

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

OA 4667/2024 with MA 4842/2024

Smt Nanu Widow of Sep(Late) Kurda Ram Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Sukhbir Singh, Advocate
For Respondents : Mr. R. S. Chillar, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 4824/2024

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 in filing the OA.

2. The MA stands disposed of.

OA 4667/2024

3. In this O.A filed under Section 14 of the Armed Forces Tribunal Act 2007, the applicant, widow of Sep Kurda Ram, who died of heart attack while on sick leave, is seeking the following reliefs:

(a) Quash and set aside the impugned letter No. 6480443/Task-1/FP dated 06.12.2023;

(b) Direct the respondents to treat the death of husband of the applicant as attributable to/ aggravated by military

service and grant Special Family Pension to the applicant from the date of death of her husband along with interest @ 12% per annum; and

(c) Grant any other relief which this Tribunal may deem fit and proper in the facts and circumstances of the case along with cost against the respondents.

4. The facts of the case, as discernible from the records, are that the husband of the applicant late Kurda Ram was enrolled in the Army on 30.05.1963 for a term of engagement of 15 years in colour service and 02 years in reserve liability. While serving with 90 ASC Battalion, he was admitted to Military Hospital, Jullundur Cantt on 23.11.1978, where he was diagnosed with Angina Pectoris. He was discharged from the hospital on 08.12.1978 and granted sick leave. During the period of such sick leave, he suffered a heart attack and expired on 01.01.1979. The applicant is presently in receipt of Ordinary Family Pension. It is her case that her husband had been deployed in counter-insurgency operations and active field areas, including participation in Operation Ablaze, Operation Riddle and the wars of 1965 and 1971. He is stated to have served in counter-insurgency operations from 25.04.1965 to 06.06.1976 under conditions of considerable stress and strain associated with military service. It is further stated that having been under medical treatment for a cardiac condition and having been directed to report back to the Military Hospital after availing sick leave, his death during the said period establishes a causal

connection with military service. However, the claim of the applicant for grant of Special Family Pension was rejected by the PCDA (Pensions), Allahabad vide letter dated 08.01.1980 on the ground that the death was neither attributable to nor aggravated by military service. The said decision was communicated to the applicant with an option to prefer an appeal within six months. Subsequently, the applicant's appeal for grant of Special Family Pension was again rejected by the respondents vide the impugned letter dated 06.12.2023 reiterating that the case did not involve a wound, injury or disease attributable to or aggravated by military service. Hence, the present Original Application.

5. Learned counsel for the applicant contends that the rejection of the applicant's claim for grant of Special Family Pension is arbitrary, illegal, and unsustainable in law. It is submitted that the husband of the applicant died of a heart attack on 01.01.1979 while on sick leave, immediately after being discharged from the Military Hospital, where he had been undergoing treatment for a cardiac ailment. Therefore, the finding of the PCDA (P), Allahabad that the death was neither on account of a wound, injury, nor a disease attributable to or aggravated by military service is erroneous and untenable. In support of his submissions, reliance is placed on Regulation 213 of the Pension Regulations for the Army 1961, which provides that Special Family Pension may be granted to the family of an

individual if the death was caused by or hastened due to: (a) a wound, injury or disease 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. It is further argued that the deceased was under active medical treatment in a Military Hospital and was granted sick leave by the medical authorities, not as a matter of routine leave, but as part of the course of treatment, with specific directions to report back after the expiry of the leave. This, according to the learned counsel, clearly establishes a direct causal connection between the military service and the condition leading to his death. Consequently, it is contended that the death ought to be treated as attributable to or aggravated by military service, thereby entitling the applicant to Special Family Pension. In support of the aforesaid contentions, reliance is placed on the following decisions:

- (i) *Mahavir Kaur, W/o late Sgt Yash Pal Singh v. Union of India and others* (O.A No. 1604 of 2017, AFT, PB, New Delhi decided on 01.04.2024);
- (ii) *Sumitra Devi v. Union of India and others* (O.A No: 1850 of 2018, AFT, RB, Chandigarh decided on 27.07.2023); and
- (iii) *Rekha Devi, W/o late Gdsm Ashok Kumar Mahkey* (O.A No. 174 of 2022, AFT, RB, Lucknow decided on 03.03.2023).

