

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.146 of 2013

Tuesday, the 25th day of November, 2014

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Mrs. Vasugi
W/o Sr.No.SL-4124 M, Lt.Col,
Late N. Gopalan
aged about 51 years,
House No.359, Village & P.O.-Kuthalur
Tahsil-Karaikudi, District-Sivagangai
Tamil Nadu, Pin-630 307.

... Applicant

By Legal Practitioners:
M/s. M.K. Sikdar & S.Biju

Vs.

1. The Director PS-4
Room No.419, 'A' Wing
Sena Bhavan, DHQ Post
New Delhi-110 105.

2. The Additional Directorate General
Adjutant General's Branch
IHQ of MOD (Army), DHQ Post
New Delhi-110 011.

3. Union of India
Rep. by The Secretary
Government of India,
Ministry of Defence
New Delhi-110 011.

4. The PCDA (P)
Draupadi Ghat
Allahabad (U.P)
Pin-211 014.

...Respondents

(R.3 and R.4 impleaded as
per Order dt.17.04.2014
in M.A.No.84 of 2014)

Mr. B. Shanthakumar, SPC

ORDER

[Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member-Judicial]

1. This application is filed by the applicant for the reliefs to set aside the impugned order in No.B/38026/24/AG/PS-4 (Imp-I), dated 6th August 2009 passed by the 2nd respondent; consequently to direct the respondents to grant Special Family Pension; and to pay the balance death gratuity amount of Rs.2,65,444/- to the applicant with interest.

2. The factual matrix of the applicant's case would be as follows:
The applicant's husband N. Gopalan was enrolled in the Indian Army as Sepoy on 30th December 1974. He served in PBOR ranks for 19 years 04 months and 01 day and in Commissioned ranks for 14 years 05 months and 06 days. Thus he served for 33 years 09 months and 07 days in the Army. The applicant submits that on 5th October 2008 at 5.00 p.m., her husband suddenly collapsed and was taken to 167 MH, but unfortunately he died due to "Acute Myocardial Infarction." The Court of Inquiry conducted had opined that the death was attributable to military service in peace due to stress and strain of the official work. Though the applicant applied for grant of Special Family

Pension, she was granted only an Ordinary Family Pension. While rejecting the claim, the 2nd respondent in the impugned order dated 6th August 2009 declared that the death of the applicant's husband was caused due to "Extensive Acute Myocardial Infarction" which is not connected with military service and therefore not attributable to, nor aggravated by military service. It was advised in the impugned order that if the applicant was not satisfied with the decision, she could submit an appeal within six months from the date of receipt of the communication to the first respondent. Though she preferred an appeal before the 1st respondent on 28th January 2010 for grant of Special Family Pension, no final order has been passed by the 1st respondent, till date.

3. The applicant is also entitled for the Death Gratuity of her husband to the tune of Rs.10,00,000/-, but she was paid a sum of Rs.7,34,556/- only and the remaining amount of Rs.2,65,444/- has to be paid to her by counting the service rendered by her husband in PBOR ranks. As per Rule 5 of Entitlement Rules for Casualty Pensionary Awards, 1982, if a member was in sound physical and mental condition while entering into service except the physical disabilities noted or recorded at the time of entry and on his discharge from service on medical grounds for deterioration in his health, a general presumption shall be drawn to the effect that the deterioration

in the health of individual was caused by military service. The applicant relied upon the judgment of the Hon'ble Apex Court reported in **(2013) 7 SCC 316** between **Dharamvir Singh** and **UOI & Others** and a judgment of this Tribunal reported in **2011 (1) AFTLJ 39** between **Polammal** and **UOI & Ors.** The applicant therefore requests that the impugned order may be set aside as biased, arbitrary, unlawful and was passed in violation of Entitlement Rules, 1982 and General Rules of Guide to Medical Officers (Military Pensions) 2002 and the applicant may be granted Special Family Pension after setting aside the impugned order, dated 6th August 2009.

