

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI**

T.A. No. 755/2009

[W.P. (C) No. 4027/02 of Delhi High Court]

Smt Sudesh Kumari

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh.S.M. Hooda, Advocate.

For respondents: Ms.Tinu Bajwa, Advocate with Wg Cdr Ajit
Kakkar

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

ORDER
20.05.2010

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this writ petition has prayed that the respondents may be directed by way of writ of mandamus to pay Special Family Pension from 06.02.1995 with arrears along with

interest thereon. It is further prayed that a direction may be issued to respondents to reimburse the amount which has been spent for treatment of her late husband.

3. Brief facts which are necessary for the disposal of the present petition are that petitioner is a widow of late Sh. Vinod Kumar Dahiya who was enrolled in the Indian Air Force on 22.07.1981 as an Aircraftman and was released on 18th May, 1989 on the recommendations of Medical Board held on 17th January, 1989 with 40% disability on account of hypertension aggravated by the Air Force service for a period of two years. Thereafter, he underwent dialysis and his kidney transplant was done. For this treatment, petitioner had to incur lot of expenses. His claim for disability pension was rejected and he approached Hon'ble Delhi High Court. Ultimately, petitioner died on account of renal failure on 05.02.1995. Petitioner, wife of the deceased of late Sh. Vinod Kumar Dahiya was released ordinary family pension w.e.f. 06.02.1995. The Hon'ble Delhi High Court vide its order dated 05.02.2002 directed the respondents to calculate and remit the incumbent's disability pension from 19.05.1989 to 05.02.1995 with 40% disability within the period of three months.

Thereafter, disability pension was released to the widow of the deceased Vinod Kumar Dahiya vide PPO No. 08/14/0115/2002. Thereafter, petitioner filed the present petition before Hon'ble Delhi High Court with the prayer that she is entitled to Special Family Pension as per Rule 270 of Pension Regulations for Air Force, 1961. This petition was transferred to this Tribunal for its final disposal on its formation.

4. The respondents contested the matter and submitted that petitioner is not entitled to Special Family Pension as she is already getting an ordinary family pension.

5. We have considered the rival submissions of the parties. As per Rule 270 of the Pension Regulations for Air Forces, 1961, if the incumbent's death is hastened by wound, injury or disease which is attributable to Air Force service or aggravated by the Air Forces service and it arose during the Air Force Service then widow is entitled to Special Family Pension.

The Rule 270 reads as under :-

“Special family pensionary awards—when admissible

270. A special family pensionary award will be admissible if the death of an individual was due to or hastened by –

- (a) a wound, injury or disease which is attributable to his air force service; or
- (b) the aggravation by his air force service of a wound, injury or disease which existed before or arose during air force service."

6. As per the report of the Release Medical Board, deceased incumbent suffering from hypertension and this was aggravated by the service and he was released on that basis. On recommendation of Invaliding Medical Board dated 17th January, 1989 petitioner was invalided out on 18th May, 1989, held that *'incumbent is requiring increasingly higher doses of antihypertensive drugs to control his hypertension and is showing evidence of target organ involvement in the form of Grade II retinopathy and LVH with strain'*. Therefore, he is invalided out of service in medical category EEE. But unfortunately PCDA rejected the claim of the incumbent and incumbent had to file Writ Petition in Delhi High Court. Disability pension was released to the petitioner @ 40% in pursuance of the order in Writ Petition (C) No. 2847/1992 filed by him in Delhi High Court which was decided on 02.02.2002. After the death of the Sh. Vinod Kumar Dahiya, his widow (petitioner) filed the present petition.

7. As per the Rule 270 which says that if the disease arose in Air Force service and it is aggravated and causes death of the deceased on account of that then the incumbent is entitled to Special Family Pension. In the present case, report of the Invaliding Medical Board on which the deceased incumbent was invalided out speaks volume that hypertension arose during the service and it can cause side effect on the other parts of the body and therefore for this cause, the deceased incumbent undergone medical treatment, dialysis and replacement of the kidney and ultimately he died on account of renal failure. Therefore, this case is squarely falls in the Regulation 270 (b) and the petitioner is entitled to Special Family Pension. We have been given to understand that she has been getting ordinary family pension. But she is entitled to Special Family Pension from the death of her husband i.e. from 05.02.1995, therefore, she may be released Special Family Pension from 05.02.1995 after deducting the amount of ordinary family pension received by her. The difference may be released to the petitioner within four months from today along with interest @ 12% p.a.

8. Learned counsel for the petitioner submits that petitioner has also incurred huge expenses for treatment of her late husband, therefore, she may be permitted to approach the Authorities for grant of medical expenses which she incurred for the treatment of her late husband. Petitioner may approach the Authorities and Authorities may consider the matter sympathetically.

9. Petition is allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
May 20, 2010.