

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

OA 849/2018

Smt. Rajbala W/o
Late GNR Suresh Kumar
VERSUS
Union of India & Ors.

..... Applicant

..... Respondents

For Applicant : Mr. A.K. Trivedi, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

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

ORDER

OA 849/2018

This original application has been filed invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 by the widow of Late GNR Suresh Kumar seeking grant of Special Family Pension wef the date of death of her husband.

BRIEF FACTS

2. The applicant is the widow of Late GNR Suresh Kumar who was enrolled in the Indian Army on 10.01.1986 and after completion of mandatory military training, was posted to Light Air Defense Regiment (composite). While serving, he was admitted in General Hospital on 07.10.1995 with complaints of fever and generalized weakness. After being diagnosed with

"Acute Myeloid Leukaemia (M1 Fab Classification) (Relapse), he was transferred to Army Hospital, Delhi Cantt on 05.11.1995. He was discharged from the Army Hospital on 13.12.1995 alongwith 28 days of Sick Leave wef 14.12.1995 to 10.01.1995. On joining back, while undergoing treatment at Army Hospital he died on 14.02.1996 due to "**Acute Myeloid Leukaemia**". As per AFMSF-93 (Part II) (Certificate of Attributability) dt. 10.05.1996, the death of individual was due to malignancy hence considered as "Neither Attributable nor Aggravated" (NANA) by Military Service. Ordinary Family Pension was granted to the applicant vide PPO No. F/NA/150/97 dt. 14.02.1997 by PCDA(P) Allahabad. The claim of the applicant for Special Family Pension was rejected by PCDA(P) Allahabad vide letter dt. 20.01.1997 and subsequently on 26.11.2001, on the ground that the death of the applicant's husband was 'neither attributable nor aggravated' (NANA) to service condition and had no causal connection with military service.

CONTENTIONS OF THE PARTIES

3. According to the applicant, she is entitled for grant of Special Family Pension, in view of Regulation 213 of the Pension Regulations of the Army 1961.

4. Placing reliance on judgment of the Hon'ble Supreme Court **Dharamvir Singh** Vs. **Union of India and Ors.** [(2013) 7 SCC 316], it is argued that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary, to be a consequence of military service. It is urged that as the applicant's husband suffered the said disease of "**Acute Myeloid Leukaemia**" during his service, hence the same is attributable to service conditions. Further, reliance is placed on AFT (PB) order dt. 04.10.2013 in OA No. 327/2011 **Smt. Seema Devi** v. **Union of India & Ors.** in OA 254/2015 **Smt. Pooja Samyal** Vs **Union of India & Ors.** and AFT (RB), Chandigarh in OA 526/2021 **Smt. Mishri Devi** Vs **Union of India & Ors.**

5. Though the applicant claims that she had earlier filed appeal dt 11.05.2017 and legal notice dt. 16.01.2018 but the same is denied by the respondents. It is submitted that the individual namely, the applicant's husband was admitted to the Army Hospital and died on 14.02.1996 during treatment on account of "**Acute Myeloid Leukaemia (M1 Fab Classification) (Relapse) and Neutropaenic Sepsis**", which being a case of malignancy considered as 'neither attributable

nor aggravated' due to service condition by the medical authority, hence there is no causal connection between the disability of the applicant and the military duty.

Analysis

6. 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?'

7. A perusal of the Policy with regard to payment of Special Family Pension governed under Part III Para 5.1 of the Government of India, Ministry of Defence letter dated 31.01.2001 (applicable to Armed Forces Personnel who were in service on 01.01.1996 and thereafter), read in conjunction with Regulation 213 of the Pension Regulations for the Army, 1961 (Part-I). Para 5.1 of the said policy letter, dated 31.01.2001, is reproduced below for ready reference:-

**"PART III - FAMILY PENSIONARY BENEFITS IN
ATTRIBUTABLE/ AGGRAVATED CASES**

5. Special Family Pension (SFP)

"5.1 In case of death of an Armed Forces Personnel, under the circumstances mentioned in category "B" or "C" of Para 4.1, Special Family Pension shall continue to be admissible to the families of such personnel under the same conditions as in force hithertofore."