6. Per contra, learned counsel for the respondents, rebutting the contentions advanced on behalf of the applicant, submits that a detailed counter affidavit has been filed setting out the factual

and legal position. It is contended that in terms of Regulation 213 of the Pension Regulations for the Army, 1961 (Part I), Special Family Pension is admissible only where the death of an individual is caused by or hastened due to a wound, injury, or disease attributable to, or aggravated by military service. In the present case, it is submitted that the husband of the applicant died of a heart attack on 01.01.1979 while on leave and there exists no causal connection between his death and military service. It is further contended that he was not performing any official duty at the time of his death. Accordingly, the competent authority rightly concluded that the death was neither attributable to nor aggravated by military service, thereby disentitling the applicant from the grant of Special Family Pension. It is also pointed out that the applicant approached the ASC Records (South) through the CPGRAM portal after an inordinate delay of more than 44 years seeking grant of Special Family Pension and the same was duly considered and rejected by the competent authority vide the impugned Annexure A1 letter. Learned counsel for the respondents, therefore, submits that there is no illegality or irregularity in the action of the respondents in rejecting the claim of the applicant. It is further submitted that the applicant is already in receipt of Ordinary Family Pension.

7. We have given our thoughtful consideration to the rival submissions and have carefully examined the material placed on

record and, in our considered opinion, the sole question that arises for consideration is, whether the applicant is entitled to Special Family Pension in circumstances where her husband died while on sick leave, subsequent to his discharge from the Military Hospital.

8. The entitlement of the applicant to Special Family Pension is required to be assessed in the light of Regulation 213 of the Pension Regulations for the Army, 1961 (Part I), which provides that Special Family Pension is admissible where the death of an individual is caused by or hastened due to a wound, injury or disease attributable to or aggravated by military service. In the present case, it is not in dispute that the husband of the applicant was admitted to a Military Hospital on 23.11.1978 and was diagnosed with Angina Pectoris, a serious cardiac condition. It is also an admitted position that he was discharged from the hospital on 08.12.1978 and was granted sick leave with directions to report back to the hospital upon its expiry. The grant of sick leave in such circumstances cannot be equated with ordinary leave, as it forms a continuation of medical management and treatment under the supervision of military authorities. The fact that the deceased was on sick leave at the time of his death assumes considerable significance. Sick leave is not a voluntary absence from duty but is necessitated by a medical condition arising during service. The individual continues to remain under

the purview of military discipline and medical supervision and his condition cannot be dissociated from service merely because he is not physically present at the place of duty. Therefore, the contention of the respondents that the deceased was not performing official duties at the time of death is of little consequence in determining attributability.

9. The sequence of events clearly establishes that the deceased was suffering from a cardiac ailment while in service, for which he was undergoing treatment in a Military Hospital and that he died shortly thereafter on account of exigency of service during the period of sick leave. The proximity between diagnosis, treatment and death lends credence to the applicant's contention that the death was causally connected with the disease detected during service. There is nothing on record to suggest that the disease was of such a nature as to be wholly unrelated to the conditions of military service. It is also relevant to note that the deceased had rendered long years of service, including deployment in active field areas and participation in counter-insurgency operations as well as the wars of 1965 and 1971. Such service, by its very nature, involves exposure to stress, strain and adverse conditions, which are recognised factors contributing to cardiac ailments. In the absence of any material to the contrary, it would be reasonable to infer that the disease

either arose during service or was aggravated by the conditions thereof.

10. The approach to be adopted in such cases has been consistently liberal and beneficial, keeping in view the object of pensionary provisions, which are intended to provide social and economic security to the families of deceased service personnel. Once it is shown that the disease manifested during service and led to death within a proximate period even if on leave (in the case such leave there is no question of any doubt that the same was attributable to service or not; even if same doubt has been injected, the benefit of reasonable doubt must go in favour of the claimant. The rejection of the applicant's claim by the respondents appears to be based on a narrow and technical interpretation of the requirement of attributability without due regard to the surrounding circumstances, particularly the fact that the deceased was under active medical treatment and had been granted sick leave as part of such treatment. The conclusion that the death had no causal connection with military service is, therefore, not supported by a holistic appreciation of the facts.

11. In view of the foregoing, we are of the considered opinion that the death of the husband of the applicant having occurred due to a cardiac ailment diagnosed and treated during service and culminating in death during sick leave must be held to be attributable to and aggravated by military service within the

meaning of Regulation 213 of the Pension Regulations for the Army, 1961 (Part I).

12. Consequently, the O.A succeeds and Annexure A1 is set aside. The respondents are directed, to grant Special Family Pension to the applicant with effect from the date of death of her husband, i.e., 01.01.1979. It is made clear that while effecting payment, the respondents shall adjust the amount already paid towards Ordinary Family Pension and only the differential amount between the Ordinary Family Pension and the Special Family Pension shall be payable to the applicant for the aforesaid period.

13. No order as to costs.

Pronounced in Open Court on this ^{AK} 6 day of April, 2026.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[RASIKA CHAUBE]
MEMBER (A)

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