

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

53.(Supplementary)

OA 337/2022 with MA 431/2022

Smt Namita Singh W/o Applicant
Late Sgt Vinod Kumar Singh
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Bikrama Sah, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

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

ORDER
27.09.2024

Vide our orders of even date, we have dismissed the application. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P. M. HARIZ]
MEMBER (A)

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HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER

The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

(i) To quash and set aside the impugned letter no. AIR HQ/99798/3/720107/DOC/FP/DAV dated 29.12.2021 whereby the Special Family Pension has been rejected.

(ii) To direct the respondent to grant Special Family Pension To the applicant w.e.f. date of death of applicants husband i.e. 14.04.2016.

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(iii) To direct the respondent to pay the due arrears of special family pension w.e.f. date of death of applicant's husband i.e. 14.04.2016 with interest @12% per annum till Final payment is made to the applicant.

(iv) Pass any other or such further order as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant.

Brief facts of the case

2. The applicant's husband was enrolled in the Indian Air Force on 16.09.1987 and he died on 13.04.2016. As per the AFMSF- 93 part 2, death of the applicant occurred due to cardiac arrest as a result of Coronary Artery Insufficiency consequent to Coronary Artery Disease (CAD). The death of the officer was declared as NANA by the competent authority. The applicant being his next of kin was granted all terminal benefits including the DCRG and Ordinary Family Pension w.e.f. 14.04.2016 vide PPO no 08/14/B/F/P/018/2017. The applicant's claim for grant of Special Family Pension was rejected vide the letter dated 22.08.2016 No. AIR HQ/99801/7533/16/DAV (med) stating to the effect:-

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2. Your husband 720107 Late SGT VINOD KUMAR SINGH was enrolled in the Air Force on 22-08-1986 and breathed his last on 13-04-2016 due to (Cause of death) Cardiac Arrest as Result of Coronary Artery Insufficiency Consequent upon Coronary Artery Disease. The death was not considered as attributable to or aggravated by service. Therefore, his death in such circumstances is not in any way related to duties of Air Force Service and is not attributable to Air Force Service:

3. You are, therefore, not entitled to Special Family Pension in terms of Regulation 189 of the Pension Regulations for the Air Force, 1961 (Part-i).

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3. The said rejection for the grant of the Special Family Pension was conveyed to the applicant with an advice to prefer first appeal which was subsequently filed by the applicant on 17.12.2021 which was rejected vide letter no. AIR HQ/99798/5/1st Appeal/05/18/720107/SFP/AV-III dt 22.11.2018 thereby, the instant O.A.

Arguments by the Counsel for the Applicant

4. The applicant submits that her late husband was enrolled in the Indian Air Force on 22.08.1986 after a thorough medical examination by a competent Medical Board which had found him fit in all respects. During his active service of 29 years 07 months and 21 days, the applicant's husband developed the aforesaid disease and the disease is therefore, attributable to Military Service.

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5. The Ld. counsel asserts that her husband reported being sick on 11.04.2016. Upon examination by a Medical Specialist at Command Hospital Air Force, Bangalore on 12.04.2016, the applicant's husband was advised for USG of abdomen. On 13.04.2016, the applicant's husband collapsed while he was going for his UGC abdomen checkup and was later declared dead. It is the case of the applicant that her husband died while in service and on duty and his case is covered within the meaning of the Rules for grant of Special Family Pension which provides that diseases contracted because of continued exposure of hostile work environment, subject to extreme weather conditions or occupation hazards resulting in death in service shall be deemed to have attributable to service.

6. Further, the post-mortem report of the applicant's husband indicates that both coronary arteries exhibit '*significant thickening with luminal narrowing, specifically noting a 90-95% blockage in the left anterior descending artery and an 80-85% blockage in the right coronary artery due to atheromatous plaque*'. This establishes the facts that the applicant's husband had developed the aforementioned cardiovascular disease during service, which the respondent failed to detect in a timely manner and which was further aggravated by his continuous service in the Air Force.

