
(2021) 06 AFT CK 0007

In the Armed Forces Tribunal

Case No : O.A. No. 335 Of 2017 with M.A. No. 276 Of 2017

Smt. Meena Devi Rajoria

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 03-06-2021

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2021) 06 AFT CK 0007

Hon'ble Judges : Sunita Gupta, Member (J); B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : S.M. Dalai, Dr. Vijendra Singh Mahndiyan, Major Sonali Tiwari

Final Decision : Dismissed

Judgement

Present application has been filed by the applicant, wife of Late Nb Sub/Clk Jagdish Chander Rajoria, under Section 14 of the Armed Forces Tribunal

Act, 2007 with the following reliefs :

(a) Quash order dated 09 Nov 2016 passed by Respondent No. 3 being bad in law.

(b) Quash order dated 09 Jun 1981 passed by Respondent No. 1 being a cryptic, non-speaking order showing non application of mind by the appellate authority.

(c) Hold late Nb Sub Jagdish Chander Rajoria's death attributable to military service.

(d) Direct the respondents to grant of Special Family Pension to the applicant w.e.f. 06 Dec 1977 with further direction to pay interest @ 12% over the arrears.

2. Brief facts of the case are that the husband of the applicant was enrolled in the Army on 14.05.1959 and was promoted to the rank of Nb Sub

during the course of his service. During his entire service, he remained medically fit and in SHAPE-1. While the deceased was on casual leave from

28.11.1977 to 12.12.1977, one day on 06.12.1977, when he was at his hometown, he suffered a sudden massive heart attack and died. The

applicant's claim for Special Family Pension (SFP) was rejected by PCDA (P), Allahabad on the grounds that the death of the applicant's

husband was not attributable to military service. However, the applicant was accorded ordinary family pension. The applicant's first appeal

against rejection of her claim to SFP was also rejected by the Competent Authority vide their letter dated 09.06.1981. Subsequently after 35 years, a

letter dated 29.09.2016, on behalf of the applicant was written by her Advocate, Mr. S.M. Dalai to Army HQ for reconsideration and grant of Special

Family Pension. This representation was rejected vide the Record Office letter dated 09.11.2016 which has been impugned in this OA. Aggrieved by

primarily the non-grant of SFP, the present OA has been preferred. There being delay of about 35 years and 07 months in filing the present OA, an

application seeking condonation of the delay has also been filed.

3. The respondents have filed their counter affidavit and have not disputed the facts of this case. However, they have raised a preliminary objection

on the ground of a huge delay of more than 35 years in filing the present OA, and have prayed for dismissal of the OA on the ground of limitation. It

has also been stated that the applicant had died of a heart attack while on casual leave and the death has not been considered as attributable to or

aggravated by military service hence the applicant has been granted ordinary family pension and her representation claiming Special Family Pension

has been rejected. As regards appeal dated 23.03.1980 preferred by the applicant, the same was processed at MoD and rejected vide letter dated

09.06.1981. Even her representation dated 29.09.2016 submitted after almost 35 years, through an advocate seeking Special Family Pension, also

came to be rejected on the ground that cause of death is neither attributable to nor aggravated by military service. Finding no reasonable grounds in

the claim for SFP, the respondents prayed for rejection of the OA on both counts i.e. limitations as well as merits of the case.

4. The matter was heard finally on 24.03.2021. During the course of hearing, learned counsel for the applicant, reiterating the facts of the case,

emphasised that the applicant's husband, at the time of entering the military service, was medically examined and found fit with no note of any

disease. He submitted that the applicant died of massive sudden heart attack while on casual leave due to the stress and strains related to military

service on account of various postings at field and high altitude areas. He invited our attention to Rule 10 of the Leave Rules to say that as the

deceased was on casual leave at the time of his death, he was to be considered on duty and, therefore, the death is attributable to military service and

the applicant is eligible to get the Special Family Pension. In this connection, he placed reliance on the following judgements:

1. Smt. Jayamani Vs. UOI & Ors. [O.A. No. 116 of 2015 passed by AFT, Principal Bench, New Delhi on 15.02.2017]

2. Smt. Ratna Yadav Vs. UOI & Ors. [O.A. No. 399 of 2015 passed by AFT, PB, New Delhi on 30.10.2015]

3. Ex Hav Rajpal Singh Vs. UOI & Ors. [O.A. No. 549 of 2015 passed by AFT, PB, New Delhi on 20.09.2018]

5. Per contra, learned counsel for the respondents submitted that the applicant's husband has been fully fit and in the medical category of

SHAPE-1 all through his service. While on posting to a peace station he proceeded on casual leave and died due to a sudden heart attack at the leave

station. The Ld counsel further submitted that there is no blanket sanction for holding all causalities during casual/annual leave as attributable to

military service. He further clarified that for accepting attributability there has to be a causal connection between the death of applicant's husband

and military duties. In the instant case such a causal connection does not exist and hence the Competent Authority has rightly declared the death of

the applicant's husband as neither attributable to nor aggravated by military service. He further submitted that it is well known that heart attacks in

healthy people can also be triggered due to a variety of factors which are specifically linked to food, drinks and emotional state. The applicant's

husband was fully fit and in medical SHAPE-1 during all the mandatory annual medical examinations in the preceding years hence it cannot be

presumed that the unfortunate heart attack which the applicant's husband had suffered was due to stress and strain of military service. He further

submitted that even the medical certificate of his death shows no cause or reason for his sudden death, which can be considered as stress or strain of

military service. He emphasised that there is no causal connection to the death of the applicant's husband with the military service. He concluded

by stating that since applicant's husband's death has no causal connection with military duty, hence her OA for grant of SFP is without any basis. He pleaded for dismissal of the OA.

