

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2380/2021
WITH
MA 2490/2021

Smt Sangam Tomar Wd/O Applicant
Late Nk Rakesh
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Mamta Panniker and
Mr. Bikrama Sah, Advocates

For Respondents : Dr. Vijendra Singh Mahndiyan,
Advocate
Capt. Abhishek Kumar, OIC Legal Cell

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 2490/2021

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in *Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648]*, the MA is allowed condoning the delay of 785 days in filing the OA. The MA stands disposed of.

OA 2380/2021

2. The applicant, the widow of Nk Rakesh, is aggrieved by the denial of Special Family Pension. By way of this OA filed under Section 14 of the Armed Forces Tribunal Act 2007, she seeks the following reliefs:

“(a) Call for the medical records pertaining to the Gallstone surgery of the applicant’s husband conducted in 2013–14, along with documents relating to the grant of sick leave during his posting with 56 Infantry Division Signal Regiment.

(b) Quash and set aside the impugned communication No. B/38046/30/2020/AG/PS-4(Imp-II) dated 16.09.2020, whereby the claim for Special Family Pension was rejected.

(c) Direct the respondents to grant Special Family Pension to the applicant with effect from the date of her husband’s death, i.e., 26.08.2019.

(d) Direct the respondents to release the arrears of Special Family Pension from 26.08.2019 along with interest @12% per annum until final payment.

(e) Pass such further orders as this Tribunal may deem fit in the interest of justice.”

3. Briefly stated, the applicant’s husband, Late Nk. Rakesh, was enrolled in the Indian Army on 16 July 2004. While on duty on 25 August 2019, he passed away at Army Hospital (R&R), Delhi Cantt. due to “Acute Pte-Post (L) Lung Decortication (Operated) with ECMO support” accompanied by “Moderately Severe Acute Pancreatitis with left-sided Pyothorax, Lung Collapse, and Thickened Pleura”. His death, however, was held as neither attributable to nor aggravated by

military service. The applicant was sanctioned enhanced Ordinary Family Pension from 26 August 2019 @ ₹12,218/- per month thereafter. Dissatisfied, she filed a first appeal claiming Special Family Pension, which was also rejected. The applicant states that her husband was on duty and under military medical treatment at the time of death and that the Commanding Officer had recommended that the death be treated as attributable to service. She, therefore, seeks Special Family Pension. She relies on the Tribunal's decision in *Smt. Seema Devi vs. Union of India & Others* (OA No. 327/2011 decided on 04.10.2013).

4. The learned counsel for the applicant submits that the Medical Officer, in his Part-D statement, attributed the cause of death to alcohol. This, according to the applicant, is baseless as there was no medical or service record indicating Alcohol Dependency Syndrome nor was any show-cause notice ever issued to the deceased in this regard. By representation dated 30 July 2021, the applicant requested correction of this recorded observation, but the request was rejected. It is further stated that no medical literature conclusively establishes that acute pancreatitis is caused solely due to alcohol, as several other

causative factors exist. The applicant additionally submits that her husband underwent Gallstone surgery around 2013–14 and medical science recognizes abdominal surgery as a major contributing factor to acute pancreatitis. To verify this, she filed an RTI application seeking relevant medical documents. However, vide communication dated 25 June 2021, Signals Records informed that the required documents were not available in the service dossier. It is also submitted that the deceased was a non-drinker, as reflected from the fact that he was routinely detailed as a school bus driver. The applicant relies upon Regulation 173 of the Entitlement Rules for Pensionary Awards, 1982, Rule 9 and Rule 14(b) of the Guide to Medical Officers (Military Pensions), 2002 and Ministry of Defence Letter No. 1(1)/81/D (Pen C) dated 20 June 1996. Reliance is also placed on:

- (1) *D.S. Nakara vs. Union of India* (AIR 1983 SC 130).
- (2) *Dharamvir Singh vs. Union of India and others* (2013) 7 SCC 316.

The learned counsel further refers to the Government of India, Ministry of Defence letter dated 31 January 2001 providing that Special Family Pension is admissible if death occurs under circumstances falling under Category B or C, in which case

pension is payable at 60% of the last reckonable emoluments. On these grounds, the applicant prays that the OA be allowed and Special Family Pension granted.

5. The respondents, in their counter affidavit, oppose the claim for Special Family Pension primarily on the basis that the cause of death of the applicant's husband has already been held as neither attributable to nor aggravated by military service. They submit that the competent medical authorities, after detailed consideration of the medical history and records, concluded that the deceased soldier's illness and subsequent death were not related to service conditions. According to the respondents, this finding is binding and forms the legal foundation for denying Special Family Pension. It is further asserted that the Medical Officer's opinion, recorded in Part-D of the medical documents, categorically states that the "aetiology leading to disease and death is due to alcohol." The respondents maintain that this medical conclusion is based on professional assessment and available clinical evidence and, therefore, cannot be challenged merely on the basis of the applicant's contrary assertions. They argue that once the Medical Board has determined the cause of death, the Tribunal

should not interfere unless there is convincing and cogent material to demonstrate procedural irregularity, mala fides or patent illegality in the medical assessment. Additionally, the respondents argue that the death of the applicant's husband does not fall within the contingencies contemplated under Categories B and C of the policy governing grant of Special Family Pension, as laid down in the relevant Ministry of Defence and Integrated Headquarters (Army) instructions. These categories generally cover deaths occurring under specified service-related circumstances such as injuries sustained in the course of active duty, training hazards, accidents while performing official functions, operational deployment or conditions directly attributable to service obligations. Since the medical opinion has concluded that the death resulted from a disease attributed to alcohol consumption and not arising out of the performance of military duties or service exigencies, the respondents submit that the case falls outside the permissible ambit of the policy framework for Special Family Pension. They emphasize that the pensionary entitlement in such cases is governed strictly by statutory rules and government regulations and the authorities cannot grant Special Family Pension in

deviation of these binding provisions. Therefore, the rejection of the claim, according to the respondents, is not only justified but also compelled by the applicable policy constraints and service rules.

