

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

OA 771/2019

Smt Sneh Sharma Widow of ... Applicant
Late Capt I R Sharma

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Anil Srivastava, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM :

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

O R D E R

OA 771/2019

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, 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. 27.11.1982 with 12% interest on the arrears thereof after deducting the amount already received as ordinary family pension.

(b) To direct the respondents to grant the ‘Ex Gratia amount’ of Rs 1,00,000/-, or an amount as then admissible, to the applicant; the death being deemed to have been caused on duty.

(c) That the applicant be awarded cost of the litigation @ 50,000/-.

(d) To pass any such other and/ or further 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."

FACTS CONTENTED

2. The applicant is the wife of the Late Capt I.R Sharma No. IC-32883H, who was commissioned in the Regiment of Artillery on 16.01.1972 and posted to 171 Mountain Regiment in High Altitude Area (HAA) in the beginning of April 1982. According to the applicant, her husband whilst he was undergoing acclimatization before being inducted permanently to HAA/ UCCA, complained of mild headache and he was examined by a Medical Officer on 09.05.1982, who had opined that he should be referred to a medical specialist to seek his opinion for suitability for the applicant's husband posting to HAA, but despite these remarks of the Medical Officer, the applicant's husband was sent to the unit located in HAA, and from there he was sent on 60 days' annual leave from 25.05.1982 to 23.07.1982. The applicant submits that after rejoining the unit on completion of leave, the applicant's husband complained of headache and giddiness and was admitted in 158 Base Hospital (BH) on 07.09.1982 and discharged on 29.09.1982.

3. As per the counter affidavit of the respondents dated 18.11.2020, his medical category was downgraded to S1H1A1P2(T-24)E1 w.e.f 27.09.1982 due to "Mild Labile Hypertension" with restriction of employability not to be posted to high altitude above 2700 meters and extreme cold climate areas. Thereafter, he was attached to Station HQ Silliguri (Bengdbi).

4. On 26.11.1982 after playing a badminton game, the applicant's husband felt giddy, developed nausea and vomited. He was immediately taken to the 158 Base Hospital and was declared dead at 2030hrs, on the same day.

5. As per the counter affidavit of the respondents, the cause of the death was 'Myocardial Infarction'. The Commanding Officer, 171, Mountain Regiment opined the disability/death is attributable to service due to stress & strain of service. Medical authorities opined to the effect:- "An old case of Hypertension, who died of myocardial infarction. **Though there is no direct proof available to establish attributability, aggravation aspect must be conceded in favour of the deceased**".

6. The applicant is recorded as the Next of Kin (NOK). The competent authority i.e. PCDA(P), Allahabad, however, considered the cause of death of the applicant's husband as being not attributable to military service vide letter No. 3(210)/82/PEN-C dated 16.04.1984 and thus the applicant's claim for Special Family Pension was rejected by the adjudicating Authority and she was sanctioned Ordinary Family Pension along with death cum retirement gratuity vide PPO No. MF/0000178/1991. The appeal dated 07.10.1984 for grant of Special Family Pension was rejected by the Competent Authority vide Govt of India, Ministry of Defence letter No 8(382)/Def(Pen/Appeal) dated 29.09.1987. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT Act, 2007.

7. The applicant submits that as her husband had died in harness while playing an organized unit game, the death of her husband is attributable to / aggravated by the Military Service and she is entitled for grant of Special Family Pension.

8. Learned counsel for the applicant further submitted that the present case is squarely covered by the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union Of India & Ors*** (Civil Appeal No. 4949/2013), and she is entitled for the grant of Special Family Pension and Ex-Gratia as the death of her husband being attributable to Military Service.

9. It was submitted on behalf of the applicant that her case falls under the category 'B' or 'C', under Para 5.1 of the GOI Letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 and thus the applicant is entitled for Special Family Pension (SFP).

10. Per Contra, it was contended by the leaned counsel for the respondents that though, the applicant's husband was in service on the date of his death and died due to the 'Acute Myocardial Infarction', nevertheless his death was considered as neither attributable to nor aggravated by military service, who died of Myocardial Infarction as there is no direct proof available to establish attributability/ aggravation of his death to concede that benefit in favour of the deceased. It was thus submitted on behalf of the respondents that he death of the officer was considered as 'Neither Attributable to / Nor

Aggravated by Military Service' vide GoI, MoD letter No. 392100/82/ Pen-C dated 16 Apr 1984 and as per IHQ of MoD Army letter No. B/13130/68/82/Org 3(d) dated 30 Nov 1982, the death of the Officer was regarded as 'Physical Casualty', hence the applicant is not eligible for Special Family Pension and Ex-Gratia and accordingly, the applicant was granted Ordinary Family Pension vide PPO No. MF/0000178/1991 and therefore the OA deserves to be rejected.

