

**COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 876/2022

Smt. Anita Devi
Wd/o, Ex Sep Narender Singh ... **Applicant**
Versus
Union of India & Ors. ... **Respondents**

For Applicant : Mr Shakti Chand Jaidwal, Advocate
For Respondents : Ms. Theepa Murugesan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 21(2)(b) of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and has made the following prayers:

- (a) Call for the relevant records of Applicant's husband and after perusal thereof, direct the Respondents to grant Special Family Pension to her from the date of the death of her husband i.e. 03.07.2014 in terms of Regulation 213 of PRA, 1961 read in conjunction with Rule-11(a) of the Entitlement Rules-1982, since her husband has expired within 10 years from the date of his invalidment from service;*
- (b) Direct the Respondents to pay interest to the Applicant on arrears of Special Family Pension @ 10% p.a. wef 03.07.2014 and/or.*
- (c) Pass such other order as may be deemed fit and proper in the facts and circumstances of the case.*

Brief Facts of the Case

2. The applicant's spouse Ex Nk Narender Singh (No. 10467506W) was enrolled in the 102 Infantry Battalion Territorial Army on 27.02.2001 and subsequently invalided out from service on 23.05.2008 on account of disablement "STROKE (RT) BASAL GANGLIA BLEED" @ 100% for life, attributable to military service.

3. The applicant's spouse passed away on 02.07.2014 at his home. Hence, the applicant was granted a family pension at enhanced rates for seven years from the date of her spouse's death i.e. @ INR 6015/- from 03.07.2014 to 31.12.2015 and @ INR 15459/- from 01.01.2016 to 02.07.2021. Thereafter, the applicant was granted an Ordinary Family Pension @ INR 9276/- for life. As the applicant's spouse passed away within 10 years from the date of release from service, the applicant filed the present OA praying for a Special Family Pension.

Arguments by the counsel for the Applicant

4. It is the case of the applicant that as the applicant's spouse passed away in 6 years 01 month and 10 days i.e. within 10 years of being invalided out from the service, the death of the applicant's spouse is attributable to the disability of "STROKE (RT) BASAL GANGLIA BLEED" @ 100% for life, caused during the service of

the applicant's spouse, thereby entitling the applicant to Special Family Pension @INR 7218/- from 03.07.2014 to 31.12.2015 and @ INR 18551/-from 01.01.2016 onwards for life, which the respondents have denied.

5. Learned counsel submits that the Pension Regulations for the Indian Army are equally applicable to the Territorial Army personnel. Therefore, the respondents have grossly erred by granting Enhanced Family Pension/ Ordinary Family Pension to the Applicant herein, instead of Special Family Pension.

6. Reliance is placed by the applicant on Regulation 213 of Pension Regulations for the Army (Part-1), 1961 read with Rule-11(a) of Entitlement Rules 1982, which makes the applicant eligible for a grant of Special Family Pension, since her husband's death was hastened by a disability which was attributable to military service.

“213 of PRA (Part-1) 1961- 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.”

“11 (a) of Entitlement Rules 1982- the benefit of doubt in determining attributability should go to the family of the deceased if death occurs within 10 years from the date of his invalidment from service unless there are other factors which adversely affecting the claim”

It is further submitted by the applicant that even in the absence of any medical opinion as to the cause of death of the applicant's spouse, the applicant is entitled to the benefit of doubt in terms of Rule 11(a) of the Entitlement Rules-1982.

7. It is contended by the applicant that the death certificate dated 04.12.2018 issued by the Local Administration i.e. Gram Panchayat- Dhaliara, Tehsil-Dehra, District-Kangra (HP), substantiates the fact that the death of the applicant's spouse was natural because of the disability from which he was suffering and there was no foul play in his death.

8. Strong reliance has been placed upon the judgment of this Hon'ble Tribunal in OA 666/2010 Smt Rajbala v. UOI dated 09.09.2011, the facts of which superimpose the facts of the present matter wherein SFP was granted to the widow of the deceased without a certificate from the hospital as to the disease which caused the death.

Arguments by the counsel for the Respondents

9. Per Contra, the learned counsel for the respondents submit that as per PCDA (P), Prayagraj Circular No 440 dated 26.08.2010, certain medical documents are required from the widow of the deceased soldier (to establish the cause of death of the deceased soldier), followed by the adjudication by the Competent Authority

and processing the applicant's case to PCDA (P), Prayagraj for grant of Special Family Pension in her favour.

10. The respondents vehemently deny the argument w.r.t error in granting Enhanced Pension/Ordinary Family Pension stating that the respondents are duty bound to implement the policies promulgated by the Government of India, Ministry of Defence, and the applicant cannot be granted the desired relief by ignoring the rules and regulations, and the applicant has been granted an Ordinary Family Pension by her Pension Disbursing Agency, which is just and legal as per policy.

11. Learned counsel submits that as per **Para 8 (b)** of Entitlement Rules to Casualty Pensionary Awards, 2008-

"In cases where an individual in receipt of a disability pension dies within a period of 7 years from the date of release/retirement, may be considered to have died of the disease for which he was granted disability pension if it can be so established by the competent medical authority. If the medical certificate as to the cause of the death is not available, other factors and circumstantial evidence would be taken into account"

The above is read in conjunction with PCDA (P), Prayagraj Circular No 440 dated 26.08.2010.

