is ~~/is not~~ Attributable to/ or Aggravated by Military Service for the following reason:-

The cause of death is due to cardiac course like to be arrhythmogenic. In view of PM finding and rapid progress of event, death is due to disease of heart.

”

6. The Special Family Pension claim of the applicant, the widow of the deceased was processed to PCDA(P) Allahabad by the Armoured Corps vide letter No. 15476319N/Claim/FP/PG dated 03.09.2015 alongwith service and medical documents of the deceased. The PCDA(P) Allahabad vide letter No. G-4/PHP-I/PFO/11982/2015 dated 07.10.2015 returned the Special Family Pension claim of the applicant with an observation that, *“the Medical Officer under Section ‘D’ of AFMSF-93 -II and other medical documents, have not categorically mentioned as to how the military service is responsible*

for death of the Army Personnel. Hence, opinion of DGAFMS, MoD, Govt. of India is required for adjudication of claim for Special Family Pension and directed to obtain the same and resubmit the claim of the applicant for proper adjudication."

Thus, the claim for the grant of Special Family Pension in favour of the applicant alongwith medical documents was forwarded to the office of the DGAFMS, MoD by the Armoured Corps Records vide letter no. 15476319N/FP/PG dated 21.10.2015 for the opinion.

7. The Competent Medical Authority at DGAFMS opined vide letter no. A/6050/DGAFMS/MA(Pen)/Initial dated 04.11.2015 stating to the effect :-

"Perusal of the documents show that the individual not having co-morbidities presented into retro sternal chest pain and palpitations while he was being managed, he deteriorated rapidly and succumbed to his illness. Postmortem examination brought out the cause of death as disease of heart and its complications. Individual was serving in a peace station with no close time association of onset of FD with service in Fd/HAA/CIOps area. There is no evidence of exceptional service related stress as per 14 days charter of duties either. FD is therefore conceded as neither attributable to nor aggravated by military service in terms of para 47, Chap VI, GMO 2002, Amendment 2008."

8. Thus, in view of letter dated 04.11.2015 referred to hereinabove, the applicant's claim for Special Family Pension was resubmitted to the PCDA(P) Allahabad by the Armoured Corps Records alongwith connected documents and enhanced rate of Ordinary Family Pension was sanctioned to the applicant vide PPO No. F/NA/20026/2016 dated 09.02.2016, and the applicant was granted terminal death benefits.

9. The applicant was informed of the same vide letter no. 15476319/FP/PG dated 22.07.2016 informing her that the death of her husband had been regarded as neither attributable to nor aggravated by military service by the DGAFMS, MoD, Govt. of India and that enhanced rate of Ordinary Family Pension with effect from 09.05.2015 has been granted to her and she was advised to prefer an appeal to the Appellate Committee on First Appeals against rejection of the Special Family Pension within six months of the receipt of the letter.

10. The applicant's First Appeal dated 05.10.2016 in relation thereto was rejected vide letter No. B/38046/83/2016/AG/PS-4 (Imp-II) dated 30.03.2017 apprising her to the effect that the cause of death of her late husband was neither attributable to nor aggravated by

military service in terms of Para 47 of Chapter VI of the GMO 2002/2008 as the individual was posted to a peace station (Ranchi). The applicant was advised that she could prefer a Second Appeal within a period of six months if she so desired. No Second Appeal was however, filed by the applicant and she rather filed the present OA on 21.06.2017 which is pending since its institution on 21.06.2017 and thus, in the interest of justice, in terms of Section 21(1) of the AFT Act, 2007 we consider it appropriate to take up the OA for consideration.

11. During the course of submissions made on behalf of the applicant on 22.11.2023, it was submitted by the learned counsel for the applicant that the prayer made through the present OA is confined to seeking the grant of Special Family Pension alone and the prayer seeking the Ex-gratia lump sum compensation is not pressed.

12. Pursuant to directions dated 22.11.2023, the respondents have produced on record the certified true copy on the postmortem report and medical case sheet qua the applicant's late husband and 14 days of charter of duties and posting profile of the late husband of the applicant in original was produced and the attested copy of the same

has been taken on record, copy of which has been supplied to the learned counsel for the applicant.

