

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

C.

OA 1152/2017

Smt Anshu

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. V S Kadian, Advocate  
For Respondents : Mr. V Pattabhiram, Advocate

CORAM

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

ORDER  
01.04.2024

Vide our detailed order of even date we have partially allowed the OA 1152/2017. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

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

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... Respondents

For Applicant : Mr. V.S. Kadian, Advocate

For Respondents : Mr. V. Pattabhiram, Advocate

Maj A.R. Subramaniam, OIC Legal Cell

**CORAM :**

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

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

**ORDER**

1. The applicant vide the present O.A 1152/2017 has made the following prayers:-

*“(a) Quash and set aside Impugned letter No B/38046A/256/2013/AG/PS-4(2<sup>nd</sup> Appeal) dated 21.04.2016 and treat the death of the husband of the applicant as attributable to or aggravated by military service. And/or*

*(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 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's Late husband Nk Tejendra Kumar was enrolled in the Indian Army on 26.10.1994 and was attested on 25.11.1995 and was subsequently posted to 21 MARATHA LI with effect from 06.02.1996 Whilst posted with the Indian Military Academy at Dehradun, although he was asymptomatic till 01.06.2011, he suddenly developed weakness of the right half of the body and an inability to move and speak and was brought to the MI Room, where an examination revealed that he was comatose with features of right VII cranial nerve palsy with brisk motor reflexes and up going plantars, no signs of meningeal irritation were seen and he was admitted to Military Hospital, Dehradun as a case of CVA with hemiplegia and hypertension in the ICU. Despite all intensive resuscitative measures, he succumbed to his illness and expired on 03.06.2011 at 0700 hrs due to 'INTRACEREBRAL HAEMORRHAGE' at the Military Hospital, Dehradun as averred by the respondents vide their Counter affidavit dated 06.07.2018. The applicant was sanctioned Ordinary Family Pension vide PPO No. F/NA/012045/2011 dated 10.01.2012 and was paid death benefits as under:-

***“(a) Death-Cum-Retirement Gratuity- Rs. 4,18,483/-  
(b) Credit Balance on Final Settlement of Accounts-  
Rs. 1,16,317/-***

(c) *Army Group Insurance Death benefits- Rs. 20,00,000/-*

(d) *Army Group Insurance Regular Maturity benefits- Rs. 1,41,251/-*

(e) *AFPP Fund balance- Rs. 2,93,989/-* ”

3. The applicant's claim for grant of Special Family Pension was however rejected by PCDA(P), i.e. the Respondent No. 4 arrayed to the OA, stating that the individual's death was not attributable to military service. The first appeal of the applicant was rejected vide letter dated 02.11.2012 apprising the applicant to the effect that her late husband died due to Intracerebral Haemorrhage Hypertension at IMA, Dehradun and his death in such circumstances was not in any way related to military service and also not attributable to military service. The applicant was advised to prefer a second appeal, which she so filed. The second appeal dated 04.06.2013 of the applicant was also rejected vide letter no. B/38046A/256/2013/AG/PS-4(2<sup>nd</sup> Appeal) dated 21.04.2016 stating to the effect:-

*“Perusal of his enclosed medical/service documents reveals that the indl died due to FD Intracerebral Haemorrhage on 03 Jun 2011. He presented with sudden onset of loss of consciousness on 01 Jun 2011. Imaging revealed Intracerebral Haemorrhage Left Temporal region. He was treated with cerebral decongestants & anti-hypertensive, but succumbed to the same. Post Mortem report reveals acute intracerebral bleed secondary to hypertension. Onset of Hypertension as per documents was in peace As per his 14 days' charter of duties, indl was not under undue/exceptional stress. Hence the was posted at peace stn at the time of onset of ID/FD with no causal*



*connection with mil service. Hence, his FD is conceded as neither attributable to nor aggravated by military service."*

The present OA was thus instituted by the applicant.

