

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

F..

OA 1308/2019

Smt. Sharda Devi Widow of  
NC(E) T Ashok Kumar (Retd)

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

ORDER

29.02.2024

Vide our detailed order of even date, we have allowed the main OA No.1308/2019. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and going through 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, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant NC(E) T Ashok Kumar has filed this application seeking grant of disability pension. However, due to his demise on 04.01.2022, his widow Smt. Sharda Devi was substituted as Legal Representative vide order dated 06.09.2022 in MA 150/2022. However, during the course of the pendency of this OA, it was brought to the notice that Smt. Sharda Devi Wd/o Late NC(E) T Ashok Kumar has expired on 22.07.2023, and thus, the son Mr. Rohan Singh was substituted as the Legal Representative vide order dated 11.08.2023 in the present O.A.

2. The deceased airman, NC(E) T Ashok Kumar was enrolled in the Indian Air Force on 22.11.1983 and discharged

from service on 30.09.2018. The applicant submits that for the purpose of CVA and Primary Hypertension, the disability has been assessed at 70% and @ 30% respectively as is evident from the medical records. The composite disability for the ailment has been assessed at 80%.

3. With respect to first disability - CVA, we find it pertinent to refer to Para 14, Chapter VI, Guide to Medical Officers (Military Pensions), 2008 stating 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 haemorrhage 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 sometimes 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 haemorrhage are due to subarachnoid haemorrhage from rupture of a berry aneurysm (Circle of Willis) and less commonly due to arteriovenous malformation. Remaining cases of haemorrhage 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 the dominant hemisphere is involved), hemianesthesia and hemianopia. In some cases ataxia, cranial nerve palsy, nystagmus may be the presentation depending on the territory of the 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."*

4. On a perusal of aforesaid provision of GMO, 2008, we find that attributability can be awarded if there is sufficient evidence of infection underlying the disease and physical and mechanical trauma related to service, which in the instant case is absent.

5. However, the same provision provides that the 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. With no differentiation made between the field and peace postings, we find it relevant to refer to the service record of the deceased airman, wherein it is evident that the applicant has served for 35 years and both the disabilities have arisen in the last year of his service which means the 35th year of his service, and being in service for 35 years in different climatic conditions, involved with several tasks assigned in his trade being 'LASCAR', the exceptional stress and strain or service cannot be ruled out.

6. Therefore, keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon'ble Supreme Court in the case of Dharamvir Singh v. Union of India and others (2013) 7 SCC 316 wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of enrollment into the military Service, we see no reason not to allow the prayer of the applicant with regard to the aforesaid disability.

7. Accordingly, we allow this application and direct the respondents to grant disability element of pension to the deceased airman @ 80% for life which be rounded off to 100% for life from the date of retirement i.e., 30.09.2018 in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012) decided on 10.12.2014.

8. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the substituted legal representative of the applicant as per his eligibility criteria within four months from the date of receipt of copy of this order, along with all consequential benefits and arrears failing

which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

9. No order as to costs.

Pronounced in the open Court on the 28 day of February, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

Ps  
OA 1308/2019