CONTENTIONS OF THE PARTIES

13. It is submitted on behalf of the applicant that her late husband had suffered from no disability at the time of induction into the Indian Army and had been enrolled in the Indian Army after having been subjected to a thorough medical examination conducted by the Board of Doctors and that he had also been found medically fit at the selection centre in all respects. It has also been submitted on behalf of the applicant that the applicant's late husband had also undergone a thorough medical examination at the training centre before training and there was no note of any disability made on the records of the respondents qua the applicant in relation to any disability that he suffered from.

14. On behalf of the applicant, reliance is also placed on Para 47 of Chapter VI of the GMO (Military Pensions) 2008 to submit to the effect that prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms and that even though the disease has developed in a peace area, it was due to the stress and strain of duty as has been observed by the

Commanding Officer who had opined the disability to be attributable to military service.

15. The applicant had further submitted that in the instant case, as per the certificate of attributability as annexed to the counter affidavit of the respondents, the death of the applicant's husband was due to cardiac complications, due to the disease of the heart and was attributable to military service as per AFMSF-93 Part II which ought not to have been changed by the Sanctioning Authorities.

16. Reliance was also placed on behalf of the applicant on Para 213 of the Pension Regulations for the Army, 1961 which is to the effect:-

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

17. Reliance was also placed on behalf of the applicant on Para 105 of the Pension Regulations for the Army, 2008 which are to the effect :-

" (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 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 military 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”.

(b) The question whether death is attributed to or aggravated by service shall be determined under the entitlement rule for Casualty Pensionary Awards 1982 contained in Appendix IV to these Regulations.”

18. *Inter alia* reliance was placed on behalf of the applicant on Para 5.1 of the Govt. of India, MoD letter No. 1(2)/97/D(Pen-c) dated 31.01.2001 which provided to the effect :-

“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 fore. There shall be no condition of minimum service on the date of death for grant of Special Family Pension.”

19. Paras B and C of Para 4.1 forming part of Part II pensionary benefits on death/disability attributable/aggravated cases as detailed in the said letter dated 31.01.2001 No. 1(2)/97/D(Pen-c) read to the effect :-

"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. Diseases 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.

Category C

Death or disability due to accidents in the performance of duties such as :-

- (i) Accidents while traveling on duty in Government Vehicles or public/private transport.*
- (ii) Accidents during air journeys.*
- (iii) Mishaps at sea while on duty.*
- (iv) Electrocution while on duty, etc.*
- (v) Accidents during participation in organised sports events/adventure activities/expeditions/training."*

20. The applicant submits that in the instant case, her late husband expired whilst in harness in military duty and the reliance placed on behalf of the respondents on the 14 days Charter of Duties of the applicant's late husband does not aid the respondents in any manner in support of their contention that the applicant's late husband's demise was due to reasons other than the stress and strain of military service which resulted into cardiac arrest.

21. It is further submitted on behalf of the applicant that the applicant's late husband expired on 08.05.2015 and had been on duty till 07.05.2015 as per the 14 days Charter of duties copy of which was submitted on behalf of the respondents which reads to the effect :-

**"14 DAYS CHARTER OF DUTIES IN RESPECT OF
NO 15476319N LATE LD ANIL KUMAR OF 82 ARMD REGT**

<u>Ser No.</u>	<u>Date</u>	<u>Time</u>	<u>Event</u>	<u>Remarks</u>
1.	30 Mar 15 to 28 Apr 15		On leave (30 days casual leave)	
2.	29 Apr 15 (Wednesday)	0530-0630h	PT	
		0630-800h	Breakfast	
		0800-1300h	Eqpt/Veh maint in Garage	
		1300-1600h	Rest.	
		1600-1700h	Game Parade	
		1700-1900h	Rest.	
		1900-2100h	Dinner	
		2100-onwards	Rest.	
3.	30 Apr 2015 (Thursday)	0530-0630h	PT	
		0630-800h	Breakfast	
		0800-1300h	Eqpt/Veh maint in Garage	
		1300-1600h	Rest.	
		1600-1900h	Rest (Half day)	
		1900-2100h	Dinner	
		2100-onwards	Rest	
4.	01 May 2015 (Friday)	0730-1300h	Long Maint in Garage	
		1300-1500h	Rest.	
		1500-1700h	Long Maint in Garage	
		1700-1800h	Rest.	
		1800-2000h	Night Parade in Garage	
		2000-2100h	Dinner	
		2100h-onwards	Rest.	

