

RESERVED

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
GUWAHATI**

ORIGINAL APPLICATION No. 09 of 2024

Friday, this the 20th day of March, 2026

**"Hon'ble Mr. Justice SK Gupta, Member (J)
Hon'ble Lt Gen CP Mohanty, Member (A)"**

Smt L Athia widow of No 14702563F Sep (late) KL Ngoukhini,
Village-Makhan Lovadzilingho, PO-Maram, Distt-Senapati,
Manipur.

..... Applicant

Ld. Counsel for the Applicant : **Shri AK Tahbildar, Advocate**

Versus

1. The Union of India, Represented by the Secretary, Ministry of Defence, Sena Bhawan, New Delhi-11.
2. Records, the Kumaon Regiment, Pin-900473, C/o 56 APO.
3. Additional Directorate General, Personnel Services, PS-4 (d), Adjutant General's Branch, IHQ of MoD (Army), DHQ, PO-New Delhi.
4. The Principal Controller of Defence Accounts (Pension), Allahabad, PIN-211014, Uttar Pradesh.

.....Respondents

Ld. Counsel for the : **Shri PK Garodia, Advocate**
Respondents Central Govt. Counsel



ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

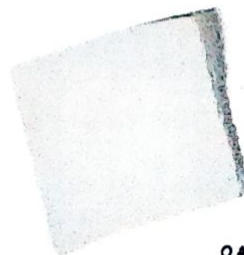
"(a) To quash and set aside the impugned order No G4/6/2001/5044/V/341 dated 19.09.2001 rejecting applicant's claim for special family pension.

(b) To grant special family pension to the applicant with effect from three years prior to the date of filing of the instant application with arrear thereon, and/or pass such further order/orders as to your Lordships may deem fit and proper.

2. The factual matrix on record is that the husband of the applicant was enrolled in the Kumaon Regiment of the Indian Army on 14.10.1988. During the course of his service, he married Smt L Athia (Applicant) on 04.04.1996. He was diagnosed to be suffering from disability 'Carcinoma Nasopharynx T4N2MO (Stage IV)' w.e.f. June, 1996 which resulted in downgradation of his medical category 'B' (Temporary) w.e.f. 19.03.1999. Thereafter, his medical re-categorization medical board was held at Command Hospital, Southern Command, Pune. Subsequently, the



applicant's husband was treated at various military hospitals and his last medical re-categorization board was held on 14.10.1999 at Command Hospital, Southern Command, Pune and he was placed in medical category 'C' (Temporary) w.e.f. 19.09.1999. He died on 26.04.2000 at 154 General Hospital due to disease 'Carcinoma Nasopharynx (Stage IV)'. The medical authorities have endorsed the cause of death as neither attributable to nor aggravated by military service stating that 'Etiology of this carcinoma is not related to any service factor and course of progress is un-effective by service condition'. The applicant, who is in receipt of ordinary family pension, had taken up a case with Records Kumaon Regiment for grant of special family pension, which was rejected by PCDA (Pension), Prayagraj vide letter dated 19.09.2001, advising her to prefer appeal within six months, if not satisfied, but record shows that no appeal has been preferred. This O.A.



has been filed on behalf of the applicant for grant of special family pension.

3. Learned counsel for the applicant submitted that at the time of enrolment applicant's husband was thoroughly examined by a medical board and he was found absolutely fit in all respects and the disability 'Carcinoma Nasopharynx (Stage IV)' occurred to husband of the applicant in the year 1996 and thereafter, the disease/disability was aggravated by military service.

4. Learned counsel for the applicant further submitted that as per Regulation 85 of the Pension Regulations for the Army, 1961, special family pension may be granted to the family of an armed forces personnel if his/her death was due to or hastened by a wound, injury or disease which was attributable to military service or the aggravation by military service of a wound, injury or disease which existed before or arose during the military service. It is further submitted on behalf of the applicant that in the instant case the



applicant's husband was serving with 1st NAGA Regiment and was exposed to harsh working environments and subjected to extreme climatic conditions, which influenced illness/disability and resulted in his death and as such the Army authorities ought to have accepted his disability to be either attributable to or aggravated by military service entitling the applicant for grant of special family pension.

5. Per contra, learned counsel for the respondents submitted that No. 14702563F (late) Sep KL Ngoukhini was enrolled in the Indian Army on 14.10.1988. It is further submitted on behalf of the respondents that the late soldier while in service was diagnosed to be suffering from 'Carcinoma Nasopharynx T4N2MO (Stage IV)' and due to this he was first placed in medical category 'B' (temporary) and thereafter in medical category 'C' (temporary). He was treated in various hospitals and died while admitted in hospital on 26.04.2000 at 154 General Hospital due to disease/disability 'Carcinoma Nasopharynx (Stage IV)'.



6. Learned counsel for the respondents further submitted that as per certificate of attributability (AFMSF-93) dated 01.09.2000 the cause of death is neither attributable to nor aggravated by military service for the reason that 'Etiology of this carcinoma is not related to any service factor and course of progression is ineffective by service condition.'