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7. Furthermore, the grounds cited by the respondents in rejecting the claim for Special Family Pension contradict the established legal principles articulated by this Hon'ble Tribunal in the order dated 30.10.2015 in OA No. 399/2015, **Smt. Ratna Yadav Vs UOI & Ors.** wherein the Tribunal considered a similar claim from the widow of an Air Force personnel who died from Cardiac Pulmonary Arrest/Acute Myocardial Infarction while on active duty and granted him special family pension. Reliance was inter alia placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union Of India & Ors** (Civil Appeal No. 4949/2013) to contend to the effect that the death of the applicant's late husband has to be held to be attributable to military service.

8. Per contra, the respondents have contended that the respondent died due to cardiac arrest as a result of coronary artery insufficiency and the cause of death was neither aggravated nor attributable as per the charter of duties and vide para 47 of Chapter VI of the GMO, 2008.

9. The counsel for the respondent submitted that the air veteran was overweight and was regularly advised to reduce weight by diet control and regular exercise, the record of which is tabulated as under;

DATE	TYPE OF MED. EXAM	ACTUAL BODY WEIGHT (in kg)	IDEAL BODY WEIGHT (in kg)	Over weight %	BMI	ADVICE
16 Sep 87	PRIMARY	58	-			-
05 Nov 04	Annual	79	70.5			-
08 April 05	Annual	81	70.5	14.89	25.85	Overweight detected
28 Feb 06	Annual	72	71			-
04 June 07	Annual	82	71			-
16 April 08	Annual	81	71			
15 April 09	Annual	83	72			-
11 Jan 11	Annual	84	71	18.30	26.81	to reduce weight by regular exercise and diet control
18 May 12	Annual	87	71	22.53	27.76	to reduce weight by regular exercise and diet control

17 April 13	Annual	83	71	16.90	26.49	to reduce weight by regular exercise and diet control
10 July 15	annual	86	71	27.45	27.45	

10. The Ld. counsel further asserted that being overweight is a recognized independent modifiable risk factor for Coronary Artery Disease (CAD). Factors such as lack of exercise, a sedentary lifestyle, and poor dietary choices contribute to this condition. The weight record of the applicant's husband indicates that the veteran had a modifiable risk factor that he failed to address, as he did not reduce his weight despite repeated medical advice. Consequently, his actions may have contributed to the development of CAD. Therefore, the cause of death Cardiac Arrest resulting from Coronary Artery Insufficiency due to CAD cannot be considered attributable to or aggravated by his service in the Indian Air Force.

11. It was also contended that as per para 189 of Pension Regulations for the Air Force, 1961 (Part-1), Special Family Pension is granted to the family of an individual if death is due to or hastened by;-

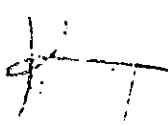
(a) A wound, injury or disease which was attributable to military service.

(b) The aggravated by military service of wound, injury or disease which existed before or arose during military service.

12. It is further submitted that since the aforesaid conditions are not fulfilled in the case of applicant's husband, therefore, the applicant is not entitled to Special Family Pension. Reliance was further placed on para 6 of the entitlement rules for Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 for award of Disability Pension /Special Family Pension to contend that a causal connection between disability or death and military service has to be established by appropriate authorities. Since the competent authority had held the death to be neither attributable to nor aggravated by military service the applicant was not entitled for the special family pension.

Consideration

13. After hearing both sides and perusing the evidence on record, the questions which need to be answered are two folds:-



(a) Whether death of the husband of the applicant was attributable to and aggravated by military service?

(b) If yes, is the applicant entitled for ex-gratia lump sum compensation and Special Family Pension?

14. Coming to the first limb i.e. is the death attributable to and aggravated by military service?" The husband of the applicant died due to cardiac arrest on 13.04.2016, while travelling to the medical hospital. A perusal of the medical documents and weight charts of the applicant's husband reveals that the veteran was constantly overweight and has been frequently advised to reduce weight by regular exercise and diet control. The disability of the applicant, as apparent from the records, was the result of the sedentary lifestyle of the applicant as the applicant has constantly been overweight during the period from 08.04.2005 to 10.07.2015. It is well settled that a litigant cannot take advantage of his own wrong. This is based on the Latin maxim '*Commodum ex injuria sua nemo habere debet*'. The Hon'ble Supreme Court in ***Kusheshwar Prasad Singh vs State of Bihar & Ors. (2007) 11 SCC 447*** has held that, "*it is settled principle of law that a man cannot be permitted to take undue and unfair advantage of*

