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

B.

OA 1591/2019 with MA 2555/2019

Pratibha Sutar W/o Late MWO Dasarathi Sutar ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. D K Sharma& Mr. K Tiwari, Advocates
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
03.04.2024

Vide our detailed order of even date we have allowed the OA 1591/2019. 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)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

TS

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1591 of 2019
with
M.A. No. 2555 of 2019

In the matter of :

Pratibha Sutar W/o
Late MWO Dasarthi Sutar ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri Kritendra Tiwari, Advocates

For Respondents : Shri Satya Ranjan Swain, Advocate

CORAM:

HON'BLE Ms. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

M.A. No. 2555 of 2019 :

Vide this application, the applicant seeks condonation of 1905 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]*** and in ***Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]***, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 1591 of 2019 :

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) Quash and set aside the impugned letter dated 30 June 2014.***
>
> ***(b) Direct Respondents to grant Special Family Pension to applicant for life as with effect from 25 Oct 2013 i.e. the date of death of husband of applicant on active service with interest @ 12% p.a. till final payment is made.***
>
> ***(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.***

BRIEF FACTS

3. The applicant's husband, MWO Dasarathi Sutar, since deceased (hereinafter referred to as 'deceased'), having been found medically and physically fit, was enrolled in the Indian Air Force on 24.05.1977. It is the case of the applicant that whilst her husband was posted to Air Force Station Baroda,

he died on 24.10.2013 due to disease 'CARCINOMA TONGUE (OPTD) WITH EXTENSIVE RECURRENCE, CVA-RT MCA INFARCT'. As the applicant was granted ordinary family pension, she sent several representations to the respondents to consider her case for grant of Special Family Pension (SFP). The applicant preferred the first appeal dated 29.09.2018, which was rejected by the Appellate Committee and the same was intimated to her vide letter No. Air HQ/99798/5/1st Appeal/03/2019/621454/AV-III dated 11.09.2019, stating that Carcinoma Tongue (Optd) with extensive recurrence is a type of cancer and no service related factors can be associated with the cause or course of his illness. Further she was also advised for filing a second and final appeal to the second appellate committee for SFP if so desired within the stipulated period of six months from the date of issue of the letter. However, the applicant did not prefer second appeal against rejection of the special family pension and 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

4. The learned counsel for the applicant submitted that at the time of joining the Indian Air Force, the deceased was declared fully fit physically and mentally and was in 'AYE' category 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. It was further submitted on behalf of the applicant that, during the period from 1978 to 2012, the deceased was posted to different locations and hard areas throughout the country; the nature of duties performed by the deceased were very tough as he had to work rigorously almost 16-17 hours daily day and night in extreme conditions of weather and hard stations; the deceased had participated in various operations including KARGIL war; he also performed field duties and Guard duties in nights and thus had no time to sleep and rest along with other office duties, which put a lot of stress and strain on the applicant and affected his mental as well as physical health and as a consequence of this, in the year 2012, the deceased suffered pain and stress in his mouth and some internal

complications and fainted; he was admitted to the AF Hospital and subsequently a biopsy was done which suggested that the deceased was diagnosed with Carcinoma Tongue, for which he received treatment in various military hospitals and was placed in LMCP-3 (T-24). It was further submitted on behalf of the applicant that the deceased, even after having been diagnosed with the disease, was posted to various hard stations and had to perform duties with hectic schedule, due to which his medical condition deteriorated and the disease was aggravated by the service conditions, for which he remained under treatment till his death on 24.10.2013. The learned counsel for the applicant further submitted that the death of the deceased after serving for more than 36 years, as such is attributable to military service and thus there is causal connection between the nature of the duties and the death of the deceased, hence the respondents ought to have declared the death as attributable to and aggravated by military service and ought to grant the Special Family Pension to the applicant. In support of his contentions, reliance is placed on behalf of the applicant on the judgments of the Hon'ble Supreme Court in ***Dharamvir***

Singh Vs. Union of India & Ors. [(2013) 7 SCC 316] and ***Union of India & Ors. Vs. Rajbir Singh [2015 (2) SCALE 371)*** wherein it has been held that that a member of the Armed Forces is to be presumed to have been inducted in the military service 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 thereafter has to be presumed to be due to service. Further, reliance was placed on behalf of the applicant on the judgment dated 31.07.2013 of the Hon'ble High Court of Delhi in the case of ***Kamlesh Devi Vs. Union of India and Ors. [W.P. (C) No. 4774 of 2012]*** vide which the petitioner thereof was granted similar relief. The learned counsel for the applicant also referred to various orders of this Tribunal in support of his contention that the disease of the applicant ought to have been held as being attributable to service.

5. *Per contra,* the learned counsel for the respondents justified the action of the respondents and submitted that the husband of the applicant died on 24.10.2013 due to Carcinoma Tongue, which is a type of cancer and no service related factors can be associated with the same. The learned

counsel referred to Rule 6 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 to submit that for award of disability pension/special family pension, a causal connection between the disability or death and military service has to be established. The respondents further submitted that as the Competent Authority had considered the cause of the death as 'neither attributable to nor aggravated by military service', the case for grant of special family pension was rejected and the ordinary family pension was duly granted to the applicant herein. The respondents thus prayed for dismissal of the OA.

ANALYSIS

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

8. It is an undisputed fact that the husband of the applicant was enrolled on 24.05.1977 and died on 24.10.2013 due to Carcinoma Tongue (Optd) extensive recurrence, which was held as neither attributable to nor aggravated by service by the respondents and thus the case of the applicant for grant of special family pension was

rejected and she was granted the ordinary family pension w.e.f. 25.10.2013.

