

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

OA 280/2020

Smt. Dharmista Ben Widow of Applicant
Late Sep (ACP 1) Patel Bhavesh

VERSUS

Union of India & Ors. Respondents

For Applicant : Mr. U S Maurya, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate
Mr. Ankush Kapoor, Advocate

CORAM

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

ORDER

OA 280/2020

Claiming Special Family Pension in accordance to the rule on account of death of her husband while in service, the applicant has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, and the relief claimed in Para 8 reads as under:

“(a) Impugned orders dated 11.08.2017 be set aside passed by the Respondents and allow the present OA with costs;

(b) Direct respondents to grant Special Family Pension from next of the death of the applicant's husband (28.09.2012) as applicant's case is squarely covered on the matter of “neither attributable to nor aggravated by military service” by the Hon'ble Supreme Court judgments in the case of Dharamvir Singh Vs. Union of India & Ors (Civil Appeal No. 4949 of 2013 judgment dated 02.07.2013), Union of India Vs. Rajbir Singh (Civil Appeal No. 2904 of 2011 judgment on

13.02.2015 along with the 26 connected appeals), Union of India & Ors. Vs. Angad Singh Titaria (Civil Appeal No. 11208 of 2011 judgment on 24.02.2015) and latest judgment Ex. Gnr. Laxmanram Poonia (Dead) Through Lrs. Vs. Union of India and Ors. (Civil Appeal No. 2633 of 2017 judgment dated 22.02.2017) with 12% interest till the date of actual payment.

(c) Direct the respondent to pay Ex-gratia as per Rule.

(d) Direct the respondents to pay damages of Rs. 1,00,000/- on account of harassment and mental trauma suffered by applicant's husband as granted vide T. A. No. 32 of 2011 Suit No. 529/06/04 of District Court, Delhi titled Ex. Hav. Mohinder Singh Vs. Union of India by Hon'ble AFT (PB) New Delhi;

(e) The applicant be granted any other relief which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case".

Brief Facts

2. Facts in nutshell indicate that the applicant is a widow of Late Sepoy (ACP-1) Patel Bhavesh Kumar Keshavlal, bearing No. 14819628P. The husband of the applicant was enrolled in the Indian Army on 16.01.2001 as a Sepoy in the Army Service Corps. He was diagnosed for "**(Left) Renal Calculus**" on 06.07.2007 and placed in Low Medical Category (LMC) P3(T-12) on 18.07.2007. Later on he was diagnosed with "**Glioblastoma Multiforme (RT) Frontal Region**" on 18.11.2010, for which he was treated at Command Hospital (Northern Command, Udhampur). While serving with 511

ASC Battalion, the individual died on 27.09.2012 due to **“Glioblastoma Multiforme Frontal Region (Optd.)”** as certified by Military Hospital, Ahmedabad on 27.09.2012. Based on AFMSF-93 (Part II) (Certificate of Attributability Fatal Case), the adjudication Board declared the death of individual as “Not Attributable to Military Service”, which was approved by HQ MG & G Area (Medical) on 14.12.2012. After the death of the applicant’s husband, she was granted Ordinary Family Pension vide PPO No. F/NA/011258/2013 dt 03.05.2013 and her claim for Special Family Pension was denied by the ASC Records (South) letter dt. 11.08.2017, on the ground that the death of the applicant’s husband was neither attributable nor aggravated (NANA) due to service condition and had no causal connection with military service.

Contentions of the parties

3. The learned counsel for the applicant invited our attention to the opinion of the Medical Board dated 18.07.2007 (Annexure A/2), when the applicant’s husband was declared and placed in the Low Medical Category and in Part-II of the report of the Medical Board the following opinion was given by the Board:

- (a) Is the disability attributable to service?
(Y/N) if so, please explain:- No
- (b) If not directly attributable to service, was it aggravated by service (Y/N) If so, please explain:- Yes, Compulsive and executive physical activity.

4. It is the case of the applicant that her husband sustained the disability 'Renal Calculus' on account of the stress and strain of Military Service as also opined by the Medical Board. She claims that since the disease which led to the death of her husband was attributable to military service, hence it falls under the category of eligibility as per the Para 105 of the Pension Regulations of the Army 2008 entitling him to grant of Special Family Pension.

5. Learned counsel for the applicant further argued that even though the Medical Board had opined that the disease of the applicant's husband was aggravated by military service when the claim was processed for grant of pension by the Records Office, the Special Family Pension has been illegally denied to the applicant on the ground that the death is not connected with military service and it is neither attributable to nor aggravated by the military service.

6. Learned counsel for the respondents on the other hand refuted the aforesaid and pointed out that the individual,

namely, the applicant's husband was admitted to the Military Hospital and died on 27.09.2012 on account of "**Globlastoma Multiforme Frontal Region (Optd.)**", which is a malignant condition of the nervous system and is neither attributable nor aggravated due to service condition.

Analysis

7. We have heard learned counsel for the parties at length and the only issue warranting consideration is as to whether the ailment of the applicant's husband resulting in his death can be termed as attributable to or aggravated by military service which ultimately resulted in his death while in service and, therefore, whether the applicant is entitled to Special Family Pension under Para 105 of the Pension Regulations of the Army, 2008, Part-I?

8. Para 105 of the Pension Regulations of the Army, 2008, Part-I reads as under:

"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/discharged. Provided that the service personnel had retired/discharged otherwise than voluntarily/at own request on compassionate grounds before completion or 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.”