his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make a profit out of his own wrong.'" In the instant case, the applicant, despite repeated caution and advice from the medical authorities, had not taken any steps towards reducing the excess weight as is evident from the weight chart reproduced earlier and therefore, has become personally accountable for the disability. The applicant cannot be permitted to take advantage of his own inaction in reducing his excess weight and thereafter claim disability pension. Thus, in light of the aforesaid discussion this Tribunal is of the opinion that death of the husband of applicant (Late Sgt Vinod Kumar Singh) had no relation with military service, therefore it was considered as neither attributable to nor aggravated by military service by competent medical authority. Hence, death of the applicant's husband shall be deemed to be NANA.

15. Coming to the second issue, as to, "is the applicant entitled for ex-gratia lump sum compensation as also Special Family Pension? From the perusal of policy with regard to payment of Special Family Pension, it is obvious that if a soldier dies in performance of his bonafide duties, then his

NOK shall be entitled for Special Family Pension. In the case in hand the competent authority has given their opinion that his death was not attributable to military service because the deceased, by his own actions, contributed towards the development of coronary artery disease. More so, it is apparent that the death of the husband of the applicant Late Sgt Vinod Kumar Singh has no causal connection with military service. Further, the charter of duties of the husband of the applicant did not reveal exposure to exceptional service related and strain. Hence, disease was conceded as neither attributable to nor aggravated by military service in terms of Para 47, Chapter VI, GMO 2008 which is produced as under:

47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded.

Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias.

The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Entitlement in Ischemic heart disease will be decided as follows:-

(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.

(b) Aggravation will be conceded in cases in which there is evidence of:-

IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude

areas, field areas, counter insurgency areas, ships and submarines due to service compulsions.

There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases.

16. Relying upon the Hon'ble Supreme Court judgement rendered in SLP(C) No. 23727 of 2008 in the case of **Union of India vs. Damodaran AV**, learned counsel for the respondents averred that in the aforesaid judgement their Lordships have held that the Medical Board is an Expert body and its opinion be given due weight, value and credence. He submitted that since the competent medical authorities have held that death of the husband of the applicant has no relation to military service and was not influenced by military service, therefore the death was regarded as NANA.

17. Admittedly, death of the husband of the applicant has no causal connection with service as held by the medical authorities and the pension sanctioning authority, hence applicant was granted enhanced rate of Ordinary Family Pension @ Rs. 10,675/- per month wef 14.04.2016 to



13.04.2026. Thereafter, ordinary family pension @ Rs. 6405/- per month with effect from 14.04.2026 to till death or disqualification of family pension whichever is earlier vide PCDA (P), Allahabad PPO dated 25.01.2017. Thus, the refusal by the competent authority for grant of Special Family Pension to applicant is only on the grounds aforesaid.

18. As far grant of ex-gratia Lump-sum compensation is concerned we find that when the husband of the applicant passed away it was neither due to any accident or any of the circumstances mentioned in the policy, further as such applicant's case does not qualify under any category of Govt of India, MoD letter dated 02.10.2016 reproduced as under :-

S.No	Circumstances	Rates (in Rs)
(a)	Death occurring due to accidents in the course of duties	25 Lakhs
(b)	Death in the course of duties attributable to acts of violence by terrorist etc.	25 Lakhs
(c)	Death occurring during (i) enemy action in international war or border skirmishes and (ii) action against militants, terrorist, etc.	35 Lakhs
(d)	Death occurring while on duty in the specified high altitude, inaccessible border posts, etc. on account of natural disasters, extreme weather conditions	35 Lakhs
(e)	Death occurring during enemy action in war or such war like engagements, which are notified by MoD and death occurring during evacuation of Indian Nationals from war-torn in foreign country.	45 Lakhs

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19. In view of the above, we are of the view that since death in respect of the applicant's husband has no causal connection with military service, the applicant is not entitled to Special Family Pension or ex gratia. Hence the OA is dismissed.

20. MA if any, stands disposed.

21. Pronounced in the open Court on 23rd day of September, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON.**

**[LT GEN R.M. HARIZ]
MEMBER (A)**