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

OA 737/2023 WITH MA 1096/2023

Smt. Parvati M/o Late Ptr Ashok NJ ... Applicant
Versus
Union of India & Ors. ... Respondent

For Applicant : Mr. U.S. Maurya, Advocate
For Respondents : Mr. Niranjana Das, Advocate

CORAM :

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

ORDER

MA 1096/2023

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others Vs. Tarsem Singh* [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

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3. 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 son.

4. The son of the applicant joined the Indian Army on 01.09.1998. While serving with 106 Infantry Battalion Territorial Army (PARA), he was detailed for Basic Hand Gliding Course at School of Artillery, Deolali from 15.02.2004 to 27.03.2004. During the said coure he got injured on 08.03.2004 and was admitted to MH, Deolali and transferred to INHS Asvini on 13.03.2004 for further treatment for "FRACTURE DISTAL ONE THIRD HUMARUS (LT) and then passed away on 24.04.2004 with the cause of death recorded as 'Sudden Cardiac Arrest' due to 'Hyper Eosinophilic Syndrome', and his death was held as 'Attributable to service' as per death certificate issued by INHS Asvini. Accordingly, Special Family Pension claim in favour of the applicant was submitted to PCDA(P), Allahabad, but the same was rejected vide their letter no. G4/04/9517/VII/694 dated 08.11.2004 citing no reason for the same and merely holding that the applicant was eligible for grant of Ordinary Family Pension only.

5. 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.

6. 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.*

7. 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 son) 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.

8. We are of the view that the administrative decision taken by the PCDA(P) to deny 'Special Family Pension' to the applicant is against the decisions of the Hon'ble Supreme Court in ***Ex Sapper Mohinder Singh*** Vs. ***Union of India and another*** (C.A No. 164 of 1993 decided on 14.01.1993) and ***Dharamvir Singh*** Vs. ***Union of India and others*** (2013) 7 SCC 316. The IHQ (Army) has also issued a letter dated 25.04.2011, the relevant portion of which is reproduced below:

> *"2 These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.*
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> ....
>
> *4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such file be processed for sanction."*

9. It is indeed an irony that a service personnel rendering crucial several 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 years of unblemished selfless service, is ironically considered less to reward attributability to the soldier.

10. We are of the considered opinion that a sympathetic view is required to be taken by the competent authority in such cases, not bound by mechanical manner of disposal of cases, where a service personnel has rendered almost a substantial part of his life to the Indian Army, but his family is not granted benefit of a beneficial provision for the sake of technical and mechanical mechanism being followed by the PCDA in such cases.

11. 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. 10 Lakhs w.e.f. the date of death of her husband, i.e. 24.04.2004, 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. However, the arrears shall be restricted to 3 years prior to filing of this OA

[Date of filing of OA: 17.03.2023]. Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

13. Pending miscellaneous application, if any, also stands closed.

Pronounced in the open Court on 3rd day of July, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/akc/