12. The respondents further argue that the applicant had submitted a letter dated 30.11.2018 to The Punjab Regiment (Records), for the grant of Special Family Pension that her spouse

Ex-Sep (Late) Narender Singh (No. 10467506W) died on 02.07.2014, which was suitably replied vide The Punjab Regiment (Records) letter No 10467506/FP/Pen dated 29.12.2018 with the advice to the applicant to forward the requisite medical documents for adjudication by the Competent Authority and further processing of claim to PCDA (P), Prayagraj for grant of Special Family Pension. However, the applicant did not provide the requisite documents and forwarded another petition No NS/SFP/01/21 dated 31.08.2021 addressed to the Additional Directorate General of Personnel Services (PS-4) with a copy to the Punjab Regiment (Records). In response, the Punjab Regiment (Records) vide letter No 10467506/FP/P dated 12.01.2022 again advised the applicant to forward the documents as requested earlier for processing her case with PCDA (P), Prayagraj. As the eligibility of the applicant for the grant of Special Family Pension will only be decided on the basis of documents being provided by her, the OA filed by the applicant is devoid of merit.

Consideration

13. Having heard the learned counsels for both the parties and on a perusal of the material placed on record, we find that the limited question for adjudication herein is whether

the applicant is entitled to grant of Special Family Pension or not as per the policy in vogue ?

14. Before advertent to rival submission, since the applicant was invalidated out from service on 23.05.2008, we find it pertinent to refer to relevant Para 8 of Entitlement Rules for Casualty Pensionary Awards, 2008, dealing with the Post Discharge Claim, which reads to the effect:

8. Post discharge claims:

(a) Cases in which a disease was not present at the time of the member's retirement/discharge from service but arose within 7 years thereafter, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.

(b) In cases where an individual in receipt of a disability pension dies within a period of 7 years from the date of release/retirement, may be considered to have died of the disease for which he was granted disability pension if it can be so established by the competent authority. If the medical certificate as to the cause of the death is not available, other factors and circumstantial evidence would be taken into account.

15. A cursory look at the aforesaid Para 8(b) makes it clear that if an individual is in receipt of disability pension, and he dies within 7 years from the date of release, he may be considered to have died of the disease for which he was granted disability pension. We note that the applicant in this case has been invalidated out on 23.05.2008 for a disability held to be 'attributable to service', and had been granted disability pension. Subsequently, he

passed away on 02.07.2014 which is within the 7 year criteria laid down by the aforesaid rule.

16. However, the aforesaid Para 8(b) provides for an overriding condition, which clarifies that it has to be established that the death may have been caused by the disability for which an individual was being granted a disability pension, and in case of non-availability of a medical certificate, other factors and circumstantial evidence would have to be considered.

17. We observe that in the absence of Post Mortem Report, it is unclear to establish the cause of death. Thus, we now proceed to examine the other factors and circumstantial evidence on record, wherein we find that the Death Certificate issued by Department of Health & Family Welfare, Government of Himachal Pradesh, dated 08.03.2021, records the date of death as 02.07.2014.

18. At this point, we find it pertinent to note that the applicant was invalidated out for the disability - "STROKE (RT) BASAL GANGLIA BLEED" @100%, and he was granted Constant Attendant Allowance alongside the Disability Pension, which clearly shows that the applicant was suffering from an ailment which was severe in nature, and the same has been supported by the Release Medical Board that the applicant will require attendant for life long.

19. We have further perused the Certificate issued by the Gram Panchayat dated 04.12.2018 placed at Annexure A-4, bearing signatures of the Sarpanch as well as Station House Officer, wherein on a perusal of the statement of Sarpanch, we find that the cause of death has been recorded as 'Long illness (Paralysis)', and there has been no dispute on the same by the Respondents. It can be fairly presumed that the paralysis was a consequential effect of the disability with which the applicant was invalided out. Additionally, vide additional affidavit dated 04.12.2024, applicant has filed a 'Medical Record Slip' of 'Nanda Nursing Home' signed dated 27.06.2014, which records as under:

"Mr. Narender Singh is suffering from Right Basal Ganglia Hemorrhage (Paralysis). He is under treatment in Nanda Nursing Home from 15.08.2008 to 27.06.2014."

20. Even otherwise, we find it essential to note that the applicant shall not be called upon to prove the condition of entitlement, as per Para 7 of the **Entitlement Rules 2008**, reproduced as under:

7. Onus of Proof:

Ordinarily, the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement /invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove of the entitlement would lie on the claimant.

21. Thus, on a consideration of aforesaid factors, and perusal of aforesaid records, we have no hesitation to hold that in view of the

presumption lying in the favour of the applicant and in absence of any contrary record to the effect, the death of the applicant has to be held to be caused by the disability/invaliding disease of the applicant.

22. Moving on to examine the prayer for grant of Special Family Pension, we find it pertinent to refer to Para 105(a) of the Pension Regulations for the Army (Part-I) 2008, reproduced as under:

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

23. It is clear from the perusal of the aforesaid Para 105(a) that Special Family Pension can be granted in cases wherein the death of the personnel has been hastened by a wound, injury or disease which was attributable to the military service, which in the instant case stands fulfilled as the invaliding disability of the applicant has been held to be attributable to the military service by the Release Medical Board, and the death has been held to be hastened by the aforesaid invaliding disability.

24. In light of the above observations, we are of the considered opinion that the applicant is entitled to grant of Special Family Pension w.e.f. the date of death of her husband i.e. 02.07.2014. However, the arrears of Special Family Pension shall be restricted to three years prior to the date of filing of OA. [Date of filing of OA: 13.04.2022]

25. Respondents to give effect to the aforesaid order within a period of three months from the date of pronouncement of this order. Default will invite interest @ 8% per annum till actual payment.

26. Consequently, the O.A. 876/2022 is allowed.

27. Pending miscellaneous application if any, also stands disposed of.

28. No order as to costs.

Pronounced in the open Court on 21st day of April, 2025.

JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P. MOHANTY)
MEMBER (A)

/Akc