**IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH**

O. A. No \_\_\_\_\_\_\_\_\_\_\_\_\_\_of 2017

Smt. Suman Ravish Wd/o Ex. – Sep. Virender Singh (No. 15500932-F)

…………..Applicant

Vs

Union of India & others ………..Respondents                                     **INDEX**

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**IPO Nos.**:- 51 H 484 702 & 705 Dated 30-05-2017 = 200-00

92 G 476 307 Dated 30-05-2017 = 50-00

**Total = 250-00**

(B.S. Rathee)

Advocate

Counsel for the applicant

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For use in Tribunal’s Office:

Date of Filing:

Or

Date of Receipt by Post:

Registration No.: Sd/- For Registrar

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**LIST OF DATES & EVENTS**

|  |  |
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| **DATES** | **EVENTS** |
| 06-05-2005  &  29-12-2011 | That the husband of applicant namely Late Sepoy Virender Singh(No. 15500932)joined Indian Army on 06-05-2005 and served at different places and in different climatic conditions. He died on 29-12-2011 due to “**CARDIAC ARREST**” when on sick leave, since he discharged from Command Hospital (WC) Chandimandir on 28-12-2011. |
| --- | That it is pertinent to mention here that the husband of the applicant while on leave, suffered an accident and admitted in Command Hospital (WC) Chandimandir on 07-12-2011 and discharged on 28-12-2011 and recommended with six weeks sick leave. On 29-12-2011 at around 07:50 am he suffered heart attack and the Post Mortem was conducted by PGIMS, Rohtak and the Medical Board opined the cause of death as heart attack **(Annexure A-1 to A-5).** |
| 26-12-2012 | That after the death of applicant’s husband, she was granted Ordinary Family Pension w.e.f. 30-12-2011 onwards @ Rs. 3,534/- and she was issued certificate of particulars of next of kin. **(Annexure A-6 & A-7).** |
| --- | That when the husband of the applicant joined India Army, he was medically fit in all respects. Due to work load of service and different climatic conditions and affected by stress and strain of service, he acquired heart disease and died. This disease has been caused during service, so his death is attributable and aggravated to Military Service. As per pension regulation for Indian Army Annexure III to Appendix II:-  **Classification of Disease**  **B. Disease Affected by Stress and Strain**  **12. Myocardial Infarction, and other forms of IHD.** |
| --- | That as per Sub Section-II Family Pension and Gratuity of the pension regulation of the Army reads as under:-  **“Sub Section –II Family Pension and Gratuity, Special Family Pension”**  **213. 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 service.** |
| --- | That as per the law settled by **Hon’ble Supreme Court of India** in case titled as “**Dharamvir Singh Vs. Union of India & Ors.”** reported as **2013 (4) RSJ 321**, **“Union of India & Anr. Vs. Rajbir Singh”** reported as **2015 (1) RSJ 775** and **“Union of India & Anr. Vs. Angad Singh Titaria”** reported as **2015 (3) RSJ 89** held that the 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 individual’s acceptance in military service. However, if medical opinion holds that the disease could not have been detected at the time of enrolment, the disease will not be deemed to have arisen during service. In that case, it is important that medical opinion must contain valid reasons that the disease is not attributable to service. |
| --- | That in number of cases Hon'ble High Court as well as Hon'ble Supreme Court of India has held that death due to HEART ATTACK is attributable to Military Service as the forces are always kept on high alert as well as being a discipline force high standard of discipline is maintainable all the times which leads to stress and strain among the service personnel and ultimately leads to the disease of heart failure. |
| 23-07-2013  &  28-09-2014 | That the applicant sent her appeal dated 23-07-2013 for grant of Special Family Pension and further sent appeal dated 28-09-2014 but no action has been taken **(Annexure A-8 & A-9).** |
| 10-06-2017 | That the applicant also decided to knock the door of justice ad sent the legal notice dated 10-06-2017 **(Annexure A-10)** through her counsel and the same was replied vide impugned reply dated 28-06-2017 (Annexure – ‘AA’) which is under challenged before this Hon'ble Tribunal. |
| --- | That similar matter has been decided by Hon'ble High Court in case of “**Ranjit Kaur Vs. Union of India**” reported as **2010 (1) RSJ 354,** **CWP No. 2275 of 2007** titled as “**P.N. Annamma Vs. Union of India”** **decided on 03-04-2008** and **CWP No. 7998 of 2009** titled as **“Tanushree Balhara & Anr. Vs. Union of India”** decided on 14-09-2009 and Hon'ble Armed Forces Tribunal, Chandigarh Bench in **O.A. No. 3688 of 2013** titled as **“Smt. Yashwanti Prasher Vs. Union of India**” decided on 16-04-2014 **(Annexure A-11)** and **O.A. No. 642 of 2011** titled as **Smt. Rachana Sharma Vs. Union of India** decided on 22-02-2016 **(Annexure A-12)**. |
| --- | That further it is pertinent to mention here that **Hon'ble Supreme Court** in case titled as **“K.T. Veerappa & Others Vs. State of Karnataka & Ors** reported as **2006 (2) RSJ 773** and another judgments of this Hon'ble High Court titled a **“Gandhi Ram (through his LRs) Vs. State of Haryana & another**” reported as **2007 (1) RSJ 413** held that once relief has been given to the similarly situated petitioners, then the present petitioner is also entitled for the same |
| ----- | Hence the present Original Application. |