5.	02 May 2015 (Saturday)	0530-0630h	PT	
		0630-800h	Breakfast	
		0800-1300h	Eqpt/Veh maint in Garage	
		1300-1600h	Rest.	
		1600-1900h	Rest (Half day)	
		1900-2100h	Dinner	
		2100-onwards	Rest	
6.	03 May 2015 (Sunday)	No duties being Sunday		
7.	04 May 2015 (Monday)	0530-0630h	PT	
		0630-800h	Breakfast	
		0800-1300h	Eqpt/Veh maint in Garage	
		1300-1600h	Rest.	
		1600-1700h	Game Parade	
		1700-1900h	Rest.	
		1900-2100h	Dinner	
8.	05 May 2015 (Tuesday)	2100-onwards	Rest.	
		0530-0630h	PT	
		0630-800h	Breakfast	
		0800-1300h	Eqpt/Veh maint in Garage	
		1300-1600h	Rest.	
		1600-1800h	Eqpt/Veh maint in Garage	
		1800-1900h	Rest.	
9.	06 May 2015 (Wednesday)	1900-2100h	Dinner	
		2100-onwards	Rest.	
		0530-0630h	PT	
		0630-800h	Breakfast	
		0800-1300h	Eqpt/Veh maint in Garage	
		1300-1600h	Rest.	
		1600-1800h	Eqpt/Veh maint in Garage	
10.	07 May 2015 (Thursday)	1800-1900h	Rest.	
		1900-2100h	Dinner	
		2100-onwards	Rest.	
		0530-0630h	PT	
		0630-800h	Breakfast	
		0800-1300h	Eqpt/Veh maint in Garage	
		1300-1600h	Rest.	

		0800-1300h	Eqpt/Veh maint in Garage	
		1300-1600h	Rest.	
		1600-1900h	Rest (Half day)	
		1900-2100h	Dinner	
		2100-onwards	Rest	

22. It was further submitted on behalf of the applicant that the Medical Case Sheet and postmortem report submitted by the respondents indicate clearly that the death of the applicant's late husband was due to disease of the heart and its complications and that there was no injury neither external nor internal and that the applicant's late husband was an apparently healthy SHAPE –I individual and had suffered a sudden death, the cause of which was not known and thus in these circumstances the presumption of attributability of the sudden cardiac ailment of the applicant's late husband with complications has to be held to be due to the stress and strain of military service in as much as the applicant's late husband was enrolled in the Indian Army in the Armoured Corps on 28.01.1999 and died due to cardiac arrest whilst on duty on 08.05.2015 after a period of 16 years of military service.

23. Reliance was also placed on behalf of the applicant on the details of the posting profile of the applicant's late husband as submitted by the respondents which reads to the effect :-

“ **Details of service (Peace/Field/Operation Service)**
in respect of No. 15476319N Late LD Anil Kumar

Sr. No.	From	To	Regt.	Peace/Ship	Peace/Field
(a)	28 Jan 1999	04 Jul 1999	BT Regt.	Ahmednagar	Peace
(b)	05 Jul 1999	05 Dec 1999	D&M Regt.	Ahmednagar	Peace
(c)	06 Dec 1999	13 Feb 2000	A& E Regt.	Ahmednagar	Peace
(d)	14 Feb 2000	20 May 2000	Auto Regt.	Ahmednagar	Peace
(e)	21 May 2000	01 Jan 2003	82 Armd Regt.	Jammu	Fd
(f)	02 Jan 2003	30 Jan 2005	33 RR Bn	-	Fd
(g)	21 Jan 2005	25 Feb 2007	82 Armd Regt.	Jaisalmer	Mod Fd
(h)	26 Feb 2007	30 Apr 2009	82 Armd Regt.	Hisar	Mod Fd
(i)	01 May 2009	02 Sep 2009	82 Armd Regt.	Suratgarh	Mod Fd
(j)	03 Sep 2009	02 Dec 2010	82 Armd Regt.	Lebanon	UNMIS N (Fd)
(k)	03 Dec 2010	26 Feb 2014	82 Armd Regt.	Suratgarh	Mod Fd
(l)	27 Feb 2014	07 May 2015	82 Armd Regt.	Namkum (Ranchi)	Peace

(emphasis supplied.....)

