Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

(Sl. No. 5)

O.A. No. 15 of 2021

Smt. Phalunching Applicant
By Legal Practitioner for the Applicant : Shri Shri A.R. Tahbildar, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Shri P.J. Barman, Advocate

Notes of the Registry	Orders of the Tribunal
	05.04.2023 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Air Marshal Balakrishnan Suresh, Member (A)** Heard Shri Shri A.R. Tahbildar, Ld. Counsel for the applicant and Shri P.J. Barman, Ld. Counsel for the respondents. Original Application is **dismissed**. For orders, see our order passed on separate sheets. Misc. Application(s), pending if any, shall be treated to have been disposed of. **(Air Marshal Balakrishnan Suresh)** **Member (A)** **(Justice Umesh Chandra Srivastava)** **Member (J)** AKD/MC/-

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

ORIGINAL APPLICATION No. 15 of 2021

Wednesday, this the 5th day of April, 2023

"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Air Marshal Balakrishnan Suresh, Member (A)"

Smt Phalunching .....Applicant

Counsel for the Applicant : **Shri AR Tahbildar,** Advocate

Versus

Union of India & Others .....Respondents

Counsel for the Respondents : **Shri P.J Barman,** Advocate
Central Govt. Counsel

ORDER

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

> *(i) to quash and set aside the impugned letter No. G4/5/03/3974/VI/266 dated Nil issued by the PCDA (P) rejecting the applicant's claim for special family pension;*

(ii) *Direct the respondents to accept applicant's husband's death to be attributable to military service*

(iii) *to pay special family pension with effect from the date of death of her husband to the applicant with arrear in compliance of the relevant provisions of the Pension Regulations for Army Part-I, 1961; and*

(iv) *and to pass such order/orders deem fit and proper.*

2. Facts giving rise to Original Application, shorn of details, are that husband of applicant was re-enrolled in the Indian Army (DSC) on 10.02.1997. While he was posted to 583 DSC Platoon, Ordinance Factory, Chandrapur (Maharastra) he was diagnosed with "CARCINOMA STOMACH" for the first time on 30.05.2002 and was treated at Military Hospital on 30.05,2002. On 24.09.2002 he died at Command Hospital, Kolkata due the said disease. After the death of her husband, the applicant was granted full family pension. After 7-8 years, when her pension was reduced she approached the pension disbursing bank to find out the reason for reduction but they could not give her satisfactory reasons. The Defence Pension Adalat held at Rangapahar on 27.05.2019 intimated the applicant that the death of the husband of the applicant should be regarded as attributable to military service for the Special Family Pension to the applicant with effect from the date of death of her husband

i.e.24.09.2002 as admissible under Rules. Thereafter, vide letter No. G4/5/03/3974/VI/266 dated Nil, respondents have intimated to the applicant that her husband died due to a wound/injury or disease in such circumstances his death is not in any way related to duties of Military service and is neither attributable to or aggravated by Military Service and as such she is not entitled to Special Family Pension, hence the claim for the grant of Special Family Pension was rejected. The applicant was granted Ordinary Family Pension vide PPO No. F/NA/010147/2015 in addition to the family pension from Assam Regiment as notified in PPO No. S/051211/1983.The applicant preferred a delayed First Appeal on 17.10.2020 which too was rejected by the respondents authority. Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant has placed reliance on the judgments of the Hon'ble Apex Court in the case of ***Union of India & Ors vs. Surendra Pandey***, LAWS(SC) 2014 9 172, decided on 18.09.2014, ***Sukhwant Singh vs. Union of India & Ors***, LAWS(SC) 2012 3 69, decided on 13.03.2012, ***Union of India vs. S.K. Kapoor***, LAWS(SC) 2011 3 43, decided on 16.03.2011 and ***Madan Singh Shekhawat vs. Union of India***, LAWS(SC) 1999 8

6, decided on 17.08.1999, ***Yadvinder Singh Virk vs. Union of India & Ors*** in Civil Writ Petition No. 6066 of 2007 (2009 SCC Online P & H), Judgment of a Division Bench of Delhi High Court in ***Ex. Sepoy Hayat Mohammed vs. Union of India***, 2008 (1) SCT 425, Judgment of AFT (RB) Kolkata in ***O.A. No. 52 of 2015, Debasish Ghosh vs. Union of India & Ors,*** *decided on 15.03.2016* and AFT,PB, New Delhi Order dated 12.09.2019 passed in OA 1146/2017 with MA 849/2017.

