

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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OA 886 of 2016

Smt Swarn Lata Sharma	Applicant
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Navdeep Singh, Advocate
For the Respondent(s) :	Mr Vikas Sharma, Sr PC

CORAM:

HON'BLE MR JUSTICE BANSI LAL BHAT, MEMBER (J)
HON'BLE LT GEN SANJIV CHACHRA, MEMBER (A)

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ORDER

30.08.2017

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By means of this O.A., filed under Section 14/15 of the Armed Forces Tribunal Act, 2007, the applicant, who is the widow of late JWO Pankaj Kumar Sharma, has prayed that the impugned letters, dated 28.8.2014 and 29.2.2016, placed on record as Annexures A-14 (collectively) as well as that part of the attributability certificate (Annexure A-11) wherein the death of her husband has been opined as neither attributable to, nor aggravated by military service without assigning any reason, may be quashed and set aside with a direction to the respondents to grant Special Family Pension to her w.e.f. 21.03.2013.

2. Brief facts of the case are that late husband of the applicant was enrolled in the Indian Air Force on 21.4.1988 in medical category SHAPE-I (AYE) and served in various peace, field and high altitude areas during service. While posted in Shillong in June 2006, the late husband of the applicant started pain in lower abdomen. On examination, a large tumour was revealed arising from the ileum and was diagnosed as a case of malignant “**METASTATIC GASTROINTESTINAL STROMAL TUMOR ILEUM**” (cancer). Thereafter, he underwent exploratory surgeries and remained under treatment for the ailments. However, the disease progressed despite treatment and, ultimately, he succumbed to illness on 20.3.2013 while in service.

3. The present O.A. has been filed by the applicant as the respondents have denied grant of Special Family Pension to her on the ground that the

disability/ disease of her late husband was neither attributable to, nor aggravated by service being '*constitutional*' in nature as per Annexure A-11 even though, otherwise, the claim is squarely covered under the Entitlement Rules and the judgments (Annexures A-1 to A-7) in the following cases:-

- (i) **Civil Appeal No.4949/2013, Dharamvir Singh vs. Union of India, decided on 02.07.2013;**
- (ii) **Civil Appeal No.2337 of 2019, Union of India vs. Chander Pal, decided on 18.09.2013;**
- (iii) **Civil Appeal No.5605 of 2011, Sukhvinder Singh vs. Union of India, decided on 25.06.2014;**
- (iv) **Civil Appeal No.2904 of 2011, Union of India vs. Rajbir Singh, decided on 13.02.2015;**
- (v) **Civil Appeal No.11208 of 2011, Union of India vs. Angad Singh Titaria, decided on 24.02.2015;**
- (vi) **Civil Appeal Nos.4357-4358 of 2015(arising out of SLP © No.13732-13733 of 2014), Union of India vs. Manjeet Singh, decided on 12.05.2015; and,**
- (vii) **WP(C) 5900/2013, Sneh Lata vs. Union of India, decided on 11.11.2014.**

4. Admitted case of the respondents in the written statement is that the husband of the applicant died while in service due to '**METASTATIC GIST ILLEUM**' and the name of the applicant has been recorded as the '*next of kin*' of the late member of the Armed Forces who has been granted ordinary Family Pension as the cause of death of her husband has been held as neither attributable to, nor aggravated by service. The appeals made by her against non-grant of Special Family Pension stand rejected.

5. Heard the learned counsel for the parties and perused the record.

6. Besides the plea that the case is fully covered by the judgments relied upon in the O.A., learned counsel for the applicant canvassed that the claim also deserves to be allowed in view of sub-clause (a) of Rule 20 and Rule 21 of Entitlement Rules for Casualty Pensionary Awards, 1982, which are reproduced below:-

“20. Conditions of Unknown Aetiology: There are a number of medical conditions which are of unknown aetiology. In dealing with such conditions, the following guiding principles are laid down:-

(a) If nothing at all is known about the cause of the disease and presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded.

(b) xxx xxx xxx.”