4. The objections raised by the respondents in the reply-statement would be as follows:

The facts regarding applicant's husband enrolment in the Army as a Sepoy and promoted to the rank of Lieutenant, his death on 5th October 2008 while he was on duty, the cause of his death was diagnosed as "Acute Myocardial Infarction" have been admitted. The respondents are also not denying the period of service of the applicant's husband, viz., 33 years 09 months and 07 days. Subsequent to the death of her husband, the applicant was granted with all terminal benefits including Ordinary Family Pension. The respondents submit that the competent medical authority, i.e.,

Commandant 167 Military Hospital opined that the death of the applicant's husband was not attributable to or aggravated by military service as he was serving in peace station. The claim of the applicant for grant of Special Family Pension was examined in detail by the competent authority on the basis of the relevant rules and decided that the cause of death was not connected with military service and therefore, it was neither attributable to nor aggravated by military service. The decision was conveyed to the applicant by letter dated 06 August 2009. The 1st appeal preferred before the Appellate Committee on First Appeals (ACFA) was examined as per the extant Government policy, and was opined that the Fatal Disease (FD) was not attributable to or aggravated by military service, and the appeal was rejected and the same was conveyed to the applicant by letter dated, 13th March 2011.

5. As per Government of India, Ministry of Defence letter No.1(2)97/D (Pen-C), dated 31 January 2001, only the cases covered under Category "B" & "C" of para 4 are to be considered for grant of Special Family Pension. Category "C" is irrelevant to this case and Category "B" stipulates that the death or disability would be accepted as attributable to or aggravated by military service due to continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards. The respondents submit that

ACFA referred the case of the applicant to competent medical authority, i.e., DDG AFMS (Pension) vide note dated 24 February 2011 which opined that "as per post-mortem report, cause of death was "Extensive Acute Myocardial Infarction" and further opined that the FD was due to "atherosclerosis erosion" of blood vessels which was due to inherent genetic predisposition. The onset of FD was in a peace station and there is no close time association with service in field/counter insurgency operation/high altitude area. Further, 14 days Charter of Duties of the applicant's husband does not reveal any severe/exceptional stress of service. The applicant as Next of Kin of the deceased military officer was rightly granted Ordinary Pension as per the present Government Policy and she is not entitled to Special Family Pension. Therefore, the respondents request that the application may be dismissed.

6. On the above pleading, the following points were emerged for consideration.

- 1. Whether the applicant is entitled for death gratuity amount of Rs.2,65,444/- ?*
- 2. Whether the applicant is entitled for Special Family Pension?*
- 3. Whether the impugned order passed by the second respondent dated 06.08.2009 is liable to be set aside?*
- 4. To what relief the applicant is entitled ?*

7. We heard the arguments of Mr. M.K. Sikdar, learned counsel for the applicant and Mr. B.Shanthakumar, learned Senior Panel Counsel assisted by Col S.K. Varshney, Additional Legal Officer (Army) appearing for the respondents. We also perused the written arguments submitted by the applicant and the copies of medical records of the applicant's husband filed on either side.

8. We have given our anxious considerations to the arguments advanced on both sides.

9. **Point No.1:** At the outset, the learned counsel for the applicant would submit that the gratuity amount payable on the death of the applicant's husband to the tune of Rs.10,00,000/- has now been completely paid to the applicant after the filing of the application. He would therefore submit that the applicant is not pressing the claim for the grant of arrears of Death-cum-Gratuity amount for a sum of Rs.2,65,444/- as prayed for in the application. Recording the submission of the learned counsel for the applicant, the said claim is dismissed as not pressed.

10. **Point Nos.2 and 3:** The case of the applicant that the applicant's husband N. Gopalan was enrolled in the army on 30.12.1974 and he served as PBOR ranks for 19 years 04 months and 01 day and in Commissioned ranks for 14 years 05 months and 06 days and his total service was 33 years 09 months and 07 days in the army was not

disputed by the respondents. The further case of the applicant is that the applicant's husband suddenly collapsed on 05.10.2008 at 05.00 p.m. at his house and he died due to "Acute Myocardial Infarction" despite he was taken to 167 MH immediately and was treated there, has not been disputed. The applicant is claiming Special Family Pension on the death of her husband which took place during his service on 05.10.2008 by stating that the death was caused due to stress and strain suffered by him in the military service. However, the applicant was granted ordinary Family Pension by holding that the death was not attributable to or aggravated by military service since it took place in peace station. The learned counsel for the applicant would draw our attention to the Court of Inquiry Proceedings conducted on the death of the applicant's husband N.Gopalan which would disclose that the death was caused due to stress and strain in the military service. Relying upon the said verdict of the Court of Inquiry, the learned counsel for the applicant would further submit in his argument that the applicant's husband was hale and healthy throughout in his career for more than 33 years and even the total health check-up conducted at the end of September 2008 showed that he was in SHAPE-1 and the disease caused to him suddenly in the first week of October which resulted in his death would certainly be due to stress and strain of military service as rightly decided by the Court of Inquiry. He would therefore request