to submit to the effect that from 21.05.2000 onwards till 02.12.2010, the applicant's late husband had been deployed in field postings from 21.05.2000 to 01.01.2003 at Jammu, from 02.01.2003 to 30.01.2005 at 33 RR Batalian and from 03.09.2009 to 02.12.2010 at Lebanon UNMISN, **all field postings** apart from the applicant's late husband

having been deployed from 31.01.2005 to 25.02.2007 at 82 Armd Regt, Jaisalmer, from 26.02.2007 to 30.04.2009 at 82 Armd Regt Hisar and from 03.12.2010 to 26.02.2014 at 82 Armd Regt Suratgarh which were all modified field areas and it is thus submitted on behalf of the applicant that merely because the demise of the applicant's late husband was on 08.05.2015 at Namkum (Ranchi) at a peace posting, the same does not detract from the factum of the cardiac ailment of the applicant's late husband being attributable to and aggravated by military service.

24. Reliance was also placed on behalf of the applicant on Regulation 423(a) of the Regulations for the Medical Services for Armed Forces Personnel 2010, wherein it has been provided to the effect :-

“423.(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or is 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 evidence 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 cases 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 cause 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.”

(emphasis supplied),

to submit to the effect that merely because the death of an Armed Force Personnel is in a peace area, the same does not make the death of the Armed Force Personnel to be not attributable to nor aggravated by military service and what is required to be established is the existence of a causal connection between the cause of the death of the Armed Force Personnel and military service, which the applicant submits has been cogently brought forth in the instant case.

25. Reliance was placed on behalf of the applicant on the order dated 30.10.2015 of the AFT, PB, New Delhi in OA 399/2015 in the case of *Smt. Ratna Yadav vs. UoI & Ors.* in which case the applicant's husband had joined the Indian Air Force on 17.03.1987 and expired on 04.04.2013. It was observed vide Para 10 to the effect :-

“10. A bare perusal of above reason clearly indicates that the Doctors were provided with the petitioner's husband only 14 days of charter duty. This material was not sufficient to form opinion that petitioner's husband's heart attack cannot be due to his long years duties. Furthermore, mere charter of duties cannot indicate the working environment which is

dependent, not only on the attitude of person but it depends upon the surrounding circumstances, like the behavioral problem of individual as well as others. Therefore, the medical opinion is not sufficient to rebut the presumption in favour of the petitioner's husband that he suffered the heart attack due to his Air Force service stress and strain. Consequently, it is held that the petitioner's husband suffered the heart attack due to service stress and strain and eligible for the special family pension."

26. Reliance was also placed on behalf of the applicant on the order dated 29.09.2015 in OA 561/2014 in the case of **Smt Karamjit Kaur vs. UOI & Ors.** wherein the applicant's late husband who returned after annual leave back to the unit, the next day developed severe symptoms and was evacuated to the ICU of the Military Hospital and succumbed to a heart attack at 11.30 a.m. on 22.04.2012 and which was diagnosed as "Sudden Heart Attack" and though the Commanding Officer had in that case accepted the cause of death, giving the remarks that the death was attributable to military service as the death occurred while on active service, the Classified Specialist Medical Officer altered the opinion of the Commanding Officer and accepted the cause of death as being not attributable to military service as per the charter of duties, as the individual was on leave

from 27.03.2012 to 20.04.2012 and rejoined the unit on 20.04.2012 at 1800 hrs and opined that his death was not attributable to military service which decision was concurred by the medical chain upto the Competent Authority in relation to which it was observed vide Para 15 and 16 in *Karamjit Kaur* (Supra) by this Tribunal to the effect :-

"15. It is evident from the record, that the husband of the petitioner returned from annual leave on 20.04.2012 and attended the unit roll call. Unit roll calls are held traditionally at dusk, before the night meal, and well before lights out, which in most Army units in peace stations, is latest by 22:30 PM. In other words the husband of the petitioner was well within the unit lines in the after noon of 21.04.2012. While not mentioned, 21.04.2012 being a week day, the normal unit routine would have commenced at 06:00-06:30 AM and the husband of the petitioner began feeling uneasy and had other symptoms at 0800 hours. He was sent through the unit MI Room to the Military Hospital in Bhatinda, where he was taken to the Intensive Care Unit and by 1100 hours was declared dead due to "Sudden Cardiac Failure". It would be prudent to examine the definition and meaning of certain terms the Court will need to consider;

(a) Sudden: (American Heritage Dictionary) 1. Happening without warning, unforeseen. 2. Characterized by rapidity, quick and swift.

