

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

O.A. No. 875 of 2019

In the matter of :

**Smt. Subhasini Behera W/o
Late Nk/MT Sudarshan Behera** ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Anil Srivastava, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate with
Maj A.R. Subramaniam, Officer-in-
Charge, Legal Cell (Army)

CORAM :

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

ORDER

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) Direct the Respondents to grant Special Family Pension to the Applicant w.e.f. the date of the death of the applicant's husband i.e. 05.07.1996 with 12% interest on the arrears**

thereof after deducting the amount already received by her as ordinary family pension.

- (b) To direct the respondents to grant the 'Ex Gratia amount' as per the then admissible rate, to the applicant; the death being deemed to have been caused on duty and as such attributable to Military Service.*
- (c) That the Applicant be awarded cost of the litigation @ Rs.50000/-.*
- (d) To pass any such other and/or further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the facts and circumstances of the case."*

2. During the course of the hearing on 03.04.2024, the learned counsel for the applicant submitted that the prayer made through the present OA is confined to seeking the grant of Special Family Pension and the prayer for grant of Ex-gratia payment is not pressed. The present OA is thus considered to the extent of the prayer seeking the grant of Special Family Pension alone.

FACTS CONTENTED

3. The husband of the applicant, Late Nk/MT Sudarshan Behera (hereinafter referred to as 'deceased soldier') was enrolled in the Indian Army as MT/Dvr in ASC on 03.02.1978. It is submitted on behalf of the applicant that during his service, on 04.07.1996, the deceased soldier was admitted to 180 Military Hospital on complaints of severe chest pain but at about 0240 Hrs., he was declared dead and as averred by the applicant, the medical certificate reflected the cause of death as 'not known to the medical authorities'. However, on the post-mortem being conducted by the medical authorities, same recorded that the death of the husband of the applicant was due to 'Ruptured Aortic Aneurysm (441), as stated in Para 3 of the counter affidavit dated 04.11.2019. However, later on 03.01.1997, the certificate showing particulars of the deceased soldier issued by the ASC Records indicated the cause of death as 'Natural death'. Accordingly, ordinary family pension was granted to the applicant. The applicant submits that she submitted a representation dated 19.03.2019 to the Chief of Army Staff for the grant of Special Family Pension (SFP) and

Ex-gratia payment and also filed an RTI application dated 19.03.2019 seeking the copy of post-mortem report and other medical documents related to her husband's death and vide letter dated 10.04.2019, the medical certificate of cause of death and medical case sheet were forwarded to her.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that at the time of joining the Army, the deceased soldier was declared physically and mentally fit 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 military service only. The learned counsel submitted that the death of the deceased soldier took place while he was on duty while he was posted at 5104 ASC Bn located in field (Missamari), and as such it is attributable to service and falls under Category 'B' or 'C' of the GoI, MoD letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 and that there is causal connection/nexus between the nature of the duty

and the incidence which caused the death of the deceased soldier, and hence the respondents ought to have declared his death as attributable to military service and the applicant ought to be granted Special Family Pension. In support of his contentions, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316]***.

5. *Per contra*, the learned counsel for the respondents justified the action of the respondents and submitted that as per the Court of Inquiry conducted, it was stated by the applicant that the deceased soldier had his dinner and went to sleep; after a while, he felt some pain near his shoulder and around 0100 Hrs. on 04.07.1996, he had severe body ache and after some time, his body became stiff, fist got tighter and jaw was locked and he was unconscious and that the deceased soldier was admitted to 180 Military Hospital on 04.07.1996, where at around 0300 hrs. the husband of the applicant expired. Further, the learned counsel for the respondents submitted that as per the post-mortem AFMSF-93 (Part-II) (Certificate of Attributability), the cause of death was due to 'Ruptured Aortic Aneurysm' and was considered

as neither attributable to nor aggravated by military service and, therefore, the CDA (Pensions) rejected the claim of the applicant for grant of Special Family Pension, ordered grant of Ordinary Family Pension to the applicant and relied on Regulation 213 of the Pension Regulations for the Army, 1961 (Part-I). The learned counsel further submitted that the present OA is barred by time as it has been filed by the applicant 22 years after rejection of the claim for Special Family Pension. The respondents thus prayed for dismissal of the OA.

6. On behalf of the applicant, a rejoinder was filed to the reply filed by the respondents and it was submitted that from the date of enrolment on 03.02.1978, the deceased soldier remained in SHAPE-1 till 19.09.1995, when he was downgraded to medical category to CEE (Psy) i.e. after a long spell of 17½ years of service, during which tenure, he was posted to various field, peace and high altitude areas. It was also submitted by the learned counsel for the applicant that the respondents failed to explain the reason for change of initial declaration of cause of death as 'Natural cause' to subsequent declaration as 'due to Ruptured Aortic

Aneurysm' and that the OA may be allowed granting the relief as prayed for.