4. During the course of submissions made on behalf of the applicant on 22.11.2023, it was submitted to the effect that the prayer made through the present OA is confined to seeking the grant of the Special Family Pension alone and the prayer seeking the grant of the Ex- gratia payment is not pressed.

5. Pursuant to directions dated 22.11.2023, respondents were directed to place on record the entire posting profile qua the applicant, post-mortem report and all documents mentioned in Exhibit R2 attached to the reply affidavit of the respondents inclusive of the Post mortem report be placed on record, the respondents submitted the said record on 12.01.2024.

#### ***CONTENTIONS OF THE PARTIES***

6. On behalf of the applicant, it was contended to the effect that the applicant's late husband joined the Indian Army in a fit medical condition and his demise due to the fatal disease of Intercerebral Haemorrhage which the Post Mortem report revealed was due to acute intracerebral bleed secondary to hypertension has to be held to be attributable to and aggravated by military service. The applicant

submits that the denial of the grant of Special Family Pension by the respondents, despite the factum that the Senior Records Officer of the OIC Records vide letter no. 2785216P/SR/DWS/FP dated 16.07.2012 had stated to the effect:-

*"2. It is submitted that No 2791357A Nk Tejendra Kumar of this Regiment was enrolled in the Army on 26 Oct 1994 and died on 03 Jun 2011 due to Diag- INTRACEREBRAL HAEMORRHAGE HYPERTENSION at IMA, Dehradun. The casualty of the deceased soldier has been classified as physical casualty.*

*3. As per AFMSF-93 Part II, the death of the individual has been classified as neither attributable to nor aggravated by Military Services by the Competent Medical Authority. However, in order to reconfirm the attributability of death as the disease seemed to be caused due to stress & strain of service factors, the case in the light of Entitlement Rules for casualty awards issued vide IHQ of MoD (Army) letter No B/40139/MISC/AG/PS-5 dt 16.02.2010 was referred to Integrated HQ of MoD (Army)/DGAFMS vide this office letter No 2791357A/SR/DWS/FP dt 24 Mar 2012. As per the opinion of the competent medical authority, death of the above deceased soldier has been reaffirmed as neither attributable to nor aggravated by military service. Accordingly, claim for grant of Ordinary Family Pension was referred to PCDA(P), Allahabad and same has been granted to the widow.*

*4. Now, the widow has appealed that she should be granted Special Family Pension as the deceased soldier has died while on active service. Under the provision of Government of India, Ministry of Defence letter No 1(2) / 97 / D (Pen - C) dt 31 Jan 2001 complete set of documents as mentioned below in respect of No 2791357A Late Nk Tejendra Kumar is submitted herewith for review and decision thereon:-*

- (a) Intimation of rejection of Special Family pension given vide this office letter No 2791357A/SR/DWS/FP dt 08 May 2012.*
- (b) Death Certificate.*
- (c) AFMSF-93 Part II.*
- (d) Complete medical documents (Original set of Fatal Case docus)*
- (e) 14 days Charter of duties.*
- (f) Details of Field/High Altitude Area/ Operational postings with dates and names of stations.*
- (g) Sheet Roll.*
- (h) Appeal from Next of Kin.*
- (j) Post Mortem Report.*
- (k) Copy of DGAFMS letter No 16050/ DGAFMS/ MA(Pens)/Initial dt 26 Apr 2012.”,-*

is wholly erroneous.

7. The applicant has also placed reliance on the medical certificate of cause of death as has been placed on record as Exhibit R-14 by the respondents which was issued by the Military Hospital, Dehradun, giving the date and time of admission of the late husband of the applicant as being 01.06.2011 at 1920 Hrs with the disease or condition directly leading to death being specified to the effect:-

***“Disease or condition directly leading to death:***

***(a) INTRACEREBRAL HAEMORRAGE***

***(Due to or as a consequence of) HYPERTENSION”***

8. Reliance was also placed on behalf of the applicant on the **Certificate of Attributability : Fatal Case** as issued by the Commanding Officer of Unit No. 1, Demo COY, IMA, Dehradun dated 13.06.2011 wherein it was stated to the effect:-