6. We have carefully considered the rival submissions and examined the material placed on record.

7. It is undisputed that the applicant's husband Late Nk. Rakesh was in military service and on duty at the relevant time and that he died while undergoing treatment at Army Hospital (R&R), Delhi Cantt. The Commanding Officer had contemporaneously recommended that the death be treated as attributable to military service. In such circumstances, settled legal principles mandate that a prima facie presumption of service-connection arises, shifting the burden onto the respondents to rebut it with cogent medical and documentary evidence. Pensionary entitlement being a welfare benefit, decisions affecting such rights must rest upon reasoned and substantiated findings, consistent with judicial precedents.

8. The respondents rely principally on a single remark recorded by a Medical Officer in Part-D of the medical proceedings stating that the "aetiology leading to disease and

death is due to alcohol.” However, we find that this opinion is unsupported by any contemporaneous medical history, service record, toxicological report, disciplinary documentation or clinical reasoning. No evidence has been produced to show that the deceased had ever been diagnosed with Alcohol Dependence Syndrome or faced counselling or disciplinary proceedings for alcohol-related misconduct during service. A bald assertion without supporting material cannot displace the presumption of service-connection, particularly when it carries significant financial and legal consequences for the family of a deceased soldier. In the absence of such evidentiary support, the medical opinion relied upon by the respondents is unreasoned and of limited probative value.

9. The applicant has consistently asserted that her husband was a non-drinker and this assertion has not been rebutted by any material on record. The deceased was also performing duties, such as school bus driving, which ordinarily require sobriety. It is expected that a person addicted to Alcohol would not have been assigned duty which could endanger the life of school going children. Furthermore, the applicant has pointed out that the deceased underwent gallstone surgery in 2013-14

and that abdominal or biliary surgery is medically recognised as a potential cause of acute pancreatitis. To verify this, she sought medical documents under the Right to Information Act. The Signals Records, however, replied that no such medical record was available in the service dossier. The respondents have not explained why crucial medical documents that should normally exist are unavailable. The failure to produce relevant medical and service records that lie within the respondents' control warrants an adverse inference against them.

10. Medical literature acknowledges that gallstone disease and post-operative biliary complications are established causes of acute pancreatitis. In the absence of convincing medical evidence supporting the respondents' attribution to alcohol and where a plausible and medically recognised alternative cause has been put forward by the applicant, the benefit of doubt must go to the applicant. The principles laid down by the Hon'ble Supreme Court in *Dharamvir Singh* (supra) and subsequent decisions reaffirm that where evidence is evenly balanced or insufficient to negate service-connection, the presumption must favour the soldier or his legal heirs. The Commanding Officer's recommendation, though not conclusive, is a contemporaneous

and relevant piece of evidence supporting service-connection. When the only contrary opinion is an unexplained and unsupported medical remark, the CO's view assumes greater evidentiary weight. Administrative decisions affecting pensionary rights must be based on reasoned consideration, not on uncorroborated assertions or incomplete records. As held in *D.S. Nakara* (supra), pension is not a matter of charity but a legitimate entitlement flowing from dedicated service to the nation. In this case, the respondents have failed to discharge their burden of proving that the death was neither attributable to nor aggravated by service.

11. In view of the foregoing discussion, we hold that the death of late Nk. Rakesh occurred under circumstances attributable to military service. The impugned communication dated 16.09.2020 rejecting the claim for Special Family Pension is founded on an unsubstantiated medical conclusion and is, therefore, unsustainable in law. Accordingly, it is set aside. The applicant is held entitled to Special Family Pension with effect from the date of her husband's death together with arrears. The respondents shall calculate the differential amount between the Special Family Pension and the Ordinary Family Pension already

paid and release the arrears within a period of four months. In case of delay beyond this period, the arrears shall carry interest at the rate of 6% per annum until actual payment.

Pronounced in open Court on this 2nd day of December, 2025.


(JUSTICE NANDITA DUBEY)
MEMBER (J)


(RASIKA CHAUBE)
MEMBER (A)

VKS

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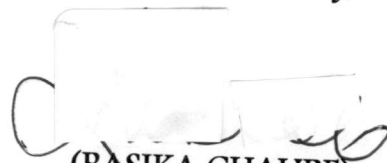
CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
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ORDER
02.12.2025

Judgment in this matter has been pronounced today vide a separate signed order. At the time of hearing, certain original documents were kept by us for perusal. Since the judgment in the matter has now been pronounced, these documents be returned to the respondents after taking due acknowledgement.

(JUSTICE NANDITA DUBEY)
MEMBER (J)


(RASIKA CHAUBE)
MEMBER (A)