(b) Accident: An accident is an occurrence or an event which is unforeseen and startling, happening of which is not inherent in the normal course of events

and is not ordinarily expected to happen or occur. Union of India v. Sunil Kumar Ghosh, (1984) 4 SCC 246: AIR 1984 SC 1737.

The popular and ordinary sense of the word "accident" means the mishap or an untoward happening not expected and designed to have an occurrence is an accident. Regional Director, ESI Corpn. V. Francis De Costa, 1993 Supp (4) SCC 100: 1994 SCC (L&S) 195.

(American Heritage Dictionary). 1, An unexpected undesirable event. 2. An unforeseen event. 3. Lack of intention chance; accidental occurring unexpectedly, unintentionally or by chance.

(c) Sudden Cardiac Arrest

(Extracts taken from Mayo Clinic; National Heart, Lung and Blood Institute)

(1) Definition: Sudden cardiac arrest (SCA) is the sudden, unexpected loss of heart function, breathing and consciousness. Sudden cardiac arrest is a medical emergency, it causes sudden cardiac death.

Explanation

Ventricular fibrillation (v-fib) causes most sudden cardiac arrests (SCAS). V-fib is a type of arrhythmia. During v-fib, the ventricles (the heart's lower chambers) do not beat normally. Instead they quiver very rapidly and irregularly. When this happens, the heart pumps little or no blood to the body. V-fib is fatal if not treated within a few minutes. Other problems with the heart's electrical system also can cause SCA. For example, SCA can occur if the rate of the heart's electrical signals becomes very slow and stops. SCA also can occur if the heart muscle does not respond to the heart's electrical signals.

Certain diseases and conditions can cause the electrical problems that lead to SCA. Examples include coronary heart disease (CHD), also called coronary artery disease, severe physical stress; certain inherited disorders; and structural changes in the heart.

Several research studies are under way to try to find the exact causes of SCA and how to prevent them.

(ii) Causes: The most common cause of cardiac arrest is an arrhythmia called ventricular fibrillation-when rapid, erratic electrical impulses cause your ventricles to quiver uselessly instead of pumping blood. A life threatening arrhythmia usually develops in a person with a pre-existing heart condition, such as:

- *Coronary artery disease,*
- *Heart attack*
- *Enlarged heart (cardiomyopathy)*
- *Valvular heart disease.*
- *Congenital heart disease*
- *Electrical problems in the heart.*

(iii) Risk Factors:

- *A family history of coronary artery disease*
- *Smoking*
- *High blood pressure*
- *High blood cholesterol*
- *Obesity*
- *Diabetes*
- *A sedentary lifestyle*
- *Drinking too much alcohol (more than one to two drinks a day)*
- *Other factors that may increase your risk of sudden cardiac arrest include:*

- *A previous episode of cardiac arrest or a family history of cardiac arrest*
- *A previous heart attack*
- *A personal or family history of other forms of heart disease, such as heart rhythm disorders, congenital heart defects, heart failure and cardiomyopathy*
- *Age-the incidence of sudden cardiac arrest increases with age, especially after age 45 for men and 55 for women.*
- *Being male-men are two of three times more likely to experience sudden cardiac arrest.*
- *Using illegal drugs, such as cocaine or amphetamines.*
- *Nutritional imbalances, such as low potassium or magnesium levels.*

16. What emerges, is that a SCA, is not a normal cardiac event, there is wide range of factors that are either causative, or carry risk, however a definite view on its causes, risks and course does not prevail. It is a poorly understood phenomenon related to risk and cause.”

and vide Para 18, 19, 20 and 21 thereof to the effect :-

“18. There are a number of medical conditions which are unknown aetiology. In dealing with such conditions, the following guiding principles are laid down:

20.(a) If nothing at all is known about the cause of the disease, and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded.