9. Category B and C are defined in MoD Policy letter No. 1(2)/97/1/D (Pen-C) dated 31.01.2001 and they are reproduced below:-

“PART-II

PENSIONARY BENEFITS ON DEATH/DISABILITY IN ATTRIBUTABLE/AGGRAVATED CASES

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised as follows:-

Category A

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. Diseases contracted because of continued exposure to a hostile work environment, 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 traveling 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/training."*

10. Applicant has based her claim for grant of Special Family Pension on Annexure A-2 (Colly), which is Categorisation Medical Board Proceeding dt 18.07.2007 when the individual was found suffering from "Renal Calculus" and held aggravated by service conditions. Renal Calculus is nothing but Kidney Stones or Nephrolithiasis a medical condition characterized by the formation of hard crystal like masses in the kidney. Re-categorisation Medical Board Proceeding dt. 11.10.2007 reveals that after treatment his condition improved after surgery and he was upgraded.

11. Admittedly, the individual died of "**Globlastoma Multiforme Frontal Region (Optd.)**" which is a malignant

condition of the nervous system and has no causal connection to the service condition, hence case of 'NANA'. As per the Medical Literature, it is the most common primary brain cancer develops from agenetic mutations that causes brain cell to grow and multiply uncontrollably. Risk factors include exposure to radiation, certain hereditary cancer syndrome and being older. Futhermore, there is no evidence to suggest that the initial disease/disability of Renal Calculus (Kidney Stone) detected in July 2007 can be a cause of "**Globlastoma Multiforme Frontal Region (Optd.)**" in the frontal region or any part of the brain. These are two distinct and unrelated medical conditions.

12. Para- 9, 10, 11 and 12 of the Chapter-VI of the GMO(MP), 2008 reads as under:-

"9. **Cancer.** Precise cause of cancer is unknown. There is adequate material both of scientific and statistical nature which brings into light the causative factors like radiation, chemicals, and viral infections.

The recognized causative agents for carcinogenesis are:-

- (a) Viral infection
- (b) Radiation from nuclear sources
- (c) Ultra violet rays
- (d) Chemicals
- (e) Acquired chromosomal abnormalities
- (f) Trauma (chronic irritation leading to dermatological cancers eg: kangri cancer)

The service related conditions in relation to carcinogenesis are as under:-

(a) **Occupational Hazards**: All ranks working in nuclear powered submarines, doctors and paramedics working with electromagnetic equipment, personnel working with radars, communication equipment, microwave and also those handling mineral oils such as petrol and diesel are exposed despite stringent safety measures.

(b) **Infection**: As a cause of cancer has been documented in certain malignancies. Though identification of an organism may not be possible due to lack of facility but there is gross evidence clinically to suspect infection. OA 1391/2019 Ex Nk Subhash Chand Page 21 of 27

(c) The question of relationship between a malignant condition and an accepted injury is difficult to establish. The vast majority of traumatic lesions however severe, show no tendency to be followed by cancer either immediately or remotely. However chronic irritation leading to dermatological cancers have been documented (eg: Kangri Cancer), attributability will be conceded depending on the merit of the case.

10. **Malignancies Considered Attributable to Service**

(a) **Due to Occupational Hazards**:

(i) Any cancer in those personnel working or exposed to radiation source in any forms:

- (aa) Acute leukaemia
- (ab) Chronic lymphatic leukaemia
- (ac) Astrocytome
- (ad) Skin cancers

(ii) Any cancer in those exposed to chemical especially Petroleum products or other chemicals:-

- (aa) Carcinoma bladder
- (ab) Renal cell carcinoma
- (ac) Carcinoma of Renal Pelvis

(iii) Any cancer in those exposed to coal dust, asbestos, silica & iron

- (aa) Bronchogenic Carcinoma
- (ab) Pleural Mesothelioma

(b) **Due to Viral Infection**:

- (i) Hepato-cellular carcinoma (HV B&C)
- (ii) Canasopharynx (EB virus)
- (iii) Hodgkin's disease (EB virus)

- (iv) Non-Hodgkin's Lymphoma (Viruses)
- (v) Acute Leukaemia (HTLVI)
- (vi) Ca anal canal (HTLV 1)
- (vii) Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service)
- (viii) Ca Cervix (HPV)

11. Blank

12. **Malignancies Not Attributable and Not Aggravated**

Tobacco related cancers in smokers and tobacco users e.g. carcinoma lung, carcinoma oral cavity, carcinoma bladder. Cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome identified."

13. In the instant case, there is nothing on record to suggest that the disability **Globlastoma Multiforme Frontal Region (Optd.)** has been caused due to any occupational hazard or any viral infection. In the absence of any record that the said disability was caused due to service conditions, we are considerate to hold that the disease has no causal connection with the military duty and does not fulfill any of the Malignancies Considered Attributable to Service as mentioned in aforestated Para 10 of the GMO (MP) 2008, hence 'NANA'.

14. In view of the foregoing discussion and in light of the Rule position as also the facts and circumstances of the case, we hold that the death of the deceased soldier is not attributable to military service and hence as per Regulation 105 of Pension Regulations for the Army 2008, the widow (applicant) of the

deceased soldier is not eligible for grant of Special Family Pension.

15. In view of the aforesaid, the OA fails and accordingly dismissed.

16. No order as to costs.

Pronounced in the open Court on this 15th October' 2025.

**[JUSTICE NANDITA DUBEY
MEMBER (J)]**

**[RASIKA CHAUBE]
MEMBER (A)]**

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