4. Learned counsel for the applicant has further submitted that:-

(a) Para 95 (a) of the pension Regulations for the Army 1961 (Part-1), reads that rates of consolidated Special Family Pension shall be inclusive of children allowance and children education allowance "***irrespective of whether the deceased pensioner of the Armed Forces had completed 7 years of service or not***".

(b) In Section 213, it is provided that 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.

Learned counsel for the applicant pleaded that in view of aforesaid rulings and judgments, death of husband of applicant should be treated attributable to military service and special family pension should be granted to the applicant.

5. Per contra, learned counsel for the respondents submitted that the death of the applicant's husband has not been regarded as attributable to military service, hence applicant is not entitled for Special Family Pension. He further submits that for grant of the special family pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injury and military service. He further submitted that unless death has causal connection with military service, armed forces personnel cannot be allowed special family pension merely on the reason of being on duty. He further submitted that in the given facts, husband of applicant died due to disease, there was no causal connection between the death and military service and, therefore, applicant is not entitled to special

family pension, as she is claiming. In support, learned counsel for the respondents has placed reliance on the following facts:-

(a) The death of husband of applicant was opined as neither attributable to nor aggravated by military service and also not connected with military service.

(b) In terms of Para 95 & 213 of Pension Regulations for the Army, 1961 (Part-1) and Para 6 of Entitlement Rules for Casualty Pensionary Awards, 1982, applicant is not entitled to Special Family Pension which was communicated to her vide letter dated 13.05.2011. Para 213 reads as under :-

"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".

Since the circumstances of death are not related to the duties of military services and was opined as neither attributable to nor aggravated by military service, hence, applicant is not entitled for special family pension.

6. We have heard AR Tahbildar, learned counsel for the applicant and Shri PJ Barman, learned counsel for the respondents and have also perused the materials available on record.

7. After having heard the submissions of learned counsel of both sides, we find that certain facts are admitted to both the parties that while applicant's was posted at 583 DSC Platoon, Ordinance Factory, Chandrapur, Maharastra,on 30.05.2002, he was diagnosed with "CARCINOMA STOMAACH" and treated at Military Hospital and died on 24,09.2002 at Command Hospital Kolkata.

8. The respondents have denied special family pension to the applicant on the reason that for getting special family pension, in respect of disease causing death during the course of employment, there must be some causal connection between the disease and military service, and this being lacking in applicant's case, as there was no causal connection between the death and military service, she is not entitled for the same.

9. This question has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the Hon'ble Apex Court. In a more or less similar matter, ***Secretary, Govt of India & Others Vs. Dharamveer Singh***, decided on 20

September 2019, in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with **'Faciomaxillary and Compound Fracture 1/3 Femur (LT)'**. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave Report, dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under Column 3 (c) was that "No one was to be blamed for the accident. In fact respondent lost control of his own scooter". In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an O.A. in Armed

Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of ***Madan Singh Shekhawat v. Union of India & Ors,*** (1999) 6 SSC 459 was allowed by the Tribunal holding that respondent was entitled to disability pension. Aggrieved by the same, this Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 points for consideration:-

(a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duly?

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?

10. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

11. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

> *" In view of Regulations 423 clauses (a) , (b), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury be connected with military service howsoever remote it may be. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributed to risk common to human being. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service".*

12. Regarding question number 3, the Hon'ble Apex Court held that if a causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well as various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and, for such injury, resulting in disability, the injury would be considered attributable to or aggravated by military service.