Chandigarh (B. S. Rathee)

Dated : 08-11-2017 Advocate

Counsel for the applicant

**IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH**

**O. A. No…………….of 2017**

Smt. Suman Ravish aged 28 years, Wd/o Ex. – Sep. Virender Singh (No. 15500932, Last Unit: 07 CAV/Armoured Corps) D/o Ranbir Singh presently Residing at H. No. 333, Near Shiv Mandir, V. & P.O. Kichhana, Tehsil & District Kaithal (Haryana).

……….Applicant

Versus

1. Union of India through Defence Secretary

Govt. of India, Ministry of Defence

101-A, South Block, New Delhi-110 011

2. Principle Controller of Defence Accounts (P)

(OIC Grants 3 Sections), Draupadi Ghat, Allahabad (U.P.) 211 014

3. Record Officer

Kavachit Corps Abhilekh,

Armoured Corps Records, PIN – 900 476, C/o 56 APO

…………Respondents

**Application under section 14 of AFT Act, 2007**

**Details of the Application**

1. **Particulars of the Impugned order against which Application is made:**

That the impugned reply/order dated 28-06-2017 **(Annexure – ‘AA’)** is under challenge before this Hon'ble Tribunal, since the respondent authorities illegally and arbitrarily rejected the claim of the applicant for grant of Special Family Pension w.e.f. 30-12-2011 onwards.

1. **Jurisdiction of the Tribunal:**

The Applicant is a permanent resident of District Kaithal, Haryana and is hence entitled to file an Application before Hon’ble Chandigarh Bench as per Rule 6 of AFT (Procedure) Rules, 2008.

1. **Limitation:**

Being Family Pension matter, no limitation is applicable since it is a continuing and recurring cause of action, although applicant sent appeal dated 23-07-2013 (Annexure A-8) and 28-09-2014 (Annexure A-9) for grant of Special Family Pension and same was not replied. She preferred to send legal notice dated 10-06-2017 (Annexure A-10) and the same was replied vide impugned reply dated 28-06-2017 (Annexure – ‘AA’), which is under challenged before this Hon'ble Tribunal.

1. **Facts of the case:**

The following is a statement of facts of the case:

1. That the husband of applicant namely Late Sep Virender Singh(No. 15500932)joined Indian Army on 06-05-2005 and served at different places and in different climatic conditions. He died on 29-12-2011 due to “**CARDIAC ARREST**” when on sick leave, since he discharged from Command Hospital (WC) Chandimandir on 28-12-2011.
2. That it is pertinent to mention here that the husband of applicant while on leave suffered an accident and admitted in Command Hospital (WC) Chandimandir on 07-12-2011 and discharged on 28-12-2011 and recommended with six weeks sick leave. On 29-12-2011 at around 07:50 am he suffered heart attack and the Post Mortem was conducted by PGIMS, Rohtak and the Medical Board opined the cause of death as heart attack. The copy of the Hospital Discharge Slip, Post Mortem Report, Death Certificate, Report of PGIMS, Rohtak and opinion of Doctor are annexed as **Annexure A-1 to A-5**.
3. That after the death of applicant’s husband, she was granted Ordinary Family Pension w.e.f. 30-12-2011 onwards @ Rs. 3,535/- and she was issued certificate of particular of next kin. The copy of the PPO and Certificate are annexed as **Annexure A-6 & A-7**.
4. That when husband of applicant joined India Army, he was medically fit in all respects. Due to work load of service and different climatic conditions and affected by stress and strain of service, he acquired heart disease and died. This disease has been caused during service, so his death is attributable and aggravated to Military Service. During his service, although he was medically examined but the medical authorities did not diagnose any heart disease. As per pension regulation for Indian Army Annexure III to Appendix II:-