***“11. Do you consider the death is attributable to or aggravated by service?(Give reasons)\*  
Attributable to Mil Service.”***

9. Reliance was also placed on behalf of the applicant on Para-43 of the Chapter-VI of the GMO(MP), 2008 which stipulates to the effect:-

***“43. Hypertension- The first consideration should be to determine whether the hypertension is primary or secondary. If secondary, entitlement considerations should be directed to the underlying disease process (e.g. Nephritis), and it is unnecessary to notify hypertension separately.***

***As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service.” (emphasis supplied)."***

to submit to the effect that stress causes Hypertension through repeated blood pressure elevations as well as by stimulation of the nervous system to produce large amounts of vaso constricting hormones that increase blood pressure. The applicant further submits that the factors which affect blood pressure through stress include white coat hypertension, job strain, race, social environment and

emotional distress and that one risk factor is coupled with other stress producing factors, the effect on blood pressure is multiplied and that excess working hours without any rest leads to develop Hypertension which is due to the stress and strain of military service.

10. Inter alia, the applicant placed reliance on Para-213 of the Pension Regulations for the Army, 1961 which read to the effect:-

*"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.*

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

11. Reliance was also placed on behalf of the applicant on Para-105 of Pension Regulations for the Army, 2008 which read 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*

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

*(ii) was due to aggravation by military service of a wound, injury or disease which existed before and 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 attributable to or aggravated by military service shall be determined*

*under the entitlement rule for Casualty Pensionary Awards 1982 contained in Appendix IV to these Regulation."*

12. Reliance was also placed on behalf of the applicant on Part-III in Para-5.1 of the Govt. of India, Ministry of Defence letter no. 1(2)/97/I/D(Pen-C) dated 31.01.2001, wherein it is stipulated in Para-5.1 as under:-

**"5. Special Family Pension (SFP)**

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

and the applicant places reliance on Category(B) & (C) specified in said letter in Para-4.1 in Part-II thereof which reads to the effect:-

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

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

**Category A .....**

**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."*

13. The applicant thus submits that the death of her late husband falls categorically within the Category 'B' of the Para 4.1 of the letter no. 1(2)/97/I/D(Pen-C) dated 31.01.2001 of the Ministry of Defence, Govt. of India in as much as the death of the applicant's husband was due to the causation of Intercerebral Haemorrhage Left Temporal region, which was secondary to essential Hypertension as indicated by the Statement of the Medical Officer in Section-D of document dated 12.09.2011 which reads to the effect:-

**SECTION D**  
**STATEMENT OF MEDICAL OFFICER**  
*The cause of death is/is not attributable to or aggravated by Military service for the following reasons*  
*.....occured due to CVA arising out of intracerebral hemorrhage secondary to essential hypertension*  
*↳...idiopathic in SHAPE-I in peace A.*

*Unit/Ship Hospital*  
*Place:*  
*Date: .. Sep 11*

*Sd/-*  
*Signature of M.O.*  
*Rank & Name in full"*

14. The applicant submits that the statement given by the Medical officer giving the cause of death as reproduced herein above, however stating that it was not attributable to nor aggravated by military



service is wholly erroneous and not in consonance with the facts and circumstances of the instant case, as have been put forth by the Statement of the Commanding Officer.