“21. The question as to whether, through the exigencies of service, the diagnosis and/ or treatment of the wound, injury or disease was delayed, faulty or otherwise unsatisfactory, including the adverse/ unforeseen effects of treatment, shall also be considered. **The entitlement for any ill-effects arising as a complication from such factors shall be conceded as attributable.”**

The learned counsel also referred to clause (f) under Para 9 of the Guide to Medical Officers (Military Pension), 2002, in which it is provided that **“Stress and strain of services is something unique and has now been documented in initiating certain cancers in human beings.”** with the exception given in Para 12 of the Medical Guide in case of tobacco related cancers in smokers and tobacco users, cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome is identified which is not the case herein.

7. Still further, reference is made by the learned counsel for the applicant to Para 7 of the judgment of the Delhi High Court in the case of *Sneh Lata* (supra), which is reproduced below:-

“7. The medical report which has been produced by the respondent during the course of the hearing in the present matter is an opinion given by the medical officer taking a view that the son of the petitioner had a case of ‘malignant mesothelioma’ and the said disease is not attributable to and aggravated by the military service. **We find that the said Medical Officer has not given any reasons as to how the**

said disease cannot be held to be attributable to and or aggravated by the military service considered the fact that there was no note of any kind of such disability at the time of his entering into the Army. We also find non applicability of Clause 12 of the Chapter VI, Guide to Medical Officers, 2002 and the Amendments of 2008, which primarily deals with the type of cancers due to the consumption of tobacco and from the medical documents placed on record by the respondent, the case of the petitioner's son is not of that kind."

8. Addressing arguments on the above lines the learned counsel stressed that the claim of the applicant for Special Family Pension deserves to be allowed on the following grounds:-

- (a) Attributability in the type of cancer, suffered by late husband of the applicant and due to which he succumbed, is to be conceded;
- (b) The surgeries performed in this case are admitted and so its ill-effects;
- (c) Despite ill health and being in Low Medical Category, late husband of the applicant served for long seven years, hence, aggravation due to service has to be admitted; and,
- (d) The case is squarely covered by Dharamvir Singh's case (supra) as well as the other cases relied upon in the O.A.

9. On the other side, learned counsel for respondents argued that applicant's husband was never posted in high altitude area for duty. The plea that the cancer suffered by him was contracted and was attributable to his parasailing and paragliding jobs is also not tenable as such activities form part of adventurous sports and not the duty. He suffered a constitutional disease, neither attributable to, nor aggravated by service. Hence the claim for Special Family Pension has rightly been rejected and the applicant has correctly been granted Ordinary Family Pension.

10. We have given due thought and consideration to the rival contentions of both sides and feel convinced with the contentions raised

by the learned counsel for the applicant. The reliance placed by the applicant on the judgment of the Hon'ble Supreme Court in Dharamvir Singh's case (supra) as well as the other cases, is found fully valid and justified. The principles laid down in that decision, which need no elaboration, stand reiterated by the Apex Court in Union of India & anr. vs. Rajbir Singh (Civil Appeal Nos. 2904 of 2011 etc.) decided on 13.02.2015; Union of India & Ors. vs. Angad Singh Titaria, Civil Appeal No.11208 of 2011, decided on 24.02.2015 followed by Union of India vs. Manjeet Singh, Civil Appeal Nos. 4357-4358 of 2015 (arising out of SLP(Civil) No.13732-13733/2014), decided on 12.05.2015. As per the observations made by the Apex Court in Rajbir Singh's case (supra) the legal position as stated in Dharamvir Singh's case (supra) is in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers.

11. We, therefore, allow the present O.A. The impugned letters as well as the impugned part of the attributability certificate, is hereby quashed and set aside and considering that the death of applicant's husband is attributable to and aggravated by service, a direction is issued to the respondents to grant Special Family Pension to the applicant w.e.f. 21.03.2013 in lieu of the ordinary Family Pension, already granted to her from the said date.

12. The respondents are further directed to calculate the arrears accrued to the applicant by virtue of the this order by drawing up a due and drawn statement and disburse the admissible amount to her in three months from the date of receipt of certified copy of this order, failing which, the amount shall carry interest @ 8% per annum from the date of this order, till the date of actual payment.

13. No order as to costs.

(Sanjiv Chachra)

Member (A)

30.08.2017

'bss'

(Bansi Lal Bhat)

Member (J)