"213. 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 military service. OR***
- (b) the aggravation by military service of a wound, injury or disease which existed before or arose during military service."***

8. 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 Para 4.1 on PENSIONARY BENEFITS ON
DEATH/DISABILITY IN ATTRIBUTABLE/
AGGRAVATED CASES** is also reproduced below:-

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:

x x x x x -----

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 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 organised sports events/adventure activities/expeditions/training.***

9. From the perusal of the aforesaid policy with regard to Special Family Pension, it is apparent that the case of the applicant did not fall in any of the Provisions, and Rules & Regulations governing the grant of Special Family Pension reproduced earlier. Looking to the facts we do not find any causal connection of the death of the applicant's husband with the military service.

10. In so far as the attributability or aggravation is concerned which was considered to be 'NANA' by the AFMSF-93 (Part II) (Certificate of Attributability) dt. 10.05.1996, it is pertinent to mention that in the instant case the applicant suffered from the said disability of "**Acute Myeloid Leukaemia (M1 Fab Classification) (Relapse) and Neutropaenic Sepsis**" and Chapter VI Para 8 & 32 of the GMO (MP) 1980 is reproduced below:

Cancer

8. Cancer is one of the diseases regarded as usually unaffected by the ordinary conditions of service. While its precise cause is still unknown, there is adequate material both of scientific and statistical nature available to exclude all ordinary conditions of service as being a causative factor and entitlement is not normally conceded. Cancer cases arising in service will be dealt with as follows. In certain types of cancer cases arising in service, however, entitlement of attributability may be appropriate, e.g.:-

(a) (i) Cancer of the colon where ulcerative colitis has been accepted as due to service,

(ii) Cancer of the liver arising in hepatic cirrhosis accepted as due to service.

(iii) Cancer of stomach where pre-existing chronic gastric ulcer has been accepted as due to service.

(iv) Rodent ulcer where there is evidence of long continued exposure to strong sunlight and this is accepted as a service factor.

(v) The question of a relationship between a malignant condition and an accepted injury may occasionally be difficult to answer and the following considerations should always be borne in mind

- The chances of carcinoma occurring spontaneously in any given site or organ should always be taken into account.
- In great majority of cases of cancer, no significant history of injury; or specific forms of chronic irritation, can be found.
- The vast majority of traumatic lesions, however severe show no tendency to be followed by cancer. either immediately or remotely. There is no evidence that the passage of a projectile through lung, liver or hollow viscus is likely to be followed by the development of cancer at the site of the injury.
- There is no statistical evidence that fractured bones are more liable to sarcoma than others, but see below
- There is evidence that exposure to radioactive substances may induce malignant changes.
- There is some evidence to suggest that where an injury has resulted in a chronic proliferative fibrosis a neoplasm may develop in that site.

- (b) *While no precise rules can be laid down for attributing the development of a malignant neoplasm to previous injury, the following criteria afford a basis for decision:-*
- (i) *The cancer/sarcoma must arise at the exact site of injury.*
 - (ii) *It must be a severe injury.*
 - (iii) *In the absence of sepsis, the cancer/sarcoma should develop or be clinically recognisable in a period of time not exceeding one year after such injury.*
- (c) *Aggravation can only be accepted if it is certified that the malignant condition existed before or arose during service and has been worsened by service factors, e.g. by delay in diagnosis or by inadequate treatment resulting from the exigencies of service.*

Leukemia

32. *Leukemia is a malignancy of the lymphatic and haemopoietic system. It occurs in two forms, chronic and acute depending upon the clinical course. Aetiologically leukemia can be related to the effects of radiation and in certain cases viral origin is strongly suspected. Ionising radiation from natural sources (cosmic radiation and the disintegration of naturally radioactive particles) is of such low intensity that it exerts no significant effect on the body. On the other hand, exposure to man-made ionising radiations arising mainly from nuclear explosions, radioactive isotopes and X-rays may give rise to certain forms of cancer and other ill effects. The commonest of these are myelogenous and monocytic leukemia, aplastic anaemia, cancer of the skin, cataracts and radiation nephrosis. The time limit for the onset of these conditions after exposure is not accurately known. It has been found that after the atomic explosions in Japan there was a fall in the incidence of leukemia after 10 years but, in cancer cases, an average latent period of more than 10 years has been noted.*

Claims usually arise on the following grounds.