7. It is further submitted on behalf of the respondents that since the medical authorities have assessed disability/death in respect of the applicant's husband as neither attributable to nor aggravated by military service, she is not entitled to special family pension as the conditions of Para 213 of the Pension Regulations for the Army, 1961 (Part-I) are not fulfilling in the instant case for grant of special family pension. which was neither attributable to nor aggravated by military service as assessed by the adjudicating board, the applicant is not entitled to special family pension in terms of Para 213 of Pension Regulations for the Army, 1961 (Part-I). He pleaded for dismissal of O.A. stating that the

conditions as laid down in Para 213 of the Pension Regulations for the Army, 1961 (Part-I) do not fulfil for grant of special family pension to the applicant.

8. Heard learned counsel for the parties and perused the record. We have also perused the medical documents placed on record.

9. It is not disputed that the applicant's husband was enrolled in the Army on 14.10.1988 and during the course of his service he suffered with disability 'Carcinoma Nasopharynx T4N2MO (Stage IV)' w.e.f. June 1996. He was treated in different hospitals for the said disability and his medical category was first downgraded to medical category 'B' and thereafter he was placed in medical category 'C'. He died in 154 General Hospital on 26.04.2000 and the medical authorities have declared his death/disability as neither attributable to nor aggravated by military service. After her husband's death, the applicant was granted ordinary family pension vide PPO No.



F/N/010214/2001 dated 30.10.2001 in addition to other applicable dues. Her claim for grant of special family pension has been denied on the ground the disability with which the applicant's husband suffered and died was neither attributable to nor aggravated by military service.

10. We find that applicant's husband was suffering from "Carcinoma Nasopharynx T4N2MO (Stage Iv)" and while undergoing treatment he expired on 26.04.2000 while admitted in Hospital.

11. Contention of learned counsel for the applicant that the Hon'ble Apex Court in its judgment in the case of ***Dharamvir Singh vs Union of India & Ors***, (civil appeal No 4949 of 2013, reported in 2013 AIR SCW 4236, has observed that the assessment of any disability as attributable to or aggravated by military service is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, as shown in Appendix II, Govt of India, MoD letter No 1(1) 81 D(Pen-C) dated 20.06.1986, and General Rules of Guide to Medical Officers (Military Pensions) 2002 is sustainable on following points:-



"(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)].

12. Also, on attributability of service, para 423 (a), (b) and (c) of Regulations for the Medical Services of Armed Forces, 1983 is relevant which for convenience sake is reproduced as under:-

"(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a show of doubt. If the evidence is so strong against the individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt. If on the other hand the evidence is so evenly balanced so as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(b) The cause of a disability or death resulting from wound or injury will be regarded as attributable to service if the wound/injury was sustained during the actual performance of 'duty' in Armed Forces. In case of injuries, which were self-inflicted or due to an individual's own serious negligence or misconduct, the

board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c) *The cause of disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease, which has led to an individual's discharge or death, will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."*

13. In the case in hand, we find that husband of applicant entered into service in a medically fit condition, thus a presumption can be drawn that he had no disease at the time of enrolment. Further, if the medical or military authority certifies that a disease is not attributable to nor aggravated by military service, then such opinion should also express cogent reasons for holding so, which in this case has not been done. Therefore, in the absence of such reasons, the disability/disease must be

assessed as attributable to/aggravated by military service, and applicant should be entitled to Special Family Pension.

14. We also observe that husband of the applicant was suffering from "Carcinoma Nasopharynx T4N2MO (Stage IV)" and he died during the course of treatment while in service in the hospital, therefore, contention of the respondents that the disability/death of the applicant's husband is NANA is beyond understandable. The applicant seems to be entitled to special family pension.

15. We find that there are catena of judgments of the Tribunals/High Courts/Supreme Courts to support her claim on the point of attributability, therefore, death of her husband is attributable to military service.

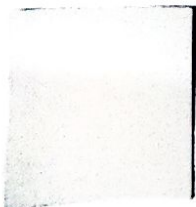
16. Respondents' contention that medical opinion is not in favour of applicant is on unfounded grounds as with regard to non-attributability no reason has been assigned by the medical officer while endorsing the term 'neither attributable to nor aggravated by military service'.



17. Additionally, we find more support from the judgment of the Division Bench of Delhi High Court in the case of ***Smt Reshma Devi vs Union of India & Ors***, Writ Petition No SC/121/2019 decided on 11.12.2019 wherein the fact and circumstances are similar to the case in hand. There is no medical opinion as to when actually the cancer started developing in the body and when it was detected and spread. However, we are of the view that in view of posting of applicant's husband while serving in different parts of the country, he may have developed the cancer due to the service conditions and it can very well be presumed from the Rules and Regulations that a presumption can be drawn that the disease had developed while in service.

18. In view of the above, we conclude that the death of applicant's husband was attributable to military service and the applicant is entitled to Special Family Pension.

19. The respondents are directed to calculate and grant Special Family Pension to applicant from three years preceding the date of filing of the present O.A. which was filed on 19.01.2024.




20. The respondents are further directed to pay the aforesaid amount within a period of three months from today. Default will invite interest @ 8% p.a.

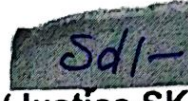
21. O.A. is allowed accordingly.

22. No order as to costs.

23. Pending applications, if any, are disposed off.



(Lt Gen CP Mohanty)
Member (A)



(Justice SK Gupta)
Member (J)

Dated : 20.03.2026
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