

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

OA No. 90 of 2010

Harjinder Singh	...	Petitioner
v.		
Union of India and others	...	Respondents

ORDER
12.07.2010

Coram : Justice N. P. Gupta, Judicial Member
Lt. Gen. A. S. Bahia (Retd), Administrative Member

For the Petitioner ... Mr. Rana Ghuman, Advocate

For the Respondents ... Mr. Sandeep Bansal, CGC

Per Justice N. P. Gupta

By this petition, the petitioner seeks grant of liberalized family pension.

The facts, as alleged, are that during 2008, son of the petitioner was deployed in Operation Meghdoot (J&K) in Operational area of Kazi Post Haziranga Complex, where due to service conditions, he developed Superior Sagital Sinus Thrombosis and died thereof on 09.10.2008. His death was declared as Battle Casualty in terms of Army Order 1/2003/MP. However, the case for liberalized family pension claim which was forwarded, was not accepted and only Special Family Pension was sanctioned. With this, it is prayed that the petitioner be granted liberalized family pension.

Reply has been filed on behalf of the respondents, inter-alia contending that the deceased died due to the disease and there is a marked difference between an injury and a disease. It cannot be termed as a Battle Casualty. A stand has been taken that the

deceased died due to disease while performing **bona fide** military duty, but casualty was inadvertently declared as Battle Casualty, even though it did not occur in action/actual fighting with the enemy/terrorists. The case was referred to the Competent Medical Authority also i.e. Director General Armed Forces Medical Services (DGAFMS), who confirmed vide letter dated 11.08.2009 that next of kin of the deceased is entitled for special family pension only. It is pleaded that while serving at the above place, at high altitude of 19600 feet since 05.07.2008, on 27.09.2008, the deceased reported with complaint of severe headache in occipital region and then he was immediately transferred to 403 Field Hospital in helicopter and was diagnosed to have been suffering from Superior Sagittal Sinus Thrombosis and was further transferred to 153 General Hospital, Leh, on the same day, and then to Command Hospital (WC), Chandimandir for further treatment, where he died on 09.10.2008. In substance, it is maintained that since the individual died of disease, it cannot be said to be injury so as to fall within four corners of Battle Casualty.

We have gone through the pleadings and the record available and as produced before us.

A look at Annexure R-1, autopsy report, shows that the patient was diagnosed as rt intracerebral hemorrhage. Likewise, his MRI also showed multiple hemorrhagic infarcts right frontoparietal region with superior sagittal sinus thrombosis and MRI taken on 08.10.2008 further show ibilateral frontoparietal hemorrhagic infarcts with right ipsilateral sulcal and ventricular effacement and midline shift to left. The sequence of facts given, even as pleaded by the

respondent, does show that in the occipital region of the petitioner, the trouble occurred suddenly when he was posted at the high altitude which was diagnosed as Superior Sagital Sinus Thrombosis, and shortly resulted into his death.

In our view, even within the meaning of Annexure R-12, the case would clearly fall in category E (1) and, therefore, according to Para 6 of Annexure R-12, the petitioner is entitled to liberalized family pension, which has been wrongly refused.

Consequently, the petition is allowed and the respondents are directed to grant liberalized family pension to the petitioner, as it is found to have become payable to him. The respondents are further directed to make calculations of the amount so becoming payable to the petitioner and make payment to him within a period of four months from the date of receipt of certified copy of this order, as prayed. It is made clear that if the payment is not made within four months, the amount shall carry interest @ 12%p.a. from the date the amount became due till actual payment.

It is further directed that if the payment is not made within a period of six months, the liability of interest for the period after six months, shall be borne by the person (s) on whose account the delay is caused, though in the first instance, it will be paid by the Government to the petitioner.

[Justice N. P. Gupta]

[Lt Gen A. S. Bahia (Retd)]

July 12, 2010
RS