ANALYSIS

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

8. In this case, the facts related to service are not in dispute. Now the only question for our consideration is as to whether the death of the applicant's husband was attributable to or aggravated by military service or not, so as to determine the eligibility of the applicant for getting Special Family Pension. It is evident from the post-mortem report that the applicant's husband died due to 'Ruptured Aortic Aneurysm' on 04.07.1996. There is 'In lieu of AFMSF-93 Part-II (Certificate of attributability) issued by 180 Military Hospital C/o 99 APO dated 23.10.1996 which also states that :

"Certified that No-13867658-K Nk Sudersan Behra of 5104 ASC Bn (MT) C/o 99 APO died on 04 Jul 96 at 0240 hrs.

***Diagnosis :- RUPTURED AORTIC ANEURYSM (441)
Death is not attributable to or aggravated by
Military Service for the following :-***

As disease is congenital and constitutional."

The medical case sheet of the examination done at 180 MH also stated that the husband of the applicant was brought to MH MI Room at 0240 hrs and on examination, it was observed as under :

"On Examination

***Pt well built and nourished.
Absolutely motionless. Unconscious.
Pt is Unconscious.
Eyes closed
No Motor response/verbal stimuli
pulse not palpable
B.P. Not recordable.
pupils dilated fixed not reacting to light.
Heart sounds not audible on auscultation/
Absent
Respiratory movement absent
lung sound absent
PA NAD
CNS - No response to any stimuli
No evidence of external injury
External or... normal
No sign of life found, brought dead."***

and as the patient was found dead, the cause of death was to be ascertained by the post mortem. The post-mortem report declared the cause of death of the deceased soldier as 'Ruptured Aortic Aneurysm'. The fact that the deceased soldier was found already dead when brought to the hospital as indicated in the medical case sheet, which has not been challenged anywhere does not *per se* establish the attributability or aggravation of the cause of death with military service.

9. We have gone through the Court of Inquiry proceedings in original, which was produced pursuant to the directions dated 28.11.2023, before the Tribunal during the course of hearing on 03.04.2024. During the Court of Inquiry, four witnesses including the applicant were examined, who made their statements giving details of the medical condition of the deceased soldier just before his death. After examining all the witnesses, the Presiding Officer and Members of the Court had recorded its finding as under :

"FINDING OF THE COURT

1. No. 13867658K Nk/Dvr/MT Sudersan Behara belonged to 'A' Coy of 5104 ASC Bn (MT)
2. On 19 Sep 94 for the diagnosis of CNS(INU) seizure (2HS) he was placed on Med Cat CEE (T) and on 19 Sep 95 he was placed on med Cat BTE (T) (appx)
3. On the night of 03/04 Jun 96 he developed severe pain and body ache and become unconscious and with in hours he expired the MH.
4. Nk Sudersan Behara expired on 04 Jul 96 at about 0300 hrs on his active service."

and the opinion of the Court reads as under :

1. Court is of the opinion that No. 13867658 K Nk/Dvr/MT Sudersan Behara of 'A' Coy 5104 ASC Bn (MT) expired on 04.07.96 about 0300h
2. No. 13867658 K Nk/Dvr/MT Sudersan Behara expired while on active service due to natural cause and no body is to be blamed for his cause of death."

The cause of death was recorded by the Col as 'natural cause' on the basis of the medical conditions as stated by the

witnesses. However, later the post-mortem report of the deceased recorded the reason for the death as 'Ruptured Aortic Aneurysm'.

10. We have examined the medical review available in the Cleveland Clinic (<https://my.clevelandclinic.org/health/diseases/16742-aorta-aortic-aneurysm>) on 'Aortic Aneurysm' (last reviewed on 06.11.2022) and the risk factors for the aortic aneurysm. The same reads as under :

"Aortic Aneurysm

An aortic aneurysm is a bulge in the wall of your aorta, the main artery from your heart. Aortic aneurysms form in a weak area in your artery wall. They may rupture (burst) or split (dissect), which can cause life-threatening internal bleeding or block the flow of blood from your heart to various organs.

xxx

xxx

What are the risk factors for aortic aneurysm?

Both your family history and your lifestyle can place a role in your risk of developing an aortic aneurysm. Aortic aneurysms occur most often in people who :

- *Smoke*
- *Are over age 65.*
- *Were assigned male at birth*
- *Have a family history of aortic aneurysms*
- *Have high blood pressure (hypertension)*

What causes aortic aneurysm ?

