

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

O.A. No. 1303 of 2022

In the matter of :

**Smt Jasbir Kaur Widow of
Late Hav Sukhpal Singh**

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Manoj Kr. Gupta, Advocate

For Respondents : Shri Rajeev Kumar, Advocate

CORAM :

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

"A. To make necessary calculation as per the provisions of Special Family Pension instead of Ordinary family pension wef 23 May 2021, by declaring the disability of Applicant's husband (infested in year 2014 after 15 years of

strenuous mil service) as attributable and further aggravated (during further 07 years of service stressor in LMC) to mil service; and/or

- B. To direct respondents to grant benefit of rounding off of Disability element of the deceased soldier @50% as per settled law upheld in the case of Ram Avtar by Hon'ble Apex Court, considering the fact that disability of PH is presumed to be more than 20% (in worst case any disability less than 20% presumed to be 20%); and/or*
- C. Direct the respondents to credit amount in lieu of Capitalised value of 50% service pension as consent by her husband prior to discharge in terms of Annexure A-4, but same was denied due to non-completion of RMB in terms of Annexure A-5/Colly and/or*
- D. Arrears of OFP is to be paid with applicable interest and/or Pass any other order as may be deemed fit and proper in the facts and circumstances of the case.”*

BRIEF FACTS

2. The applicant's husband, Hav Sukhpal Singh, since deceased (hereinafter referred to as 'deceased soldier'), having been found medically and physically fit, was enrolled in the Indian Army on 12.04.1999. During service, on 07.11.2014, the deceased soldier was diagnosed with Primary Hypertension and was placed in low medical category P3 (Temporary) for six months. However, the disability was held as 'neither attributable to nor aggravated by military service' (NANA). After expiry of six months, a Re-categorisation Medical Board was held on 24.04.2015 at MH, Saugor (MP) and the deceased soldier was downgraded to low medical category P2 (Permanent) for 24 months i.e. upto 23.04.2017 from that date for the disease Primary Hypertension and the same was considered again as NANA. Thereafter, the next Re-categorisation Medical Board was held on 02.05.2017, which assessed the duration of disablement as two years and the medical category was same as P2 (Permanent) and the disease was again considered as NANA.

3. The next Re-categorisation medical board was to be held on 23.04.2019, however, due to the deceased soldier being on leave from 30 days from 21.04.2019 to 20.05.2019 to attend the creation of his father in law. The said Re-cat medical board could not be conducted on due date. On expiry of leave, when the applicant reported for the Re-categorisation medical board, the medical authority refused to do so without a certificate for condonation of delay. Accordingly, the Battalion provided the said certification duly signed by CO but the medical board was not held due to procedural delay. On 10.06.2019, the deceased soldier was attached to IHQ of MoD (Army) and reported to BASE Hospital, Delhi for his medical re-categorisation, the Medical Board in Delhi refused to carry out the same for want of condonation of delay certificate. Finally, the sanction of General Officer Commanding HQ 7 Mountain Division was granted to condone the delay to hold the Re-cat medical board on 26.04.2021, however, the same could not be done due to ongoing lockdown due to COVID-19 pandemic all over the country.

4. Later on, on 30.04.2021, the deceased soldier, on completion of the engagement of service tenure, was discharged from service without any release medical board/re-cat medical board and service pension was granted accordingly. It is the case of the applicant that her husband died on 23.05.2021 due to complication of disability and infection during COVID-19 within seven years of detection of the disability Primary Hypertension, yet she was granted only Ordinary Family Pension instead of Special Family Pension. The applicant sent a legal notice dated 30.12.2021 for grant of Special Family Pension along with other connected benefits. When no response was received by the applicant, she has filed the present OA. In the interest of justice, in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that at the time of joining the Indian Army, the deceased soldier was declared fully fit physically and mentally and no note was made in his medical documents to the effect that he was suffering from any disease at that time and thus any

disease/disability contracted during the period of service is attributable to service only. The learned counsel submitted that in terms of Para 213 of the Pension Regulations for the Army, 1961, Special Family Pension may be granted to the family of an individual if his death was due to or hastened by a wound, injury or disease which was attributable to military service or aggravation of service of a wound, injury or disease which existed before or arose during military service and, therefore, the applicant is entitled to Special Family Pension as her husband found infested with Primary Hypertension in 2014 which led to his death in the year 2021 within a month's time from discharge from service.