Anexure III to Appendix II(Pension Regulations)

B. diseases Affected by Stress and Strain,

- 1. Psychosis and Psychoneurosis*
- 2. Hypertension (BP)*
- 3. Pulmonary Tuberculosis*
- 4. Pulmonary Tuberculosis with pleural effusion*
- 5. Tuberculosis (Non pulmonary)*
- 6. Mitral Stenosis*
- 7. Pericarditis and adherent pericardium*
- 8. Endocarditis*
- 9. Sub-acute bacterial endo-carditis, including ineffective endocarditis*
- 10. Myocarditis (acute and chronic)*
- 11. Valvular disease*
- 12. Myocardial infarction, and other forms of IHD*
- 13. Cerebral haemorrhage and cerebral infarction.*
- 14. Peptic ulcer.*

19. The preceding has been, quoted to establish, whether indeed the death of the petitioner was on duty and attributable to military service. The fact that the husband of the petitioner was on duty, is incontrovertible. The manner of death, by all available literature, is indicative of the fact, that no clear determination of cause of the "Sudden Cardiac Failure or attack" is evident. All causes and risk factors are extensive and common to several allied diseases and ailments. There is a clear ambiguity related to the occurrence of this medical condition, resulting in death. The medical authorities have changed the attributability of the death to military service, to not attributable based on "as per charter of duties the Individual was on leave from 27.03.2012 to 20.04.2012 and rejoined his unit on 20.04.2012 at

1800 hrs". This opinion was upheld all the way up the medical channel upto HQ South Western Command.

20. Apart from the issue that the medical authorities have reversed the decision of the CO; the medical opinion per se, fails, when put to the test, that undoubtedly "Sudden Cardiac Death" is in itself not a firmly rooted occurrence based on clear causes and risk factors. Further none of the known risk factors have been identified in the JCO in question, prior to the event. Presumably the earlier charter of duties has been examined to rule out service stress etc. How does the opinion account for the fact that the individual had spent more than 24 back in his unit at the time of his death. How does the 14 day charter relate to the full spectrum of known and indeed unknown causes of this cardiac event? Consequently how was this justification used to deny attributability in the case of a medical event, which is largely of unknown origin? Should the provisions of the Pension Regulations for the Army quoted above not have been made applicable? Reasons are incomprehensible and the outcome is incredulous.

21. This Court hence finds no difficulty in the establishment of fact that the death of the husband of the petitioner was on duty and attributability needed to have been accorded based on the provisions of Pension Regulations (Entitlement Rules paras 14 (a) and 20 (b) quoted above)."

27. On behalf of the respondents, learned counsel for the respondents placed reliance on Para 8 of the **CERTIFICATE OF**

ATTRIBUTABILITY FATAL CASE dated 26.06.2015 as approved
on 20.07.2015 to the effect:-

“

8. Date of last leave and where spent [Village/Town/State]- 30 days Casual Leave wef 30 Mar 2015 to 28 Apr 2015 at Vill-Lilodh, PO- Lilodh, The-Kosli, Distt-Rewari (Haryana), Pin-123305

”

to submit to the effect that the applicant's late husband had been on 30 days casual leave with effect from 30.03.2015 till 28.04.2015 and thus, the sudden demise of applicant's late husband on 08.05.2015 after he resumed his duties on 29.04.2015 till 07.05.2015 does not bring forth that the applicant's late husband's demise was due to any causative stress and strain of military service which was proximate in time to the demise of the applicant's late husband. It has also been submitted on behalf of the respondents that the postmortem report dated 08.05.2015 of the Department of the Forensic Medicine and Toxicology RIMS, Ranchi itself states that the death was due to disease of heart and its complications and no reasons for causation thereof are mentioned in the postmortem report nor in the medical case sheet dated 08.05.2015 of the Military Hospital, Namkum which

states that the Postmortem Diagnosis was "death is due to disease of heart and its complications, sudden death (cause unknown)".

28. The respondents thus submit that the applicant is not entitled to the grant of Special Family Pension and is being paid the Ordinary Family Pension with all terminal benefits.

ANALYSIS

29. On a consideration of submissions that have been made on behalf of either side, it is essential to observe that the late husband of the applicant died whilst in harness in the Indian Army after 16 years of service in the Indian Army which included three field postings and three modified field postings between the period 21.05.2000 to 26.02.2014 that is before his 12th and last posting from 27.02.2014 to 07.05.2015 at the 82 Regmt Namkum Ranchi.

30. It is essential to advert to Para 47 of the GMO (Military Pensions) 2008 which reads to the effect :-

"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.

Entitlement in Ischemic heart disease will be decided as follows:-

- (a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. 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.*

Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.

(b) Aggravation will be conceded in cases in which there is evidence of:- IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions. There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases.”, (emphasis supplied).....