6. We have heard the rival contentions of the learned counsel for the parties and have also gone through the material available on records.

7. In this case, the facts of service are not in dispute. The huge delay in filing the present OA will not come in the way of the application in view of

the law laid down by the Honhble Supreme Court in Union of India and others Vs, Tarsem Singh [2008 (8) SCC 648]. Accordingly, this issue is

settled. Now the only question for our consideration is as to whether the death of the applicant's husband is attributable to or aggravated by

military service or not, so as to determine the eligibility of the applicant for getting Special Family Pension.

It is an admitted position that the applicant's husband died due to a sudden heart attack on 06.12.1977 and the death took place when he was in

the middle of his casual leave at his hometown. It is evident from the medical certificate, true copy of which is placed by the respondents as Annexure

R6, that the deceased died suddenly and upon examination at hospital, was declared brought dead. The Statement of the applicant placed as

Annexure- R5 also goes to show that the death of her husband, who was a young man in his mid-thirties, was caused due to sudden heart attack.

Apart from this, there is nothing on record to show that the deceased was suffering from any ailment or was having any medical treatment. It is also

an admitted position that the applicant's husband was fully fit and had been in SHAPE-1 medical category during his entire service. In the armed

Forces, a person who is fully fit in the following five factors i.e. S-Psychology, H-Hearing, A- Appendages, P- Physical and E-Eyesight, is classified

as the medical category of SHAPE-1. If the deceased had any weakness in any of the factor, he would have been downgraded to the relevant

medical category. It is also taken note of that the deceased was performing duties of a clerk by trade, which primarily consists of office work only.

Even at the time of his proceeding on leave or even during his leave till his death, there is not even a single document to show that he was suffering

from any physical or mental strain or stress or disease. Although in her petition to the then President of India, she stated that her husband had died

while on his way to his Unit, but no evidence or document was adduced to prove her above statement. In fact, this fact was also not shown in her

statement made at Annexure-R5 and the same only is to the effect that her husband died suddenly due to heart attack on the way. The deceased

husband was on leave till 12.12.1977 and he died on 06.12.1977, therefore, without any evidence, he cannot be said to be on his way to his Unit.

Nevertheless, her claim for Special Family Pension by way of various representations/appeals was rejected after due consideration. The provisions

with regard to Special Family Pension are contained in Para 213 of the Pension Regulations for the Army, 1961 which would be relevant in this case,

are reproduced as under :

213 - A special family pension may be granted to the family of an individual his death was due to or hastened by- fa) 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. We may also refer to Regulation 105 as well as Regulation 82 of the Pension Regulations for the Army, Part I (2008) regarding Special Family

Pension, which read as under:

SECTION - 3: Special Family Pension

Sub-section-I General WHEN ADMISSIBLE

105. fa) 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 fii) 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/ discharge. Provided that the service personnel had retired/discharged otherwise than voluntarily/at own request on

compassionate grounds before completion of terms of engagement.

(b) The question whether death is attributed to or aggravated by military service shall be determined under the Entitlement Rule For Casualty Pensionary

Awards, 1982 contained in APPENDIX-IV to these Regulations.

Â ((CIRCUMSTANCE OF DEATH/DISABILITY ATTRIBUTABLE TO OR AGGRAVATED BY MILITARY SERVICE

Category A

Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged

pension or invalid pension or invalid gratuity as the case may be.

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities.

death or disability would be examples.

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 organized sports events/adventure activities/expeditions or training.

[illegible]

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9. From the reading of the above, it is clear that Special Family Pension can be granted only if the death is due to a wound, injury or disease which is

attributable to or aggravated by military service. However in the case of death due to natural causes falling under the Category A, as reproduced

hereinabove, only ordinary family pension is entitled. In this case a soldier who was fully fit and medically in SHAPE-1 has

died at his hometown, while on casual leave, due to a heart attack. The question before us is if this death is attributable to or aggravated by military

service?.

10. Prima facie this death though very unfortunate, is certainly not fitting into the category of death due to disease or injury. Additionally while

medical science has a fair answer as to how a heart attack happens, it has still no clear answers as to why it happens to some and not to others.