**Classification of Disease**

**B. Disease Affected by Stress and Strain**

**12. Myocardial Infarction, and other forms of IHD.**

(v) That further Sub Section-II Family Pension and Gratuity of the pension regulation of the Army reads as under:-

**“Sub Section –II Family Pension and Gratuity, Special Family Pension”**

**213. 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 service.**

(vi) That as per the law settled by **Hon’ble Supreme Court of India** in case titled as “**Dharamvir Singh Vs. Union of India & Ors.”** reported as **2013 (4) RSJ 321**, **“Union of India & Anr. Vs. Rajbir Singh”** reported as **2015 (1) RSJ 775** and **“Union of India & Anr. Vs. Angad Singh Titaria”** reported as **2015 (3) RSJ 89** held that the 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 individual’s acceptance in military service. However, if medical opinion holds that the disease could not have been detected at the time of enrolment, the disease will not be deemed to have arisen during service. In that case, it is important that medical opinion must contain valid reasons that the disease is not attributable to service. The relevant para No. 14 & 15 of the last judgment in case of **“Union of India & Anr. Vs. Angad Singh Titaria”** reported as **2015 (3) RSJ 89**  held that:-

14. Thus, a plain reading of sub-rule (b) of Rule 14 makes it abundantly clear that 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 military service. However, if medical opinion holds that the disease could not have been detected at the time of enrolment, the disease will not be deemed to have arisen during service. In that case, it is also important that the medical opinion must contain valid reasons that the disease is not attributable to service.

15. Recently, this Court in a similar case **(Union of India & Anr. Vs. Rajbir Singh (Civil Appeal Nos. 2904 of 2011 etc.)** decided on 13th February, 2015) after considering Dharamvir Singh (supra) and upholding the decision of the Tribunal granting disability pension to the claimants, observed:

“... The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. ... ...

Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. ... ...

There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same”.

(vii) That in number of cases Hon'ble High Court as well as Hon'ble Supreme Court of India has held that death due to HEART ATTACK is attributable to Military Service as the forces are always kept on high alert as well as being a discipline force high standard of discipline is maintainable all the times which leads to stress and strain among the service personnel and ultimately leads to the disease of heart failure.

(viii) That applicant sent her appeal dated 23-07-2013 for grant of Special Family Pension and further sent appeal dated 28-09-2014 but no action has been taken. The copy of the appeal dated 23-07-2013 and 28-09-2014 are annexed as **Annexure A-8 & A-9**.

(ix) That applicant also decided to knock the door of justice and sent the legal notice dated 10-06-2017 through her counsel and the same was replied vide impugned order dated 28-06-2017 (Annexure – ‘AA’ ), which is under challenged before this Hon'ble Tribunal. The copy of the legal notice dated 10-06-2017 is annexed as **Annexure A-10**.

(x) That similar matter has been decided by Hon'ble High Court in case of “**Ranjit Kaur Vs. Union of India**” reported as **2010 (1) RSJ 354,** **CWP No. 2275 of 2007** titled as “**P.N. Annamma Vs. Union of India”** **decided on 03-04-2008** and **CWP No. 7998 of 2009** titled as **“Tanushree Balhara & Anr. Vs. Union of India”** decided on 14-09-2009 and Hon'ble Armed Forces Tribunal, Chandigarh Bench in **O.A. No. 3688 of 2013** titled as **“Smt. Yashwanti Prasher Vs. Union of India**” decided on 16-04-2014 and **O.A. No. 642 of 2011** titled as **Smt. Rachana Sharma Vs Union of India** decided on 22-02-2016. The copy of the judgment dated 16-04-2014 and 22-02-2016 are annexed as   
**Annexure A-11 & A-12**.

(xi) That further it is pertinent to mention here that **Hon'ble Supreme Court** in case titled as **“K.T. Veerappa & Others Vs. State of Karnataka & Ors** reported as **2006 (2) RSJ 773** and another judgments of this Hon'ble High Court titled a **“Gandhi Ram (through his LRs) Vs. State of Haryana & another**” reported as **2007 (1) RSJ 413** held that once relief has been given to the similarly situated petitioners then the present petitioner is also entitled for the same.

(xii) Hence the present Original Application.

1. **Grounds of Appeal with Legal provisions:**

That the following grounds emerge from the above mentioned situation:-

(i) That the Applicant is entitled for the Special Family Pension, since the death of the applicant’s husband is attributable and aggravated to Military Service.

