

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

OA 1295/2019 WITH MA 2036/2019

Mrs Kamlesh P Singh W/o
Late Brig Pardaman Singh
Versus
Union of India & Ors. ... Applicant
... Respondents

For Applicant : Mr. Anil Srivastava, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM :

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

ORDER

MA 2036/2019

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 1295/2019

3. 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.

4. The husband of the applicant, Late Brig Pardaman Singh was commissioned into the Indian Army on 09.06.1957, and

expired on 25.02.1988 while in service, with the cause of death recorded as 'Adenoid Cystic Carcinoma (Lt) Partid (Optd)' at Army Hospital, Delhi Cantt', but the Competent Authority had considered the case of death as neither attributable nor aggravated by service, and therefore, the applicant was held to be not eligible for grant of Special Family Pension.

5. It is submitted by the Ld. Counsel for the applicant that when the husband of the applicant was posted at DSSC Wellington and was 'Head of the Training Team', he came to Delhi for his medical checkup as advised by the Medical Officer and was diagnosed with cancer. Although he was operated on and radiation was given at Military Hospital, Delhi, he became alright and commanded 471 Engnr Bde at Chandimandir, Western Command.

6. Learned counsel further submits that the husband of the applicant was deployed at various locations during exercises, during activation and in peacetime. It was again in 1986, that the disability recurred, and the husband of the applicant passed away after a service of around 29 years.

7. Per Contra, learned counsel for the respondents submit that the Competent Authority has considered the cause of death of applicant's husband as neither attributable nor aggravated by the service, since at the time of death, the officer was posted as DDG

(OL) with Army HQ, Delhi and hence, the applicant is not eligible for grant of Special Family Pension.

8. 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.

9. Before proceeding to adjudicate the issue under consideration, it is relevant to examine the policy on the subject, which leads us to Para 189 of the Pension Regulations for Air Force, 1961 (Part-I) reproduced as under:

189. 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 air force service. Or

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

10. A basic analysis of the aforesaid provision clarifies that if the disability which caused the death of the officer (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.

11. At this point, we find it appropriate to refer to Para 8 of Guide to Medical Officers, 1980, being in effect at the time of service of the officer and the same reads to the effect:

"Cancer

8. Cancer is one of the diseases regarded as usually unaffected by the ordinary conditions of service. While its precise cause is still unknown, there is adequate material both of scientific and statistical nature available to exclude all ordinary conditions of service as being a causative factor and entitlement is not normally conceded. Cancer cases arising in service will be dealt with as follows. In certain types of cancer cells arising in service, however, entitlement of attributability may be appropriate, eg.-

(a) (i) Cancer of the colon where ulcerative colitis has been accepted as due to service,

(ii) Cancer of the liver arising in hepatic cirrhosis accepted as due to service.

(iii) Cancer of stomach where pre-existing chronic gastric ulcer has been accepted as due to service.

(iv) Rodent ulcer where there is evidence of long continued exposure to strong sunlight and this is accepted as a service factor,

(v) The question of a relationship between a malignant condition and an accepted injury may occasionally be difficult to answer and the following considerations should always be borne in mind:-

- The chances of carcinoma occurring spontaneously in any given site or organ should always be taken into account,*
- In great majority of cases of cancer, no significant history of injury or specific forms of chronic irritation, can be found. The vast majority of traumatic lesions, however severe, show no tendency to be followed by cancer, either immediately or remotely. There is no evidence that the passage of a projectile through the lung, liver or hollow viscous is likely to be followed by the development of cancer at the site of the injury.*
- There is no statistical evidence that fractured bones are more liable to sarcoma than others. but see below.*
- There is evidence that exposure to radioactive substances may induce malignant changes.*

- *There is some evidence to suggest that where an injury has resulted in a chronic proliferative fibrosis a neoplasm may develop in that site.*

(b) While no precise rules can be laid down for attributing the development of a malignant neoplasm to previous injury, the following criteria afford a basis for decision:-

(i) The cancer/sarcoma must arise at the exact site of injury.