15. The applicant has also placed reliance on the judgment dated 02.09.2011 of the Hon'ble High Court of Delhi in WP(C) 5087/2011 titled as *Kamla Devi vs. UOI & Ors.*, in which case, the applicant's husband suffered a heart attack whilst on duty on 24.02.1993 and died on the same day and the Court of Inquiry opined that the death was attributable to service, but despite the same, the grant of Special Family Pension and ex-gratia was rejected, however, the grant of Special Family Pension was allowed by the Hon'ble High Court of Delhi. Reliance was also placed on behalf of the applicant on the order dated 16.04.2014 of the AFT(RB), Chandigarh in OA 3688/2013 in the case of *Smt Yashwanti Prasher v. UOI* wherein the applicant's husband suffered a Heart Attack and was admitted in Military Hospital, Jamnagar and his death was held to be neither attributable nor aggravated by service by PCDA, in which case too, where there was no mention of the disease at the time of entry into service, and in addition, there was nothing to rebut the presumption in favour of the individual that he sustained the disease/injury whilst in service, it was held that the disability was sustained during service and there was an



aggravation of the same in service and the applicant thereof was held entitled to the grant of family pension.

16. Reliance was placed on behalf of the applicant on the order dated 29.09.2015 in OA 561/2014 of the AFT(PB), New Delhi in the case of *Smt. Karamjit Kaur vs. UOI & Ors.* in which case the applicant's late husband who succumbed to Sudden Heart Attack whilst on duty on 21.04.2012 and to whom the Special Family Pension was denied by the respondents observing that the death was neither attributable to nor aggravated by military service, was held entitled to the grant of Special Family Pension, making reference to Annexure- III to Appendix-II of the Pension Regulations for the Army, 1961 which are to the effect:-

**"Annexure 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. Endocarditic***
- 9. Sub-acute bacterial endocarditic, including infective endocarditic***
- 10. Myocarditis (acute and chronic)***
- 11. Alular disease***
- 12. Mycardial infarction, and other forms of IHD***
- 13. Cerebral hemorrhage and cerebral infarction.***
- 14. Peptic ulcer."***

which indicates that Myocardial Infarction and other forms of IHD are diseases affected by stress and strain. Observations were also made in the said order to the effect:-

*“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.”*

17. Reliance was also placed on behalf of the applicant on the order dated 30.10.2015 in OA 399/2015 in *Smt Ratna Yadav vs. UOI & Ors.* in which too, the applicant's husband suffered "Cardiac Pulmonary Arrest/Acute Myocardial Infarction" whilst performing duties which resulted into his death and though the Court of Inquiry recorded the finding that the disability of the applicant's husband was attributable and aggravated to the Air Force Service, the claim for grant of Special Family Pension was denied by the respondents, which

however was granted vide order dated 30.10.2015 in *Smt Ratna*

*Yadav vs. UOI & Ors.* vide Para-9 &10 observed to the effect:-

*“9. It is not in dispute that petitioner's husband entered into the service of the Air Force as far back as in the year 1987 and he continued in the service till 04.04.2013 which is a very long period. In medical opinion, the Doctor has mentioned that individual was posted at peace station and engaged in routine activities as per 14 days charter of duties provided by the unit. He has no job related aggravating factors. Coronary artery disease is a metabolic disease, hence no aggravation can be allowed.*

*10. A bare perusal of above reason clearly indicates that the Doctors were provided with the petitioner's husband only 14 days of charter of 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.”*

It was thus reiterated on behalf of the applicant that the demise of the applicant's husband was due to stress and strain caused by the military service and having died in harness, the applicant is entitled to the grant of Special Family Pension in terms of Category “B” of Para 4.1 read with Para 5.1 of the GoI letter letter no. 1(2)/97/I/D(Pen-C) dated 31.01.2001.

18. The respondents on the other hand submitted to the effect that the applicant is already in receipt of Ordinary Family Pension and that the cause of death of the applicant's Late Husband was Intracerebral Haemorrhage and had been opined to be not attributable to military service by the CRO of the Pension Authorities and thus she is not entitled to the grant of family pension as the death of the applicant's late husband was not due to any factors which were either attributable to aggravated by military service as determined by the competent medical authorities. However, the Ordinary Family Pension could be sanctioned to the applicant. The respondents have also placed reliance on the Charter of Duties qua the applicant which is to the effect:-