- ***Atherosclorisis (narrowing of the arteries)***
- ***Inflammation of the arteries***
- ***Inherited conditions, especially those that affect connective tissue (such as Marfan syndrome and Ehlers-Danlos syndroms).***
- ***Injury to an aorta***
- ***Infections, such as syphilis."***

Having perused the aforesaid medical review, we find that in the present case, there is no record or submission to indicate that the deceased soldier was suffering or suffered from hypertension or was a smoker. The applicant was not above 65 years of age as he was only 39 years old when he died nor is there any family history of aortic aneurysm recorded in the medical case sheet of the deceased soldier nor did he have any infection, inflammation of the arteries etc. There is also no evidence, documentary or oral, which goes to show that the deceased soldier was involved in such duties which may have caused him to suffer from hypertension. The only disease the applicant suffered from was 'Seizure' apparently w.e.f. 1994 and there is apparently no connection between Seizure and Aortic Aneurysm. In fact, the deceased soldier is reported to have suffered the attack at the midnight of 04.07.1996 at his home. Although the details of the

conditions of the deceased soldier just before his death were indicated by the applicant as mentioned above, the medical case sheet shows that when the husband of the applicant was brought to the hospital, he was already dead as mentioned in the medical case sheet of 180 MH. Thus, it cannot be concluded that the death of the deceased soldier was, by any means, attributable, to or the ailment which led to his death was aggravated by the military service.

11. Special Family Pension can be granted only when there is nexus established between the cause of death and the military service/duty. Even till the death of the deceased soldier, there is not a single document to show that he was suffering from any physical or mental strain or stress or disease which led to his death. The claim for Special Family Pension of the applicant was also rejected as the death of the deceased soldier was neither attributable to nor aggravated by military service and thus she was granted Ordinary Family Pension. The provisions with regard to Special Family Pension are contained in Para 213 of the Pension Regulations for the Army, 1961 which would be relevant in this case, are reproduced as under :

"213 – A special family pension may be granted to the family of an individual his death was due to or hastened by-

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

OR

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

12. We may also refer to Regulation 105 as well as Regulation 82 of the Pension Regulations for the Army, 1961 Part-I (amendment 2008) regarding Special Family Pension, which read as under:

**"SECTION - 3: Special Family Pension
Sub-section-I General**

WHEN ADMISSIBLE

105. (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/ discharge. Provided that the service personnel had retired/discharged otherwise than voluntarily/at own request on compassionate grounds before completion of terms of engagement.**

(b) The question whether death is attributed to or aggravated by military service shall be determined under the Entitlement Rule For Casualty Pensionary Awards, 1982 contained in APPENDIX-IV to these Regulations."

REGULATION 82

**"CIRCUMSTANCE OF DEATH/ DISABILITY
ATTRIBUTABLE TO OR AGGRAVATED BY MILITARY
SERVICE**

82. For determining the pensionary benefits on death or disability which is attributable to or

aggravated by Military service under different circumstance, the cases shall be broadly categorized as follows: -

Category A

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

Explanation : The cases of death or disability due to natural causes falling under Category A entitles ordinary family pension or invalid pension or invalid gratuity as the case may be.

Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as:

- (i) Accidents while travelling on duty in Government vehicles or public/private transport.**
- (ii) Accidents during air journeys**
- (iii) Mishaps at sea while on duty.**
- (iv) Electrocution while on duty etc.**
- (v) Accidents during participation in organised sports events/ adventure activities/expeditions or training.**

xxx

xxx

xxx”

13. From the reading of the above, it is clear that the Special Family Pension can be granted only if the death is due to a wound, injury or disease which is attributable to or aggravated by military service. In this case, the death of the deceased soldier does not fall into the category of death due

to disease or injury being attributable to or aggravated by military service. Hence, we are unable to accept the contention of the applicant that the death of her husband had any nexus between the military duty and the incidence which caused death of her husband and that the same be considered as attributable to military service.

14. This is so despite the factum that as admitted by the OIC, Legal Cell of the respondents on 03.04.2024 that for the period 23.02.1994 till his demise on 04.07.1996, the applicant's late husband was posted in the Unit 5104 ASC Bn (MT) which had a posting type of both CI Ops and peace areas, in view of reasons detailed by us in Para 13 hereinabove.

15. Viewed thus, the contentions raised by learned counsel for the applicant for grant of Special Family Pension is misconceived for the reason that the statutory provisions are mandatory and cannot be overlooked while deciding the issue. There is no evidence to establish the cause of death of the applicant's late husband to be attributable to or aggravated by service. Consequently, the applicant is not entitled to grant of Special Family Pension.

CONCLUSION

16. In view of the above, the OA 875 of 2019 is dismissed.
17. There is no order as to costs.

Pronounced in the open Court on this 12th day of
July, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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