6. The learned counsel placed reliance on various orders passed by the Principal Bench of the Tribunal including Yashoda Devi Vs. UOI & Ors. [O.A. No. 788 of 2015] decided on 01.07.2019, Smt. Jagdeep Kaur Garewal wd/o Sgt AS Grewal [O.A. No. 1769 of 2017] decided on 16.11.2018; Smt. Vitana Devi wd of Late Sep Surya Pal Vs. UOI [O.A. No. 71/2020] decided on 30.11.2021; Order dated 19.03.2018 of AFT RB Chandigarh in Meena Devi Vs. UOI [O.A. No. 151 of 2020] and the order passed by AFT RB, Kochi in Geetah TK

Wd/o Ex Sep Satheesh Kr. TP, wherein the husband of the applicant died after discharge due to the diseases which were declared NANA by the respondents and the Tribunal granted the relief to the applicant. The learned counsel further submitted that the disability of the deceased soldier was detected after about 14 years of service which led to his death post discharge and at the time of discharge from service, he was placed in low medical category P2 (Permanent) and as such the disability is attributable and thus there is causal connection between the nature of the duty and the death of the deceased soldier, hence the respondents should have declared the death as attributable to and aggravated by military service and granted the Special Family Pension to the applicant. In support of his contentions, the learned counsel placed reliance on various judgments of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316]** wherein it was held that that a member is to be presumed in sound physical and mental condition if there is no note made at the time of entrance in service and any disease or deterioration of his health is presumed to be due to service.

The learned counsel also referred to various orders of the High Court and the Tribunal in support of his contention that the disease and death of the applicant ought to have been held as attributable to service.

7. *Per contra*, the learned counsel for the respondents justified the action of the respondents and submitted that the husband of the applicant is not entitled to grant of disability element as the opinion of the medical authority dated 24.04.2015 and 23.04.2019, the disability of the deceased soldier was considered as NANA and thus the death of the husband of the applicant was also not attributable to service and consequently the applicant is also not entitled to the grant of Special Family Pension as and no service related factors can be associated with the same. The learned counsel referred to Rule 6 of the Entitlement Rules 2008 to submit that for award disability pension/special family pension, a causal connection between the disability or death and military service has to be established and thus the applicant was rightly granted the ordinary family pension was duly granted to the applicant herein. The learned counsel, therefore, prayed for dismissal of the OA.

ANALYSIS

8. We have heard the learned counsel for the parties and perused the available material on record.

9. It is an undisputed fact that the husband of the applicant was enrolled on 12.04.1999 and was discharged from service on 30.04.2021 being in low medical category P2(Permanent) due to the disease Primary Hypertension firstly diagnosed in the year 2014 and died on 23.05.2021 and the disability of the deceased soldier was held as neither attributable to nor aggravated by service by the respondents and thus the applicant was granted Ordinary Family Pension and denied the Special Family Pension w.e.f. 25.10.2013.