**“ 14 DAYS CHARTER OF DUTIES PERFORMED  
BY NO 2791357A LATE NK TEJENDRA KUMAR  
OF NO 1 DEMO COY, IMA**

Day/Date	Time	Duties	Remarks
<b><u>Monday</u></b> <b>20 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Tuesday</u></b> <b>21 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Wednesday</u></b> <b>22 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h	Self Preparation PT Breakfast Adm NCO	

	1400h to 1600h 1600h to 1800h	Rest Office Work	
<b><u>Thursday</u></b> <b>23 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Friday</u></b> <b>24 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Saturday</u></b> <b>25 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Sunday</u></b> <b>26 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Monday</u></b> <b>27 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Tuesday</u></b> <b>28 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Wednesday</u></b> <b>29 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Thursday</u></b> <b>30 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	

<b><u>Friday</u></b> <b>31 May 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Saturday</u></b> <b>01 Jun 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	
<b><u>Sunday</u></b> <b>02 Jun 11</b>	0530h to 0600h 0600h to 0645h 0645h to 0800h 0800h to 1400h 1400h to 1600h 1600h to 1800h	Self Preparation PT Breakfast Adm NCO Rest Office Work	

”

to submit to the effect that the applicant's late husband had been given adequate time for said preparation and rest as per the 14 days Charter of Duties and thus there was no causative or precipitated stress and strain which resulted into the causation of the Intracerebral Haemorrhage secondary to essential Hypertension in the case of the applicant's late husband, which had occurred whilst he was posted in a peace area.

19. A submission was also made on behalf of the respondents vide the undated letter wherein the applicant had sought grant of all permissible pension benefits to her and had not specified the grant of receipt of Special Family Pension.

## *ANALYSIS*

20. That the applicant's late husband joined the Indian Army in a fit medical condition without any note of any disability on the records of the respondents on 16.10.1994 is not refuted by the respondents. That the applicant's late husband died due to Intracerebral Haemorrhage on 03.06.2011 whilst in service is not disputed in terms of the Post Mortem documents dated 18.06.2011 submitted by the respondents pursuant to directions dated 22.11.2023, which bring forth categorically the opinion as to the cause of death as under:-

“

### **OPINION AS TO THE CAUSE OF DEATH**

*The cause of death in this case is acute intracerebral bleed secondary to hypertension*”

indicating that the cause of death was due to acute intracerebral bleed secondary to hypertension. The Post mortem report through the clinical diagnosis also states to the effect:-

**“CLINICAL      DIAGNOSIS:**      *Intracranial Hemorrhage due to hypertension.*

21. The clinical cause of death specified also in the said Post Mortem Report as under:-

**“2. CLINICAL CAUSE OF DEATH : Intracranial Hemorrhage secondary to hypertension.”**



22. Apparently, thus the Intracerebral Haemorrhage Hypertension in the instant case as indicated also by the Medical certificate of the cause of death dated 03.06.2011 issued by the Military Hospital, Dehradun indicates that the same was due to Hypertension. That stress and strain even in peace areas caused Hypertension to personnel of the Armed Forces has been accepted by this Tribunal in a catena of orders.

23. In terms of Para-43 of Chapter-VI of GMO(MP),2008 itself, it is brought forth categorically to the effect that stress and strain are also causative factors of Hypertension.

24. Reliance was sought to be placed on behalf of the respondents on Para-14 of the GMO(MP), 2008 which relates to Cerebrovascular Accident(Stroke) which reads to the effect:-

*“14. Cerebrovascular Accident (Stroke). Stroke or cerebrovascular accident is a disease of acute onset leading to neurological deficit such as hemiplegia caused by intravascular events. Cerebral infarction following thrombosis and embolism accounts for a large number of cases whereas cerebral hemorrhage is the cause only in a few cases. Atherosclerotic thrombosis is of gradual onset and any permanent neurologic deficit is preceded by TIAs (Transient Ischaemic Attacks).*

*TIAs result mostly from embolism of thrombus or platelet material from an extra cerebral artery (Internal carotid) and some times due to stenosis of a major artery, altering hemodynamics in the event of change of posture and exertion.*



