

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

OA 786/2018

Smt Savita Singh W/o Late Wg Cdr AD Singh ... Applicant  
Versus  
Union of India & Ors. ... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate  
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

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, Late Wg Cdr AD Singh, was commissioned into the Indian Air Force on 17.12.1988, and expired on 18.10.2014 while in service, with the cause of death recorded as 'Metastatic Leiomyosarcoma', but the Competent Authority had considered the case of death as neither attributable nor aggravated by service, and therefore, the applicant was held to be not eligible for grant of Special Family Pension.

### Arguments by the Applicant

3. It is submitted by the learned counsel for the applicant that the husband of the applicant was a Fighter Controller and had to remain in the proximity of the radar for extended duration and the radiation from the radar may have been the reason behind the husband being diagnosed with Metastatic Leiomyosarcoma.

4. Learned counsel further submits that the husband of the applicant was deployed at various locations during exercises, during activation and in peacetime. During the tenure of his service, the husband of the applicant was exposed to radiation due to proximity of the working place.

### Arguments by the Respondents

5. Per Contra, learned counsel for the Respondents submits that the applicant's husband was detected to have deranged lipid profile and ECG abnormality during medical examination on 01.06.2012 at the age of 46 years while serving at AF Station, New Delhi. He was referred to AFCME for evaluation and management and was diagnosed with ID-Primary Hypertension and ID-Obesity. He was managed conservatively by the cardiologist. He was opinioned to place on low medical category A4G4 (T24). His initial

medical board was held at AF Stn New Delhi *vide* AFMSF-15 dated 28.06.2012. During subsequent review he was upgraded to medical category A4G1 for ID-obesity and LMC A4G2 (P) for ID-Primary Hypertension *vide* AFMSF-15 dated 17.09.2013.

6. It is the case of the respondents that the late officer was presented as a case of Metastatic Leiomyosarcoma in June 2014, when he had presented with one month h/o severe lower backache. Workup had revealed a 7X7X8 cm soft tissue mass in left lower chest wall invading and destroying the ribs along with mediastinal lymphadenopathy and multiple skeletal lytic lesions. He was diagnosed with leiomyosarcoma. Further the officer expired on 18.10.2014 at 1120 hrs at AH R&R, Delhi as per AFMSF 93 (Medical Certificate of Cause of death) of Army Hospital (R&R), Delhi Cantt.

7. Stressing further, learned counsel submits that the Competent Authority has considered the cause of death of applicant's husband as neither attributable nor aggravated by the service, and hence, the applicant (wife of Late Wg Cdr AD Singh) is not eligible for grant of Special Family Pension.

### Consideration

8. 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.

9. Before proceeding to adjudicate the issue, under consideration, it is relevant to examine the policy on the subject, which leads us to Para 189 of the Pension Regulations for Air Force, 1961 (Part-I) reproduced as under:

*189. A special family pension may be granted to the family of an individual if his death was due to or hastened by-*

*(a) a wound, injury or disease which was attributable to air force service. Or*

*(b) the aggravation by air force service of a wound, injury or disease which existed before or arose during air force service.*

10. A basic analysis of the aforesaid provision clarifies that if the disability which caused the death of the Air Warrior (applicant's husband) had been held attributable to or aggravated by air force, applicant would have been entitled

for grant of Special Family Pension, which would have been admissible in case of any injury, wound or disease.

11. We find that the issue of attributability of the aforesaid disability has been dealt with by this Tribunal in *Rolly Gandhi W/o Late Wg Cdr Manish Gandhi* [(2017) SCC Online AFT 4563] wherein Hon'ble Tribunal vide PARA 10 and 11 has observed as under:

*10. It is not in dispute that persons posted or working with radars and communications have equipment, which have occupational hazards. This is recognised in the handbook of guidelines itself. If that be so then the consistent exposure of the deceased for almost two decades cannot be said to have given him his radiation over a period of time which resulted in cancer of the type which he was suffering. The deceased was found to be having cancer in the joint of esophagus and the intestines. When a person is exposed to radiation what part of the body shall be affected is not known. Therefore, one can reasonably draw an inference that because of radiation deceased suffered cancer. This is more so that the respondents themselves state in the para 9 of their counter that the precise reason of cancer is unknown. Then in such a situation the respondents or their medical expert ought to have filed an affidavit that the cancer suffered by the deceased was not because of the occupational hazard. Even during the course of argument they were given this opportunity but they categorically refused to avail the same.*

*11. If that be so then the only irresistible conclusion which can be drawn because of posting, job profile and long service of the deceased and the attendant circumstances that the deceased acquired by the disease as an occupational hazard and he or family members cannot be denied the benefit.*

*12. Moreover guidelines in the Handbook are only guidelines for doctors which are essentially ameliorative provisions and must be construed liberally more so when you are dealing with persons working in uniform. They carry on onerous task of protecting the nation and permitting its residents to sleep in peace.*

12. While holding that the disability - Metastatic Leiomyosarcoma which caused the death of the Air Warrior is attributable to service, and the applicant (wife of the Air Warrior) is entitled to grant of Special Family Pension, 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 his whole life to the Air Force, but his family is not granted benefit of a beneficial provision for the sake of technical and mechanical mechanism being followed by the competent authority in such cases.

13. In light of the above observations, we allow the OA, directing the Respondents to grant Special Family Pension to the applicant. However, the arrears shall be restricted to three years prior to the date of filing of OA (19.04.2018) keeping in view the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8) SCC 649].

14. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @8% p.a. from the date of receipt of copy of the order by the respondents.

15. No order as to costs.

16. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on 28<sup>th</sup> day of May, 2024.

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(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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