31. The same thus makes it apparent that service in field and HAA areas apart from physical hardship causes considerable mental stress on the personnel of the Armed Forces and as observed hereinabove, the applicant's late husband was posted on three field postings and three modified field postings prior to his last posting at Ranchi which was a peace station.

32. As regards, the contention that has been raised on behalf of the respondents that the 14 days charter of duties does not in any manner bring forth any specific stress and strain that the applicant's late husband suffered from, apart from adverting with concurrence to observations made by the Coordinate Bench in *Smt Karamjit Kaur* (Supra) in OA 561/2014 vide order dated 29.09.2015 with observations made in Para 20 and 21 thereof as already adverted to hereinabove, we also consider it essential to refer to the observations in Para 10 and 11 of the order dated 05.04.2017 of this Tribunal in OA 799/2016 PB, New Delhi in the case of *Jyotsna Bhatnagar vs. UOI & Ors.* in which case the applicant thereof who was posted as the Director Ex serviceman Contributory Health Scheme at Nagpur was discharging his duties and fell sick and reported on 26.07.2014 to the Station Medicare Center at Nagpur and felt uncomfortable in the night between 26.07.2014 and 27.04.2014 and complained of a breathing problem and heaviness and was taken to the Station Medicare Center at Nagpur but unfortunately was declared dead due to coronary heart disease in which case the applicant thereof was denied the grant of Family Pension, and it was observed vide Para 10 and 11 in *Jyotsna Bhatnagar* (Supra) in OA 799/2016 which reads to the effect :-

"10. The applicant, in the application filed though has submitted that there was medical negligence on the part of the respondent authorities as due medical case was not extended to her husband, same cannot be accepted in the absence of adequate material on record in that regard. The applicant in the OA filed has specifically narrated the charter of duties required to be performed and also the stress and strain attached to the post Regional Director of ECHS. The respondent authority has rejected the claim of the applicant to cumulative stress and strain of service only on the ground that last 14 days charter of duties do not suggest undergoing any stressful job by the applicant. The cause of death, which was Coronary Artery Disease cannot occur spontaneously, and it has happened over a period of time. The respondents actions of taking into account the last 14 days charter of duties without taking into account the measures of duties, performed by the applicant's husband prior to the aforesaid period of 14 days before his death, would be incorrect. Therefore, it has to be concluded that the applicant's husband suffered from stress and strain of service which cannot be adjudged on the basis of charter of 14 days duties.

11. The Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India and others (2013) 7 SCC 316 having regard to the entitlement Rules has held that when a person entered the service without any disease or disability, the disability or disease occurred to him has to be treated as attributable to service as the presumption is required to be drawn in favour of the applicant, which presumption is however rebuttable by the respondents. It is the duty of the respondents to demonstrate otherwise. In the instant case except on the strength of 14 days charter of duties which do not indicate the stress and strain of work by the husband of the applicant, no attempt has been made to substantiate that the cause of death was not due to cumulative stress and strain of service through the applicant's career as an air crew."

33. There is nothing that the respondents have placed on record in the instant case to indicate any contributory factors from the side of

the late officer, and thus the respondents cannot contend that attributability and aggravation cannot be conceded in the instant case for the causation of the disability which is neither hereditary nor has it been contended that the applicant was a smoker. In these circumstances the presumption that arises in favour of the deceased Armed Force Personnel of his disability and consequential death being due to a myocardial infarction due to the stress and strain of military service and continued exposure to the hostile work environment and occupational hazards squarely falls within the ambit of category B of para 4.1 of the MoD letter No. 1 (2)/97/D (Pen-C) dated 31.01.2001. In the circumstances the applicant is held entitled to the grant of the Special Family Pension from the date of demise of her late husband LD Anil Kumar No. 15476319N.

34. We are fortified in view of our order dated 16.05.2023 in OA 2396/2019 in the case of *Smt Vidya Devi W/O Late Sep Dharampal Yadav vs. UOI & Ors.* thereof to the effect :-

“14.