9. The issue with regard to the attributability of a disease is no more *res integra* as it is already settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316],*** which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be

on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

10. The 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008', which take effect from 01.01.2008 provide vide Paras 6,7,10 and 11 thereof as under:

> ***"6. Causal connection:***
>
> ***For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.***
>
> ***Onus of proof:***
>
> ***Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.***
>
> ***10. Attributability:***
>
> ***(a) Injuries:***
>
> ***In respect of accidents or injuries, the following rules shall be observed:***
>
> ***i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).***
>
> ***ii) In cases of self-inflicted injuries white 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.***
>
> ***(b) Disease:***
>
> ***(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-***

(a) that the disease has arisen during the period of military service, and
(b) that the disease has been caused by the conditions of employment in military service.

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical courses as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitude etc."

Thus, the ratio of the verdicts in ***Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316), Union of India Vs. Rajbir Singh [(2015) 12 SCC 264]*** and other verdicts as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

11. The deceased was diagnosed with the disease in question i.e. Carcinoma tongue in 2012 and continued in

service thereafter, against sheltered appointments, till he died on 24.10.2013. His disease was considered as 'neither attributable nor aggravated (NANA)' by military service as it was stated that there was no causal connection between the disease and service conditions. In this regard, we may refer to Para 9 of Chapter VI of the Guide to Medical Officers (Military Pensions), 2008 [hereinafter referred to as 'GMO (MP) 2008']. The same is reproduced as hereunder :

> ***"9. <u>Cancer</u>. Precise cause of cancer is unknown. There is adequate material both of scientific and statistical nature which brings into light the causative factors like radiation, chemicals and viral infections.***
>
> ***The recognized causative agents for carcinogenesis are :***
>
> ***(a) Viral infection '***
>
> ***(b) Radiation from nuclear sources***
>
> ***(c) Ultra violet rays***
>
> ***(d) Chemicals***
>
> ***(e) Acquired chromosomal abnormalities***
>
> ***(f) Trauma (chronic irritation leading to dermatological cancers***
>
> ***eg : kangri cancer)***
>
> ***The service related conditions in relation to carcinogenesis are as under:***
>
> ***(a) <u>Occupational Hazards</u> : All ranks working in nuclear powered submarines, doctors and paramedics working with electro-magnetic equipment, personnel working with radars, communication equipment, microwave and also those handling mineral oils such as petrol and***

diesel are exposed despite stringent safety measures.

(b) <u>Infection</u> : As a cause of cancer has been documented in certain malignancies. Though identification of an organism may not be possible due to lack of facility but there is gross evidence clinically to suspect infection.

(c) The question of relationship between a malignant condition and an accepted injury is difficult to establish. The vast majority of traumatic lesions however severe, show no tendency to be followed by cancer either immediately or remotely. However chronic irritation leading to dermatological cancers have been documented (eg: Kangri Cancer), attributability will be conceded depending on the merit of the case."

12. The attributability of the disease of the husband of the applicant leading to his death, is covered by the judgment of the Hon'ble Apex Court in *Dharamvir Singh's case (supra).* There is no evidence on record that the applicant was suffering from the disease in question at the time of his medical examination prior to his enrolment into the Air Force. Further, we find that the very first line of Para 9 of Chapter VI of the GMO (MP) 2008 states ***'Precise cause of cancer is unknown'.*** It is also stated that service related cancer can occur due to a number of occupational hazards

like working with radars or communication equipment or due to infections, including viral infections. On the other hand, at Para 12, the said document states that malignancies are 'Not Attributable and Not Aggravated' in cases of tobacco related cancers or when cancers are due to congenital chromosomal abnormalities e.g. CML where Ph chromosome is identified. **It is evident from the record that the deceased in this case was a non-smoker and had no family history of any such diseases.**

13. Further, we find that at Para 22 in 'Chapter IV – Entitlement Rules' in Guide to Military Officers (Military Pensions), 2002, it is stated that in cases of unknown aetiology, like in the applicant's case, if nothing at all is known about the cause of the disease and the presumption of entitlement in favour of the claimant is not rebutted, attributability should be conceded. Thus, in our view, the disease of the husband of the applicant i.e. Carcinoma tongue, which led to his death is attributable to and aggravated by the military service and thus the applicant is entitled to Special Family Pension instead of Ordinary Family Pension, of which the applicant is already in receipt of.

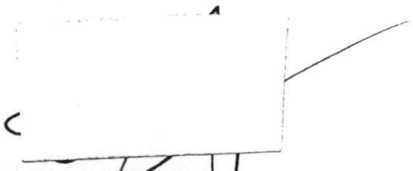
CONCLUSION

14. Therefore, OA 1591 of 2019 is allowed. The respondents are directed to grant Special Family Pension to the applicant with effect from 25.10.2013 i.e. the next day of death of her husband i.e. 24.10.2013, after making adjustment of the amount already paid against the Ordinary Family Pension to the applicant.

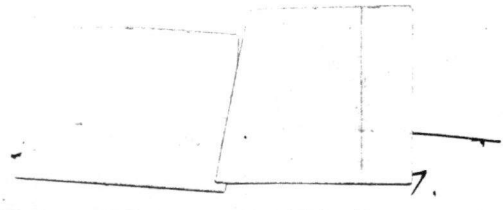
15. Accordingly, the respondents are directed to calculate, sanction and issue necessary Corrigendum PPO to the applicant within three months from the date of receipt of copy of this order and the amount of arrears, if any, shall be paid by the respondents, *failing which,* the applicant shall be entitled to interest @ 6% per annum till the date of payment.

16. There is no order as to costs.

Pronounced in the open Court on this 31st day of April ~~March~~, 2024.



[REAR ADMIRAL DHIREN VIG]
MEMBER (A)



[JUSTICE ANU MALHOTRA]
MEMBER (J)