- (a) *where an individual claims that he was in the vicinity of nuclear explosion;*
- (b) *where exposure as an occupational hazard is claimed;*
- (c) *where ill effects of radiotherapy or diagnostic X-rays for a condition related to service is claimed.*

Such claims should be considered as follows.

(a) in such cases it is necessary to obtain full details from service diaries etc, of the individual's proximity to the explosion, whether he wore protective clothing and whether he was issued with a 'Film badge' which would record any exposure to a dose of nuclear radiation.

(b) these claims commonly arise from workers on contaminated aircraft etc and for consideration of the claim full details are required.

(c) In cases of leukemia claims may arise in the following circumstances:-

(1) X-ray therapy for ankylosing spondylitis,

(2) radioactive phosphorus therapy for polycythaemia. or

(3) repeated diagnostic X-rays for pulmonary tuberculosis or peptic ulcer.

In each case it is necessary as far as possible to ascertain the frequency and site of exposure, the total dosage and interval of time between exposure and the onset of symptoms.

11. Admittedly, the individual died of **“Acute Myeloid Leukaemia (M1 Fab Classification) (Relapse) and Neutropaenic Sepsis”**, which is a malignant condition and has no causal connection to the service condition, hence case of ‘NANA’. As per the available scientific literature published by American Cancer Society vide <https://www.cancer.org> states that the cause of Chronic Myeloid Leukaemia is due to chromosomal abnormality, which develops during cell division and when the DNA swaps between two types of chromosomes, which in our considered view supports the reasoning provided

in AFMSF-93 (Part II) (Certificate of Attributability) dt. 10.05.1996.

12. The reliance placed by the applicant on the judgment rendered by AFT (PB) in the case of **Smt. Pooja Samyal** (Supra) and AFT (RB), Chandigarh in the case of **Smt. Mishri Devi** (Supra) decided on the basis of the judgment rendered by AFT (PB) in the case of **Smt. Seema Devi** (Supra) wherein the benefit of the Special Family Pension was extended to the applicant is misplaced. The judgment is distinguishable in view of the non-similar facts of the present case. It is pertinent to note that in the aforementioned case the deceased husband of the applicant was posted to serve in areas involving operational hazards and detailed in connection with the counter insurgency operations in Jammu and Kashmir involving professional stress and strain, which could be in such circumstances a cause for aggravation of malignancies. Moreover, the deceased husband of the applicant was suffering from Cancer (Carcinoma Lungs), a malignancy aggravated to service as per reasons described in Clause 10 and 11 of Guide to Medical Officers (Military Pensions).

13. In the instant case, neither the medical documents nor service profile is available on record. It being very old case, the respondents could only produce the long roll which does not clarify under which circumstances Late GNR Suresh Kumar suffered this disease. There is nothing on record to suggest that the disability "**Acute Myeloid Leukaemia (M1 Fab Classification) (Relapse) and Neutropaenic Sepsis**" has been arisen due to X-ray therapy, radioactive therapy or due to repeated diagnostic X-ray.

14. In the absence of any record that the said disability has been caused due to service conditions, we are constraint to hold that the disease **Acute Myeloid Leukaemia (M1 Fab Classification) (Relapse) and Neutropaenic Sepsis**" has no causal connection with the military duty and also does not fulfill any of the conditions mentioned in aforestated GMO (MP) hence 'NANA'.

15. 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 under the provisions of Regulation 213 of Pension Regulations for the Army 1961, the

widow (applicant) of the deceased soldier is not eligible for grant of Special Family Pension.

16. In view of the aforesaid, the OA stands disposed of.

17. No order as to costs.

Pronounced in the open Court on this 11th November, 2025.

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

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

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