10. Having carefully perused the medical record of the deceased soldier, we find that at the time of initial medical board held in 2014, the applicant was diagnosed with the following disability with its onset :

“Disability	Primary Hypertension (1-10)
Onset	October, 2014”

The applicant was placed in medical category S1H1A1P3(T-24)E1 w.e.f. 07.11.2014. However, we find that the weight of the deceased soldier at that time was

recorded as '80 Kg (Actual)' as against the Ideal weight as 67.5 Kg. Thereafter, In the next Re-cat Medical Board held on 24.04.2015, again the weight of the deceased soldier was recorded as 80 Kg. He was on medication for the disease. Although the deceased soldier was advised for restricting diet along with medication, again in the next Re-cat Medical Board held on 02.05.2017, the present condition was mentioned as 'developed obesity' and the weight of the deceased soldier was indicated as 91 Kg i.e. he was found overweight by 23.5 Kg. by the ideal weight with BMI 30 Kg/m² and thus he was again advised to reduce weight to acceptable range with exercise. Therefore, it can be made out from the aforesaid, that the deceased soldier has been constantly overweight/obese at least since 2014. Therefore, in our view, the disability i.e. 'Primary Hypertension' can be said to be an offshoot of the obesity, which itself can lead to many diseases like, high blood pressure (hypertension), Type 2 diabetes, metabolic syndrome etc., which are commonly seen in obese patients. Therefore, in our view, the disability of the deceased soldier was rightly held as NANA as there is no causal connection with service and

thus his death is also not held attributable to the military service.

10. A fine reading of all the Re-cat medical boards indicates that the husband of the applicant had the disability, namely, Primary Hypertension, onset of which is shown as October, 2014, however, the deceased soldier has been overweight and obese since October, 2014 at least till May, 2017 and he failed to maintain the ideal weight. Thus, it can be considered that the Primary Hypertension is the result of the overweight and obesity. Therefore, in our opinion, the disability 'Obesity' is due to interplay of genetic metabolic and lifestyle factors and due to failure in maintaining the ideal body weight which can be managed by regular exercise and restricting diet. Moreover, the armed forces personnel are required to be in shape and keep their weight and parameters in check so as to perform the assigned tasks/duties efficiently and swiftly.

11. With regard to the impact of obesity or overweight leading to hypertension etc., the publication released by World Health Organization, which specifically brings out the effect of obesity/overweight on hypertension, titled

'Hypertension' dated 16.03.2023 available on the internet was examined by us, relevant part of which reads as under :

"Hypertension (high blood pressure) is when the pressure in your blood vessels is too high (140/90 mmHg or higher). It is common but can be serious if not treated.

People with high blood pressure may not feel symptoms. The only way to know is to get your blood pressure checked.

Things that increase the risk of having high blood pressure include:

- *older age*
- *genetics*
- *being overweight or obese*
- *not being physically active*
- *high-salt diet*
- *drinking too much alcohol*

Risk factors

- ***Modifiable risk factors include unhealthy diets (excessive salt consumption, a diet high in saturated fat and trans fats, low intake of fruits and vegetables), physical inactivity, consumption of tobacco and alcohol, and being overweight or obese."***

Considering the aforesaid and the fact that the husband of the applicant is already overweight by more than 20 Kg as recorded during all the three Re-cat medical boards which is an indication that the husband of the applicant had remained obese over a period of time which lent itself for the other disability i.e. Primary Hypertension' which led to his death after discharge from service and thus we do not find any infirmity in the opinion of the medical boards or

respondents that the disability is NANA and there is no causal connection between the disability of the husband of the applicant and the military service.

12. As regards the medical boards' assessment of the disability of the deceased soldier with regard to the attributability is concerned, the Hon'ble Supreme Court in the case of **Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667]**, observed that though the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board.

13. From the above, it is clear that the disability of the deceased soldier has no causal connection with military service. The medical board has rightly considered the disability as NANA and we find no infirmity in its opinion. Therefore, the disability does not qualify for grant of disability element of pension since the disability is neither attributable to nor aggravated by the military service and thus the plea that the death of the applicant's husband be treated as attributable to the service post his discharge also

does not hold good. Consequently, the applicant is not entitled to grant of Special Family Pension.

CONCLUSION

14. In view of the above, the OA lacks merit and accordingly stands dismissed.

15. There is no order as to costs.

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


[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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