There are a large number of physically fit persons and sports persons who have suffered heart attacks all over the world defying the traditional belief

that physically fit and active persons do not suffer heart attacks. It is also widely accepted in the medical world that Heart attacks in a fully fit person,

can be triggered by disturbances in the electrical impulses which generate the heart-beat. However how and why these disturbances in the electrical

impulses happens is not yet fully understood by the medical world though it is known that certain types of substance/drinks consumption, human

emotions can also trigger such disturbances besides genetic factors. Hence we are not inclined to accept the contention of the applicant that because

the death of her husband was due to heart attack, therefore, it should be treated as a pre-existing disease and should be considered as attributable to

military service.

11. Â It has been argued by the Ld. counsel for the applicant that the applicant's husband was on casual leave when he died of a heart attack. He

argued that being on casual leave is akin to being on duty hence the death during casual leave is attributable to military service. We are not in

agreement with this contention. The recent judgement of the Honhble Supreme court dated 20.09.2019 in the case of The Secretary Government of

India & Ors Vs. Dharamhir Singh [Civil Appeal No 4981 of 2012] has amply clarified that whether a soldier is on annual or casual leave is

immaterial for the purpose of deciding attributability, however, it is the causal connection with military duty which will have primacy in deciding

attributability to military service. In view of the above and in the absence of any evidence or document, which helps in holding the death attributable to

military service, we are of the opinion that the applicant's husband's death is not attributable to military service hence she is not entitled to

Special Family Pension.

12. We have also gone through the rulings relied upon by the learned counsel for the applicant to buttress his contentions. In our view, all the

judgments and orders relied upon by the applicant are related to casual leave and duty and disability pension/SFP for disability/death while performing

duty. The issue of casual leave and duty for attributability stands clarified vide the recent Honhble Supreme Court judgement quoted above. The cases

relating to disability pension and claim for SFP have a different set of facts and are not relevant to the case in hand.

13. In the case of Smt. Jayamani (supra), the late husband of the petitioner who was commissioned in the regular Indian Army on 15.11.1961, was to

be discharged from service on 30.11.1989. He reported for carrying out the discharge drill at ASC Depot, MT Wing, Bangalore on 07.11.1989, he

was found lying unconscious in JCO's Mess living accommodation. He was taken to the hospital and was declared brought dead. The Medical

Officer, on examining the circumstances related to this happening, declared the death of her husband as attributable to military service. However, the

claim of the applicant for grant of Special Family Pension was rejected by the PCDA(P) Allahabad. Hence, the petitioner approached the Tribunal,

where it was observed that the petitioner's husband suffered from heart attack and as found by the Court of Inquiry, the death took place when

he had proceeded to Bangalore to report for carrying out the discharge drill on 07.11.1989 and on 08.11.1989, he was found lying unconscious and

was declared brought dead. The Tribunal relied upon the Court of Inquiry proceedings, which opined the death attributable to military service and as

such, the applicant was granted Special Family Pension.

14. Smt. Ratna Yadav (supra) was also a case where the husband of the applicant by performing his duties suffered Cardiac Pulmonary

Arrest/Acute Myocardial Infarcti resulting into death and under those

circumstances, the applicant was granted Special Family Pension.

15. $\hat{\text{A}}$ Ex Hav Rajpal Singh (supra) was a case where the applicant was on casual leave with effect from 06.10.2008 to 25.10.2008. While going to

the railway station on 12.10.2008 to get his reservation for return journey for re-joining duty, a civil vehicle hit him resulting in severe injuries. The

applicant claimed disability pension. The Tribunal relied upon Para 12(f) of the Entitlement Rules for Casualty Pensionary Awards, 1982, which reads

as under :

$\hat{\text{A}}$??An accident which occurs when a man is not strictly on duty as defined may also be attributable to service provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incident of his service and that the same was not a risk common to human existence in

modern conditions in India. Thus for instance, where a person is killed or injured by another party by reasons of belonging to the Armed forces, he shall be

deemed $\hat{\text{A}}$??on duty⁹ at the relevant time. This benefit will be given more liberally to the claimant in case occurring on active service as defined in the

Army/Navy/Air Force Act.

It was observed that the act of going to railway station for arranging return ticket to his unit has a causal connection with his military service.

16. $\hat{\text{A}}$ All these judgments relied upon by the applicant are entirely distinguishable. In the instant case, the husband of the applicant who was on casual

leave from 28.11.1977 to 12.12.1977, suffered a massive heart attack on 06.12.1977 at his hometown and died. The medical record reveals that the

applicant $\hat{\text{A}}$??s husband was fully fit and in medical category of SHAPE-1 throughout his service. That being so, even if the husband of the applicant

is to be treated as $\hat{\text{A}}$??on duty $\hat{\text{A}}$?? during the period of casual leave, but since there is no causal connection between his death and the military service,

therefore, the applicant does not get any benefit from the judgments relied upon by her.

17. $\hat{\text{A}}$ In the light of the aforesaid, in our view, the OA lacks merit and accordingly stands dismissed. Consequently, M.A. No. 276 of 2017 also stands

disposed of. However, there shall be no order as to costs.

Pronounced in open Court on this __3rd $\hat{\text{A}}$ day of June, 2021.