In the instant case, in terms of Para-47, Chap VI of GMO 2002 amended in 2008, which forms the basis of denial of the claim for Special family pension as relied upon on behalf of the respondents itself, it is indicated that

prolonged stress and strain and 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 said Para-47 which deals with Ischaemic Heart Disease (IHD) already referred to herein above, also stipulates that considerable mental stress of solitude and separation from the family also leaves the individual tense and anxious. The Entitlement for Ischaemic Heart Disease (IHD) in terms of Para-47 of GMO 2002 amended in 2008, relied upon on behalf of the respondents themselves, stipulates that attributability will be conceded where a myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours."..,

(emphasis supplied).....

in which case the cause of death of the serving Sepoy having been opined to be **Shock Secondary Myocardial Infarction** that is a heart attack, was held to be due to circumstances aggravated by military service with the applicant thereof that is the spouse of the deceased Sepoy having been held entitled to the Special Family Pension in terms of Rule 213 of the Pension Regulation for the Army 1961, in as much as the late Sepoy's disability was held to have apparently

aggravated during military service and did not exist as per the records of the respondents at the time of induction into the military service.

35. Vide order dated 23.03.2023, the AFT(RB), Lucknow in the case of *Sony Kushwaha Widow of Nk Late Nagendra Singh Kushwaha vs. UOI & Ors.* in OA 53/2023 has likewise granted Special Family Pension to the widow of the late Armed Forces Personnel who died in harness with **Coronary Insufficiency Associated with Hypertrophied Heart (Heart Disease)** with para 6 thereof being to the effect :-

“6. Para 4.1 of Government of India, Ministry of Defence letter dated 31.01.2001 (Annexure A-24) deals with attributability and aggravation of cases for grant of pensionary benefits on death/disability which reads as under:-

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

1. to 3. XXXX XXXX XXXX

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

Category C

Death or disability due to accidents in the performance of duties such as:-

- (1) Accidents while travelling on duty in Government Vehicles or public/private transport;*
- (ii) Accidents during air journeys;*
- (iii) Mishaps at sea while on duty'*
- (iv) Electrocution while on duty, etc.*
- (v) Accidents during participation in organized sports events/adventure activities/ expeditions/training.*

Category D

Death or disability due to acts of violence/attack by terrorists, anti- social elements, etc, whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.

Category E

Death or disability arising as a result of:-

- a) Enemy action in international war.*
- b) Action during deployment with a peace keeping mission abroad.*

c) Border skirmishes

(e) On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating mine-field laid by enemy or own forces in operational areas near international borders or the line of control.

f) War like situations, including cases which are attributable to/aggravated by:-

(i) Extremist acts, exploding mines etc., while on way to an operational area

(ii) Battle inoculation training exercises or demonstration with live ammunition.

(iii) Kidnapping by extremists while on operational duty.

(g) An act of violence/attack by extremists, anti-social elements etc while on operational duty.

(h) Action against extremists, antisocial elements, etc. Detach/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.

(1) Operations specially notified by the Govt. from time to time.

4.2 Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.

Notes:- (1)

The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.

(11) The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time

In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/ discharge/invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defence letter No. 1(1)99/D/(Pen/Ser) dated 7.7.99. Defence letter no. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as amended /modified vide Ministry of Defence letter No. 1 (1)99/D(Pen/Ser) dated 07.06.99."

However, though the applicant's late husband died while in harness and it stands established that the death was attributable to and aggravated by military service, nevertheless the death of the deceased armed force personnel does not fall within the ambit of the category of death stated in the letter no. 20(1)/98/D(Pen/Service) dated 22.09.1998, nor within the ambit of the category of the death stated in letter no. 20(1)/98/D(Pen/Services) dated 21.10.2008, in as much as the death of the late deceased armed force personnel in the instant case, *did not occur due to any accident in the course of his duties, nor did the death take place in the course of duties attributable to acts of violence by terrorists etc, nor during enemy action in war or border skirmishes, nor in action against militants, terrorists etc., during enemy action in international war or war like engagements specifically notified.* Thus the applicant is not entitled to the grant of

any ex-gratia payment. As observed vide Para 11 hereinabove, the learned counsel for the applicant on 22.11.2023 submitted that the prayer for the grant of ex gratia payment was not pressed.

CONCLUSION

36. The instant OA 1057/2017 is thus partially allowed, in as much as the applicant's late husband died whilst in harness and its stand established that the death was attributable to and aggravated by military service, the applicant is held entitled to the grant of Special Family Pension as prayed from the date of death of her husband that is 08.05.2015.

37. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum on the arrears due from the date of this order.

Pronounced in the open Court on the 22 day of March, 2024.

[REAR ADMIRAL DEHREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/