that the order of rejection towards the grant of Special Family Pension dated 06.08.2009 is not sustainable and therefore, it is liable to be set aside. He would also draw our attention to Para 423 of General Rules of Guide to Medical Officers (Military Pensions) 2002 and argued that in determining the cause of disability or death resulting from the disease and its attributability to/aggravation by service, it is immaterial whether the cause giving rise to disability/death occurred in an area declared to be a Field Service/Active Service or under normal peace conditions. According to him, this would enable the death of the applicant's husband due to "Acute Myocardial Infarction" to be presumed as attributable to or aggravated by military service.

11. He would also argue by relying upon the principles laid down by the Hon'ble Apex Court reported in **(2013) 7 SCC 316** between **Dharamvir Singh** and **UOI & Others**. He would also narrate the principles laid down that the stress and strain in peace station could also be a cause for the disability or death which would entitle the individual or his kin to claim the benefit as attributable to or aggravated by military service. It is also the case of the applicant that the rejection order was passed with mala fide intention, bias and in violation of the Entitlement Rules, 1982 and General Rules of Guide to Medical Officers (Military Pensions) 2002 and therefore, it has to be set aside and the applicant's husband be considered as death occurred due to the

disability caused in the military service as attributable to or aggravated. He would also submit that the overall health condition of the applicant's husband would go to show that the sudden stress and strain caused in the military service during the first week of October 2008 was the reason for his death and the medical documents would also amply prove the same. He would therefore request us to set aside the impugned order and to convert the ordinary Family Pension into that of the Special Family Pension payable to the applicant from the date of death of the applicant's husband.

12. The claim of the applicant was mainly controverted by the respondents on two points. It was submitted that the Court of Inquiry is not the competent authority to hold that the death of the applicant's husband was caused by the military service due to stress and strain sustained by him. Secondly, the health conditions of the applicant even though was quite well till September 2008, the disease, viz., "Acute Myocardial Infarction" was caused to the applicant's husband not due to stress and strain in the service, but was due to biological and genealogical causes. Stressing the two points, the learned counsel for the respondents would submit that the medical opinion is superior to the opinion of the Court of Inquiry and such medical opinion is based upon sound reasons as laid down in Amendment to Chapter VI and VII of Guide to Medical Officers, 2008. He would also rely upon various

pronouncements of Hon'ble Apex Court including the judgment rendered in **A.V. Damodharan's** case to the principle that the medical experts' opinion should be given primacy and credence and it cannot be distinguished by different opinion of the Courts. Therefore, it was argued that there was no causal connection between the service of the applicant's husband and his death and therefore, the applicant was rightly granted ordinary Family Pension from the date of her husband.

13. Considering the submissions made on either side, we could understand that the applicant's husband was found to be in a healthy condition till the end of September 2008 from the date of his enrolment. The medical documents produced on either side would also disclose that he was in SHAPE-1 during the said period. However, he was unwell during the first week of October 2008 and sustained "Acute Myocardial Infarction" on 05.10.2008 by 05.00 p.m. and unfortunately he died on the day itself despite intensive care treatment was given to him. No doubt the Court of Inquiry has come to a conclusion that the death of the applicant's husband N.Gopalan was due to stress and strain caused in the military service. The said verdict was arrived by the Court of Inquiry on the evidence given by the officers. On a careful perusal of the evidence adduced by the witnesses, we could understand that they have generally spoken about the stress and strain in every engagement during those days even in peace stations. Of course, there is no

specific event like training or exercise undergone by the applicant's husband on that day as part of his duty so as to invite the disability which caused his death. However, the Court of Inquiry has come to a conclusion that it was due to service. The presumption as per Para 423 of General Rules of Guide to Medical Officers (Military Pensions) 2002 could be taken in favour of the applicant by virtue of the decision reached by the Court of Inquiry to the effect that the death of the applicant was caused due to service. Now the respondents should establish that such a presumption is successfully rebutted through the opinion of the doctors. After the death of applicant's husband, the body of the deceased was sent for autopsy and the post-mortem certificate would also confirm that the death was caused due to "Acute Myocardial Infarction."