ANAYLSIS

11. We have heard learned counsel for the parties and have perused the records produced before us.

12. In the instant case, though the applicant submitted that her husband died while playing an organized badminton match on 26.11.1982, as averred in Para 4.6 and 4.7 of the OA, however, the averments made in Para 4.6 to 4.8 of the OA were denied by the respondents vide their counter affidavit. It is however, not refuted that when reported, the applicant's husband was attached with Station Headquarter, Siliguri due to restriction of employability in his medical category S1H1A1P2(T-24) (Mild Labile Hypertension).

However, it is equally also not in dispute that after playing a badminton game in Siliguri, when the applicant's husband felt giddiness and developed nausea and started vomiting, he was immediately evacuated to 158 Base Hospital and provided medical treatment available. However, the applicant's husband was declared dead on 26.11.1982 at 2030hrs due to 'Myocardial Infarction' and his death was considered as 'neither attributable to nor aggravated by Military service' by the authorities and the applicant is in receipt of Ordinary Family Pension.

13. Now the issue which is to be decided in this case is as to whether the death of the applicant's husband can be held to be attributable to or aggravated by Military service or not so as to hold the applicant eligible for grant of Special Family Pension.

14. For deciding the question whether there is a causal connection between the death of the applicant's husband and the military service, so as to decide attributability/aggravation of the disability, it is essential to refer to the judgment of the Hon'ble Supreme Court in the case of **Secretary, Govt. of India Vs. Dharambir Singh [2019]**

Latest Caselaw 851 SC decided on 20.09.2019, which lays

down as under:-

“....(10) In view of the provisions reproduced above, we find that the following questions arise for consideration:

(i) xxx xxx

(ii) Whether the injury or death caused even if, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(iii) xxx

Answer to Question No.1

(11) to (14) xxx xxx

Answer to Question No.2

(15) The 1982 Rules give expansive definition to the expression ‘duty’ being undertaken by the personnel of the Armed Forces. It includes the period when Armed Forces personnel is proceeding from his leave station or returning to duty from his leave station. It includes even an accident which occurs when a man is not strictly on duty provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. However, as per Regulation 423 of the Medical Regulations, such injury has to have causal connection with military service or such injury is aggravated by military service.

(16) In Regulation 423(a) of the Medical Regulations, it has been specifically mentioned that it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service or active service area or under normal peace conditions, will be deemed to be duty. Regulation 423(a) mandates that it is essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to individual. For the sake of repetition, the said clause reads as under:

“(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the

cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions..."

(17) Clause (b) of Regulation 423 of the Medical Regulations presumes that disability or death resulting from wound or injury, will be regarded as attributable to service if the wound or injury was sustained during actual performance of 'duty' in Armed Forces. This is in contradiction to "deemed to be duty" as per Rule 12(f) of 1982 Rules, as the Rule is when a man is not strictly on duty. However, the injuries which are self-inflicting or due to individual's own serious negligence or misconduct even in the cases of active duty, are not to be conceded unless, it is established that service factors were responsible for such action.

(18) and (19) xxx xxx

(20) In view of Regulation 423 clauses (a), (b) and (d), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury or death must be connected with military service howsoever remote it may be. The injury or death must be intervention of armed service and not an accident which could be attributed to risk common to human beings. When a person is going on a scooter to purchase house hold articles, such activity, even remotely has no causal connection with the military service."

[Emphasis supplied]

15. On behalf of the respondents reliance in relation thereto was placed on Para-4.1 of policy of MoD letter No. 1(2)/97/D(pen-C) dated 31 Jan 2001 for grant of Special Family Pension of, wherein category 'B' and 'C' are considered for special family pension which read as under:-

"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

exposes 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 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 organized sports events/ adventure activities/ expeditions training."

16. It is an admitted position that the applicant's husband died while playing a badminton match, however, there is no mention in the record about the match having been organized by the authorities. The applicant also stated herself that on reporting, immediately her husband was taken to the hospital and treated with the available medical resources and was declared dead at 2030hrs on 26.11.1982. The death of the applicant's husband was regarded as 'Neither Attributable to Nor Aggravated by Military Service' vide GoI, MoD Letter No. 3(210)/82/Pen-C dated 16 Apr 1984 and as per IHQ of MoD Army letter No. B/13130/68/82/Org 3(d) dated 30 Nov 1982 and the death of the applicant's husband was regarded as 'Physical Casualty'.

17. The matter was earlier reserved for orders vide order dated 04.07.2023. Vide order dated 13.12.2023, it was

however, considered essential to direct the respondents to produce the original Court of Inquiry proceedings. Though, the respondents sought time to produce the same on 01.09.2025, it was submitted on behalf of the respondents that the original Court of Inquiry documents are not held with the offr Dossier and Record of Service.