*Mural thrombus from the heart in IHD and SBE and ulcerated plaques of atherosclerotic arteries are the principal source of embolism.*

*Among other causes, physical trauma (heat) and mechanical trauma and arteritis associated with infection like TB, connective tissue disorder (PAN, SLE) can give rise to stroke. Service in HAA can precipitate stroke by virtue of hypercoagulable state.*

*About half of the strokes caused by cerebral hemorrhage are due to subarachnoid hemorrhage from rupture of a berry aneurysm (Circle of Willis) and less commonly due to arteriovenous malformation. Remaining cases of hemorrhage in cerebral substance are due to rupture of small perforating arteries/arterioles weakened by hypertension or atheromatous degenerations.*

*The majority cases exhibit greater degree of hemiparesis, dysphasia(if dominant hemisphere is involved), hemianaesthesia and hemianopia. In some cases ataxia, cranial nerve palsy, nystagmus may be the presentation depending on the territory of brain involved.*

*It will be appropriate to award attributability if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service.*

*Aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field.*

*It nearly takes 6 months for complete recovery. However, cases showing no sign of improvement up to two years are unlikely to improve further and should be labelled as permanent."*

thus, to contend that parameters thereof are not met,- is wholly misplaced in terms of Para-14 of Chapter-VI of GMO(MP), 2008 itself as it is stipulated therein to the effect:-

*"Remaining cases of hemorrhage in cerebral substance are due to rupture of small perforating*

*arteries/arterioles weakened by hypertension or atheromatous degenerations."*

which thus explains categorically to the effect of rupture of small perforating arteries/ arterioles weakened by hypertension. Significantly, it is also provided by the said Para-14 to the effect that aggravation can be conceded when atherosclerosis is the underlying cause and exceptional stress and strain of service is in evidence irrespective of his service in peace or field. That stress and strain can be factors of Cerebrovascular Accident (Stroke) can thus not be overlooked.

25. In the instant case, the post mortem report categorically and eloquently speaks to the effect that the cause of death of the applicant's late husband was Intracerebral Haemorrhage due to hypertension. As observed herein above, stress and strain are also causative factors of Hypertension which in the instant case have been due to military service cannot be overlooked and as the cause of death of Intracerebral Haemorrhage due to hypertension, the acute Intracerebral bleed secondary to hypertension has to be held to be attributable to and aggravated by military service.

26. As regards, the factum that the applicant's late husband was posted in a peace area at the time of his demise, the same is rendered

immaterial in terms of Regulation 423 of the Regulations for the Medical Services of the Armed Forces Personnel, 2010 which reads to the effect:-

*"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 favor, 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.*

27. Furthermore, the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. UOI & Ors.* in Civil Appeal No. 4949/2013 vide Para-33 thereof, expressly observed to the effect:-

*"33. As per Rule 423(a) of General Rules for the purpose of determining a question 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 service/active service area or under normal peace conditions."Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."-* (emphasis supplied)

28. In the facts and circumstances of the instant case, the post mortem records produced by the respondents themselves reveal that the demise of the applicant's late husband was due to acute intracerebral bleed secondary to hypertension which he did not suffer from before induction into military service, and the same has to be held to be attributable to and aggravated by military service especially in the absence of any reasons set forth by the medical authorities of the respondents to bring forth any contributory factors from the side of the applicant for the causation thereof. Thus the applicant is held entitled to the grant of Special Family Pension in the instant case from the date of demise of her late husband i.e. 03.06.2011, in as much as the applicant has been continuously agitating her rights and has

instituted the instant OA on 29.06.2017, after rejection of her second appeal on 21.04.2016.

29. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

30. Further the amount of the ordinary family pension already received by the applicant shall be adjusted towards the special family pension to be paid to the applicant in terms of this order.

31. No order as to costs.

Pronounced in the open Court on the 18 day of April, 2024.

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

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/