(ii) It must be a severe injury,

(iii) In the absence of sepsis, the cancer/sarcoma should develop or be clinically recognizable in a period of time not exceeding one year after such injury.

(c) Aggravation can only be accepted if it is certified that the malignant condition existed before or arose during service and has been worsened by service factors, e.g. by delay in diagnosis or by inadequate treatment resulting from the exigencies of service."

12. In this background, we now refer to the 'Summary of the case' prepared by Army Hospital, Delhi Cantt at the time of admission of the officer for his treatment for the disability of 'cancer', reproduced as under:

"The deceased a 50 year old serving Brig initially developed Bell's Palsy in 1979. He was diagnosed as Adenoid Cystic Carcinoma (L) Parotid Gland in 1982 and operative removal of left parotid gland was done in 1982 followed by a deep X-ray therapy at Pune. The officer remained under periodic medical surveillance and did not manifest any recurrence of growth. In 1986, the officer developed weakness of the (R) side of the body with tinnitus left ear. He was evaluated including a CT scan of the head and no overt cause was found and the clinical profile was considered to be the effect of deep X-ray therapy given earlier. The weakness of the (R) side of the body however progressed and he manifested signs of pyramidal involvement. Evaluation in April 1987 showed CT scan finding of an enhancing mass lesion in the region of (L) temporal bone and destruction of petrous temporal bones with mass lesion extending to post cranial fossa. The widespread and extensive local recurrence precluded surgery and further radiotherapy. The officer was therefore given a course of chemotherapy consisting of Adriamycin, Cis Platinum and vincristine. The response was poor. A trial of radiation with linear accelerator of AIIMS was given with no improvement. The officer was placed in medical category SHAPE (P)

(P) in Jan 1988. The officer did not improve and in fact deteriorated with local fungation of recurrence in the (L) temporal region and osteolytic lesions in the transverse process of lumbar vertebrae. The officer was admitted on 07.02.88 with evidence of (R) sided hemiparesis, local fungation in the temporal region and evidence of widespread metastasis including in the lumbar vertebrae. He was cohectic and unable to swallow. The officer was treated with Ryles tube feeding, fortwin injections on demand and nursing care. The condition however continued to deteriorate and he expired on 24.2.88 with peripheral, circulatory collapse from which he could not be resuscitated."

13. On an analysis of the above 'summary of case', we find that the officer has earlier been diagnosed with the 'Adenoid Cystic Carcinoma (L) Parotid Gland' in the year 1982 itself, and post removal of left parotid gland in 1982, till 1986, there is no record of recurring cancer. However, we find that even after detection of tinnitus in left ear, which is a probable symptom of the recurrence of cancer, the detection of recurrence of cancer could only be done in April 1987, and the applicant came to be admitted for treatment only in Feb 1988.

14. While we are conscious of the fact that due to non-development of modern day medical techniques of examination and equipment, detection of cancer at an early stage would have been more difficult, specifically when it has been treated earlier five years back. However, we are of the opinion that non-detection of the cancer timely by the medical authorities cannot be weighed against the officer, in view of 'aggravation' factor laid down in Para 8(c) of the Guide to Medical Officers, 1980, coupled with the fact that the officer has served for

almost 31 years in the Indian Army, and the onset of the disability was after 25 years of service in different environmental regions.

15. In view of the aforesaid analysis, we do not find any reason to deny the beneficial interpretation of the Para 8(c) of the Guide to Medical Officers, 1980, and hence, hold that the disability of the officer i.e. 'Adenoid Cystic Carcinoma (L) Parotid Gland (Optd.) was aggravated by service, and thus, the applicant i.e. wife of the officer is held entitled for grant of Special Family Pension.

16. In light of the above observations, we allow the OA, directing the respondents to grant Special Family Pension to the applicant within a period of two months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment. However, the arrears shall be restricted to three years prior to the date of filing of OA. (Date of filing of OA: 01.08.2019)

17. No order as to costs.

18. Pending application, if any, also stands disposed of.

Pronounced in the open Court on 13th day of September, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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