18. We have gone through the record and found that the applicant's husband died while playing a badminton game, which was not organized by the authorities and the Competent Authority regarded the death of the applicant's husband as 'Neither Attributable to Nor Aggravated by Military Service'. For a death to be held attributable, there has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such a death and the military service as brought forth though the verdict of the Hon'ble Supreme Court in **Secretary, Govt. of India Vs. Dharambir Singh (Supra)** as referred in Para 14 hereinabove, thus in the absence of any evidence on record to establish any causal connection between the death of the applicant's husband with the military service, the applicant is

not entitled to grant of Special Family Pension simplicitor on this account.

19. However, on perusal of the records, it is observed that the medical sheet pertaining to the deceased officer contains a note, placed as part of Annexure-R-1 to the counter affidavit, stating that "*The case of death is/is not attributable to or aggravated by Military Service*", which has been countersigned by the Colonel Commanding, C/o 99 APO, dated 22.02.1983. **It is however, significant to note that the said observation was not concurred by the Brigadier, ADMS, Bengal Area**, who recorded the following remarks:

"I agree/do not agree with the above. An old case of Hypertension, who died of Myocardial Infarction. Though there is no direct proof available to establish attributability, aggravation aspect must be conceded in favour of the deceased.

*Sd/- (P.V. Chablani)
Brig
ADMS, HQ BENGAL AREA
8 May 1983."*

Furthermore, it is noted that the above opinion of Brig. PV Chablani, ADMS, HQ Bengal Area was subsequently concurred with by the DDMS, HQ Eastern Command on 18.03.1983.

20. **It is important to observe that neither on the record nor during the course of arguments, the respondents have ever refuted or disputed the above medical opinions of the senior doctors (ADMS and DDMS) conceding the aggravation aspect.**

21. **The fact that the aggravation of the disease leading to the death of the applicant's husband was conceded by Brig. Chablani, a senior medical officer, and further endorsed by the DDMS, a higher medical authority is thus borne out from the record.** As observed elsewhere hereinabove the matter was listed on 01.09.2025, pursuant to the Tribunal's direction dated 26.05.2025 to produce the original Court of Inquiry (CoI) proceedings for perusal, and the respondents submitted a communication No. 81/IC-32883H/T-7/MP 5(B) dated 20.05.2025 from IHQ, MoD (AG's Branch) addressed to the Legal Cell, Armed Forces Tribunal, intimating that the original CoI documents are "not held with the Officer's Dossier & Record of Service". In view of the foregoing we consider it appropriate to extend the benefit of doubt to the applicant, and we are thus of the considered view that the disease (Myocardial Infarction) of the

applicant's husband has to be regarded as having been aggravated by military service, which led to his death. Consequently, the applicant is held entitled to Special Family Pension in accordance with the provisions of MoD letter No. 1(2)/97/D(Pen-C) dated 31.01.2001, with effect from the date of death of her husband i.e., 26.11.1982, in view of the verdict of the Hon'ble Supreme Court in **S.K. Mastan Bee vs General Manager, South Central Railway And Anr (2003) I SSC 184** and the verdict of the Hon'ble High Court of Delhi in WP(C) 16268/2025 dated 27.10.2025 in **UOI & Ors. vs Smt. Guddi Bisht W/o 1278283Y Late Hav Puran Chandra Singh Bisht.**

CONCLUSION

22. Therefore, the OA 771/2019 is allowed to the extent that the respondents are directed to grant Special Family Pension to the applicant with effect from the date of death of her husband i.e., 26.11.1982, after adjusting the amount already paid to the applicant on account of ordinary family pension. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this

order, *failing which*, the applicant shall be entitled to interest @ 8% per annum till the date of payment.

23. However, as the death of the applicant's husband was due to Cardiac Arrest (Myocardial Infraction) though it was aggravated by Military Service, the death of the applicant's husband was not whilst in the performance of bonafide official duties and thus the applicant is not entitled to the grant of ex-gratia payment in terms of Para 3 of letter No. 2(2)/2011/(Pen/Pol) dated 26.12.2011, Para 3 of which reads to the effect:-

"3. The President is pleased to decide that such Defence Service Personnel, who are disabled, incapacitated in the performance of their bonafide official duties under various circumstances and are boarded out from service on account of disability/war injury attributable to or aggravated by military service, shall be paid Ex-gratia lump-sum compensation amounting to Rs. 09 Lakhs for 100% disability. For disability/war injury less than 100% but not less than 20%, the amount of Ex-gratia compensation shall be proportionately reduced. No ex-gratia compensation shall be payable for disability/war injury less than 20%. The proportionate compensation would be based on actual percentage of disability as certified by the Invaliding Medical Board, without applying broad-banding provisions as contained in Para 7.2 of this Ministry's above mentioned letter dated 31.01.2001."

24. There is no order as to costs.

Pronounced in the open Court on this day of 20

November, 2025.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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