

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

OA 1541/2018

Smt. Punam Yadav Wd/o
Late Nk Vijay Singh Yadav
Versus
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC for R1-4
Ms. Anjali Vohra, Advocate for R-5

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

ORDER

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.

2. The Husband of the applicant joined the Indian Army on 24.01.2000, and sought Premature Discharge vide application dated 05.01.2017, post which Records, Kumaon Regiment issued Discharge Order vide letter No.A2/211/1/Gen/2017 dated 20.02.2017, in compliance with which the applicant's husband reported at Kumaon

Regimental Centre, Ranikhet on 01.09.2017 for discharge drill, with his discharge scheduled for 30.09.2017.

3. While on discharge drill, he was admitted to MH Ranikhet on 24.09.2017 and transferred to AHRR, Delhi on 29.09.2017. However, since the discharge of applicant's husband was scheduled for 30.09.2017, and at that moment, he was under treatment in AHRR, Delhi, he was locally discharged on 30.09.2017, and directed to be treated as ex-servicemen w.e.f. 01.10.2017 vide Kumaon Regiment Centre Signal No. 302202/DEPOT/2017 dated 01.10.2017. Unfortunately, the applicant's husband expired on 07.10.2017 while under treatment at AHRR, Delhi with the cause of death recorded as 'Acute Myeloid Leukaemia' and 'Intra Cranial Haemorrhage', but the Competent Authority had considered the case of death as has occurred after retirement and neither attributable nor aggravated by service, and therefore, the applicant was held to be not eligible for grant of Special Family Pension.

4. 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.

5. Before proceeding to adjudicate the issue under consideration, it is relevant to examine the policy on the subject, which leads us to Para 105 of the Pension Regulations for Army, 2008 (Part-I) reproduced as under:

(a). 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 category 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 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.

6. A basic analysis of the aforesaid provision read with Category 'B' of the Regulation 82 of the Pension Regulations for Army, 2008 (Part-I) along with Para 4.1 of the MoD letter No.1(2)97/D/(Pen-C) dated 31.01.2001 clarifies that if the disability which caused the death of the individual (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.

7. It is indeed an irony that a service personnel having rendered crucial 17 years of life to the Indian Army dies due

to a disease which in no way can be held as 'not attributable to the military service' by virtue of the fact that nothing was detected in the initial medical examination when he entered into service, and 17 years of unblemished selfless service, is ironically considered less to reward attributability to the soldier. We cannot help but take adverse notice of the fact that as model employers, the defence services who are expected to care for their soldiers have in the instant case displayed apathy, by issuing discharge order to the applicant when he was battling for life in Army Hospital (Research & Referral), New Delhi merely because his date of discharge had been decided earlier as 01.09.2017 vide a letter issued more than six months ago. This arbitrary and rigid action was well preventable by seeking a waiver from the competent authority. In view of aforesaid we consider contents of Kumaon Regimental Centre letter No 302202/Depot/2019 dated 06.10.2017 unreasonable and accordingly quash the same, thus holding the applicant to be in service till his death on 07.10.2017.

8. While holding that the disabilities - 'Acute Myeloid Leukaemia' and 'IntraCranial Haemorrhage' as attributable to service, and the applicant's husband to be 'on duty' at the time of his death for the purpose of grant of 'Special Family

Pension' to the applicant, we are of the considered opinion that a sympathetic view is required to be taken by the competent authority in such cases and not bound by mechanical manner of disposal of cases.

9. In light of the above observations, we are of the opinion that the applicant is entitled to grant of Special Family Pension and Ex-Gratia Lump Sum Compensation of Rs. 1,000,000/- (Ten lakh only) w.e.f. the date of death of her husband i.e. 07.10.2017, and therefore, the Respondents are directed to give effect to this order within a period of three months from the date of pronouncement of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Miscellaneous application, if any, pending stands closed.

Pronounced in the open Court on the ^{HN} 30 day of April, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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