13. The Hon'ble Apex Court while summing up took note of following guiding factors by the Armed Forces Tribunal, Regional Bench, Chandigarh, in the case of ***Jagtar Singh v. Union of India & Ors,*** Decided on November 02, 2020 in TA No 61 of 2010 approved in the case of ***Sukhwant Singh*** and ***Vijay Kumar*** case, and held that they do not warrant any modification and the claim of disability pension is required to be dealt with accordingly. Those guiding factors are reproduced below for reference:-

> *"(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.*
>
> *(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.*
>
> *(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.*
>
> *(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to*

military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior".

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

14. It is pertinent to mention here that judgments relied up by the applicant in para 3 above are not relevant in this case being based on different facts and circumstances which are enumerated below:-

(a) **Union of India vs. Surendra Pandey (Supra)**. In this case respondent was on annual leave and was travelling by bus from Hajipur to reach Patna to where his family was

admittedly residing and met with accident, therefore, the Hon'ble Court has held that respondent was enroute to his home town and authorized journey had not ended when he met with incident, hence appeal of Union of India was dismissed.

(b) ***Sukhwant Singh vs. Union of India (Supra)***. In this case respondent was on casual leave and injury sustained in scooter accident. The Hon'ble Court has held that there was no causal connection between the injuries suffered and military service, hence, appeal of applicant was dismissed.

(c) **Union of India vs. S.K. Kapoor (Supra)**. This case pertains to absence without leave and dismissal from service, hence, this case is not applicable.

(d) ***Madan Singh Shekhawat vs. Union of India (Supra)***. In this case applicant met with accident while he was travelling from Jodhpur to his home town and alighting from the train at Didwara railway station. The Hon'ble Court has held that when proceeding to his leave station or returning to duty from his leave station at public expense, is entitled to disability pension, hence, petition of the applicant was allowed.

(e) ***Yadvinder Singh Virk vs. Union of India (Supra).*** In this case applicant was on annual leave and met with a motorcycle accident and was downgraded to medical category CEE. At the time of discharge from service his disability was @ 30% for life as NANA. The Hon'ble Punjab & Haryana Court has held that applicant suffered disability during annual leave would be treated as duty and is entitled for disability pension as per the existing rules in the year 1990.

(e) ***Mrs. Poonam Tomar vs. Union of India (Supra).*** In this case husband of applicant was on 13 days casual leave and met with accident while travelling from Kichha to Meerut to his home station and later on succumbed to injuries. A Court of Inquiry was held and death of husband of applicant was attributable to military service, hence applicant was granted special family pension.

(f) ***Debasish Ghosh vs. Union of India (Supra).*** In this case applicant was on 20 days casual leave and during leave he was travelling from his home town to Sealdah for booking his ticket for his return journey and fell down from running train and his leg was amputated. A Court of Inquiry was held and

his disability @ 100% for life was attributable to military service, hence applicant was granted disability pension.

15. We have considered the applicant's case in view of above guiding factors and we find that husband of applicant while posted at 583 DSC Platoon, Ordinance Factory, Chandrapur, Maharastra, on 30.05.2002, he was diagnosed with "CARCINOMA STOMAACH" and treated at Military Hospital and died on 24.09.2002 at Command Hospital Kolkata. As such the death of the Husband of the Applicant is '***neither attributable to nor aggravated by military service and not connected with his military duties in any manner***', she is not entitled to special family pension for the same. There is also no evidence or proof, placed by the applicant to establish that the cause of death of her husband, had causal connection with military service being on extended duty. We also find that judgments and rulings relied upon by the applicant being either based on different facts and circumstances or overruled are of no help to her.

16. In the result, we hold that the claim of special family pension has rightly been rejected by the respondents which need no interference. Resultantly, Original Application is **dismissed**.

17. No order as to cost.

(Air Marshal Balakrishnan Suresh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 05 April, 2023

AKD/MC/-