

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

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MA 203 of 2017 and OA 1683 of 2016

Smt Anita Devi	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Surinder Sheoran, Advocate
For the Respondent(s) :	Ms Savita Chaudhary CGC

CORAM:

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

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ORDER
01.06.2017

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1. This application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed in which the petitioner has prayed for the following reliefs :-

- (a) Quashing of the impugned letters dated 16.07.1992 and 12.08.2016 vide which the respondents have rejected the claim of the petitioner.
- (b) Direction to the respondents to release Special Family Pension w.e.f. 11.10.1991 as the late husband of the petitioner died while on sick leave and the same is counted as on duty.

2. Shorn of the unnecessary details, the case of the applicant's husband Late Cfn Ranbir Singh joined Army service on 10.06.1987 and died on 10.10.1991 due to accidentally falling from the railing of the bridge. A court of inquiry was held and the death of the husband of the applicant was considered as attributable to military service as the accident of the individual was on duty. Accordingly claim for release of Special Family Pension was forwarded to PCDA (P) Allahabad but the same was rejected as the cause of death is

due to a disease which is neither attributable to nor aggravated by military service. However Ordinary Family Pension was sanctioned to the applicant w.e.f. 11 October 1991 vide PPO at Annexure R-4.

On notice the respondents have filed reply wherein the petition was opposed inter alia on the ground, that husband of the applicant, died due to an unnatural death and it has been considered as neither attributable to nor aggravated by military service and it has no causal connection with the military service. Special Family Pension is only granted in cases where the death is attributable/aggravated by military service as per Regulations 213 of the Pension Regulations for the Army 1961.

Heard learned counsel for the parties and perused the record.

On perusal of records and proceedings of the COI we find that the husband of the applicant was on duty with his unit and died due to accidentally falling from the railing of the bridge and accordingly the death has been considered as Attributable to Military Service. The counsel for the respondents referred to the the Govt of India, Ministry of Defence letter dated 31.01.2001 wherein entitlement of a person to get Special Family pension is provided for. Under the heading of Part II ***“Family Pensionary Benefits in Attributable/Aggravated”*** by military service under which para 5.1, which has been referred to by the learned counsel for the parties, is relevant to determine the entitlement of the petitioner to get Special Family Pension. For the sake of convenience the said paragraph is reproduced as follows :-

“In case of death of an Armed Forces Personnel under the circumstances mentioned in category ‘B’ or ‘C’ of para 4 above Special Family Pension shall continue to be admissible to the families of such personnel under the same conditions as in force hitherto. There shall be no condition of minimum service on the date of death for grant of Special Family Pension”

A bare reading of the aforesaid provision would show that it refers to various circumstances under which Special Family Pension for death may be awarded,. Four categories are enumerated therein but we reproduce category 'C' only as the case of the petitioner falls in Category 'C'. Para 4. reads as follows :

“Death or disability due to accidents in the performance of duties such as

- (i) Accidents while travelling on duty in Government
- (ii) Vehicles or public/private transport,
- (iii) Accidents during air journeys,
- (iv) Mishaps at sea while on duty,
- (v) Electrocution while on duty etc,
- (vi) Accidents during participation in organized sports events/adventure activities/expeditions/training”

Furthermore, as observed from the records based on the C of I and its approval from the competent authority, the EME Records forwarded this petitioner's claim (Annexure R-5) for grant of Special Family Pension, alongwith Certificate of Attributability (Annexure R-1) which has been signed and approved by the Competent Medical Authority giving out clearly “the cause of death is attributable to military service”. It is thus not understood how the PCDA has rejected the claim on the grounds of “No causal connection to military service.)

In view of the finding of the Court of Inquiry the death of the applicant's husband has been confirmed to be by an accident while on duty and thus attributable to military service is sufficient to negate the respondent's case. Interestingly, the respondents, in para 2 of their reply, have admitted and come out with the averments which adequately supports the case of the petitioner in that :-

“ it is pertinent to submit here that though the findings of court of inquiry, the accident occurred at unit location on duty and the cause of death of the individual has been considered as “ATTRIBUTABLE TO MILITARY SERVICE” she is not entitled for grant of Special Family Pension as the death of the individual has no causal connection with the performance of duty. Hence Special Family Pension claim was

rightly rejected by PCDA (P) Allahabad considering the death of individual as not attributable to military service. Further as per Rule 3 of Appendix II to Pension Regulations for the Army, 1961 (Part I) and corresponding Rule 8 of Entitlement Rules to the Casualty Pensionary Awards, 1982 (Extract attached as Annexure R6), clearly stipulates that attributability/aggravation shall be concede, if causal connection between death/disablement and military service is certified by the appropriate medical authorities. Thus, the death occurred in service, does not automatically become attributable to military service unless the circumstances lead to such death and the death has causal connection with military service. Hence, the action of the respondents in the case of the applicant in not granting Special Family pension is just, fair and according to laid down procedures.”.

We have taken note of the above averment which is contradictory, in that , while the cause of death by an accident while on duty is attributable to military service by the duly constituted Court of Inquiry and approved by the competent authority, the PCDA has rejected it on the grounds that the death is not attributable for want of a causal connection with military service, which we find without merit and hence cannot be accepted.