14. On the fateful day, the applicant's husband was admitted at 167 MH by 6.15 p.m. towards treatment and the Medical Case Sheet would disclose that the applicant's husband was taking medicines for gas formation from outside medication for the last three days and suddenly presented with air hunger and was having sweating and anxious expression and his pulse became feeble. Further recording of Medical Case Sheet would show that despite treatment given to him, he died at 08.00 p.m. on 05.10.2008 due to "Acute Myocardial Infarction." We could see that the applicant's husband was unwell for three days prior to

his death and was taking treatment of his own on the wrong thinking that it was a gastric disorder. The personal particulars as given in AFMSF-93 would contain the statement of medical officers also. The medical officer had considered the Case Sheet, Post-Mortem Certificate and other records produced before him and had come to the conclusion of certifying that the cause of death is not attributable to or aggravated by military service for the reasons mentioned in Para-47(b) of Guide to Medical Officers (Military Pensions), 2008 since he was serving in peace stations. Whether the medical opinion as given by the medical officer could be considered as inadequate to rebut the presumption that the applicant's husband died due to stress and strain of the military service by the verdict of the Court of Inquiry is the question. The Medical Officer had referred to Para 47(b) of Amendment to Chapter VI & VII Guide to Medical Officers (Military Pensions) 2008. For better appreciation the said Para 47(b) has to be perused which is extracted as below:

"There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases. "

Para 47 deals with Ischaemic Heart Diseases (IHD) which comprises the "Acute Myocardial Infarction" also. According to the aforesaid Para 47(b), the aggravation will be conceded in persons having been diagnosed as IHD are required to have their duty in high altitude areas, field areas, counter-insurgency areas, ships and submarines due to service compulsions. It is also further clarified that the immediate or prolonged exceptional stress and strain of military service should be evident for such conceding of aggravation, if any, such diseases of IHD may be assumed to be the result of biological factors, hereditary and the way of life such as indulging in risk factors like smoking. The medical officer has classified the death of the applicant's husband as not attributable to or aggravated by military service since there was no evidence of prolonged exceptional stress or strain of service prior to the death of the applicant's husband. It has been opined by the medical officers with the reasons contained in the rule 47(b) of Guide to Medical Officers (Military Pensions) 2008. This opinion of medical officer should be given primacy and credence over the verdict of Court of Inquiry since there was no prolonged exceptional stress and strain as per the evidence recorded in the Court of Inquiry. The judgment of the Hon'ble Apex Court in **A.V. Damodharan's** case is very clear to the effect that the medical opinion should be given much credence and it should not be varied by the Courts by giving their own opinion.

15. The arguments advanced by the learned counsel for the applicant that the stress and strain caused to the individual in peace station can also be the cause for the disability or death as per the principle laid down by the Hon'ble Apex Court in **Dharamvir Singh's** case cannot be applied in this case since the facts are different. The medical opinion of the doctor and the evidence recorded by the Court of Inquiry would disclose that there was no prolonged exceptional stress or strain caused to the applicant's husband immediately prior to the disability caused death. The Medical Case Sheet would also show that the applicant's husband was taking treatment for gastric trouble thinking that it was only a stomach upset. All these circumstances would clearly show that the disease sustained by the applicant's husband, viz., "Acute Myocardial Infarction" was only due to biological factor or genealogical reasons as opined by medical experts as laid down in Para 47(b) of Guide to Medical Officers (Military Pensions) 2008. Therefore, we uphold that the grant of ordinary Family Pension in favour of the applicant without giving the Special Family Pension on the basis of the reason that the applicant's husband's death was not caused due to military service, as it was neither attributable to nor aggravated by military service. Consequently, the impugned order passed by the second respondent is not liable to be quashed nor the applicant is

entitled to Special Family Pension. Accordingly, both the points are decided against the applicant.

16. **Issue No.4:** In view of our discussions held above that the relief of arrears of gratuity was not pressed and the relief for the grant of Special Family Pension cannot be granted, the application filed by the applicant for that purpose is liable to be dismissed.

17. In the result, the application is dismissed. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
(MEMBER-ADMINISTRATIVE)

Sd/
JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

25.11.2014
(True copy)

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No

Internet : Yes/No
Internet : Yes/No

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To,

1. The Director PS-4
Room No.419, 'A' Wing
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2. The Additional Directorate General
Adjutant General's Branch
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5. M/s. M.K. Sikdar & S.Biju
Counsel for applicant.

6. Mr. B. Shanthakumar, SPC
For respondents.

7. OIC, Legal Cell,
ATNK & K Area HQ,
Chennai.

8 . Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
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