Under the facts and circumstances, we find force in the petition and hold the claim for grant of Special Family Pension which has wrongly been declined by the PCDA (P) Allahabad.

The petition is allowed. The respondents are directed to pay and release the Special Family pension to the petitioner w.e.f 11.10.1991. within three months from the date of receipt of certified copy of this order by the learned counsel for the respondents failing which the amount shall carry interest @ 10% per annum from the date of order.

The oral payer made at this stage for grant of Leave to Appeal to the Hon'ble Supreme Court stands declined as we are of the view

that no point of law of general public importance is involved in this decision.

(Sanjiv Chachra)

Member (A)

01.06.2017

* sns

(Bansi Lal Bhat)

Member (J)

The present petition has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the widow of late Nk Balbir Singh, who was enrolled in the Army on 02.01.1980 and has died during army service on 14th March, 1994, for grant of Special Family Pension.

2. The background facts may be noticed in brief:

The husband of the petitioner was admitted to 166 MH on 21st January, 1994 as a patient of severe anemia and thereafter he was transferred to Army Hospital Delhi for further treatment. At Army Hospital Delhi, he was diagnosed as suffering from ***“ACUTE MYELOID LEUKAEMIA”***. He was given treatment but ultimately expired on 14th March, 1994. The petitioner’s claim is that her husband was hale and hearty when he joined the Army; he suffered with the said disability during Army service while he was posted at different places of high altitude. His physical condition was deteriorated while in ‘OP RAKSHAK employment. She is getting Ordinary Family Pension but her claim for grant of Special Family Pension has been wrongly denied by the PCDA(P) Allahabad on the ground that the said disease is neither attributable to nor aggravated by military service.

3. The respondents have filed a reply and have come out with the case that even after meticulous treatment, the individual succumbed to his disease on 14th March, 1994 at Army Hospital Delhi Cantt. He had served the Army for 14 years, 2 months and 13 days and his widow has

been given the monetary benefits, as admissible under the law. They have also come out with the case that the cause of death of the deceased soldier i.e. **ACUTE MYELOID LEUKEMIA (M-2) 205'** and **'INTRACEREBAL HAEMORRAGE 431'** was assessed by the Medical authorities as neither attributable to nor aggravated by military service, disability being constitutional in nature. Thus, the petitioner is not entitled to the Special Family Pension.

4. Heard the learned counsel for the parties and perused the record.
5. The learned counsel for the petitioner submits that in view of the judgment in **OA No. 3663 of 2013 "Ram Parsad v. Union of India and others" decided on 23.04.2015**, a judgment of the Principal Bench in **OA No. 327 of 2011 "Smt. Seema Devi v. UOI & Ors"** decided on **01.10.2013** and **TA No. 372 of 2010** (arising out of CWP No. 12671 of 1995) **"Baljinder Kaur v. UOI & Ors"** decided on **09.07.2010**, the stand taken by the respondents that the disability is neither attributable to nor aggravated by military service is unsustainable. He further submits that the petitioner's husband had served the army for more than 14 years and was in 'OP RAKSHAK' employment. He was posted in high altitude area where he contracted the disease. Our attention was invited towards page No. 30 of the paper-book which is a **'REPORT ON CASES (OTHER THAN THOSE DUE TO INJURIES) WHICH HAVE ENDED FATALLY, OR ARE PROPOSED FOR INVALIDING'**. Our attention was drawn towards column Nos.6 and 13, wherein it has been stated that the petitioner joined the Unit on 5th April 1981, was in SHAPE-1 AYE and the individual was living in Unit Lines. All operation moves/Ops relating to Operation Rakshak is quite frequent in this area. For the sake of convenience, column No.13 is reproduced below:

Do you consider the disability/dearth aggravated by service? (Give Reasons)-
Yes, due to severe conditions in OP RAKSHAK employment in this sector.'

6. In view of the above certificate given by the Officer Commanding on the fact that the individual was hale and hearty when he joined the army and onset of the disease is during service, we are of the view that the stand taken by the respondents that the disease is neither attributable to nor aggravated by military service cannot be allowed to stand in view of the judgment of the Apex Court in the case of **Dharamvir Singh Vs. Union of India & others (2013) 7SCC 316**. The other judgments relied upon by the learned counsel for the petitioner also supports his stand.

7. The learned counsel for the respondents submits only this that there is no material on the record to show that the disease is attributable to or aggravated by military service. We are not impressed by the said argument. Regulation 213 of the Pension Regulation for the Army reads as follows:

“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. In view of the above regulation, we are of the opinion that this is a case where the disease was attributable to military service, as held by the Apex Court in the case of **Dharamvir Singh's case** (supra) and the cause of death of the individual is the disease.

9. Viewed as above, we find sufficient force in the petition. The petition succeeds and is allowed. No order as to cost.

10. Since the petition has been filed with delay, the arrears are restricted to three years prior to the filing of the present petition i.e. 3rd September, 2013.

11. The respondents are directed to make necessary calculations and make payment to the petitioner within a period of three months from the date of receipt of certified copy of this judgment by learned counsel for the respondents failing which the amount shall carry interest at the rate of 8% per annum from the date of judgment.