(ii) That the husband of the applicant was thoroughly examined at the time of recruitment and he was fully fit in all the respects. That the husband of the applicant died due to CARDIAC ARREST.

(iii) That the death of the applicant’s husband is attributable and aggravated to Military Service, so the applicant is entitled for family pension as per Regulation 213 of Army Pension Regulation, 1961, the content of regulation 213 are reproduced as under:-

**“Sub Section- II Family Pension and Gratuity, Family Pension”**

**213. A 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**

1. **The aggravation by military service of a wound, injury or disease which existed before or arose during military service.**

6. **Details of Remedies exhausted:**

The applicant sent number of appeals dated 23-07-2013 (Annexure A-8) and 28-09-2014 (Annexure A-9) and finally sent he legal notice dated 10-06-2017 (Annexure A-10) and the same was replied vide impugned reply dated 28-06-2017 (Annexure – ‘AA’) which is under challenged before this Hon'ble Tribunal.

1. **Matter not previously filed or pending with any other Court/Bench of Tribunal:**

The Applicant further declares that she had not previously filed any application, writ petition or suit regarding the matter in respect of which this Application is made, before any court of any other statutory authority or any other Bench of the Hon’ble Tribunal nor is any such application, writ petition, or suit pending before any them.

1. **Relief(s) sought:**

In view of the facts mentioned in Para 4 above, the applicant prays for the following relief(s) with costs:

1. To set aside the impugned reply/order dated 28-06-2017 (Annexure ‘AA’) being illegal, void and unconstitutional.
2. Directions to respondents to accept the death of the applicant’s husband as attributable and aggravated to Military Service.
3. Directions to the respondents to release the Special Family Pension to the applicant w.e.f. 30-12-2011 onwards with interest at market rate.
4. Any other directions which this Hon’ble Tribunal deems fit in the present circumstances.
5. **Interim Order, if any prayed for:** NONE
6. Para 10 is applicable only if the application is being sent by Registered Post.
7. **Particulars of Bank DD/IPO filed as application fee:**

Rs.250/- enclosed vide IPO Nos. as follows:-

|  |  |  |  |
| --- | --- | --- | --- |
| **S. No.** | **IPO No.** | **Date of Issue** | **Amount** |
| 1. | 51 H 484702 & 705 | 30-05-2017 | 200-00 |
| 2. | 92 G 476307 | 30-05-2017 | 50-00 |
| **Total** | | | **250-00** |

1. **List of enclosures:**
2. Compilation - 1 & 2 with all Annexure A-1 to A-12.
3. Fee
4. Vakalatnama

Signature of Applicant:

Through Counsel

(B. S. Rathee)

Advocate

Signature of Advocate:

**Verification**

I, Smt. Suman Ravish, Wd/o Ex. – Sep. Virender Singh (No. 15500932, Last Unit: 07 CAV) D/o Ranbir Singh presently residing at H. No. 333, Near Shiv Mandir, V. & P.O. Kichhana, Tehsil & District Kaithal (Haryana), do hereby verify that the contents of paragraphs 4, 10, 11 and 12 of this Application are true to my personal knowledge and belief and that the contents of paragraph 1 to 3, and paragraph 5 to 9 are believed to be true on legal advice by my counsel and that I have not suppressed any material fact.

Date: 08-11-2016 Place: Chandigarh Signature of the Applicant

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­­­­**IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH**

**O.A. No \_\_\_\_\_\_\_\_\_\_\_\_\_\_of 2017**

Smt. Suman Ravish …………..Applicant

Vs

Union of India & others ………..Respondents

Affidavit of Smt. Suman Ravish Wd/o Ex. – Sep. Virender Singh (No. 15500932-F) D/o Ranbir Singh, presently residing at H. No. 333, Near Shiv Mandir, V. & P.O. Kichhana, Tehsil & District Kaithal (Haryana).

I, the above named deponent do here by solemnly affirm and declare as under:

1. That the applicant is filing the present original application before this Hon’ble Tribunal which is likely to be accepted on the grounds taken therein.

2. That the statement of facts made in the original application in Para No. 1 to 12 have been read over and understood by the deponent in her own language, which are correct to my knowledge and belief. The documents attached with the application are true/photo copies, which are supplied by the applicant to the counsel.

3. That the deponent has not filed any such application or writ petition or suit regarding the matter in respect of which the present application is made before any court or any other statutory authority or this Hon’ble Tribunal earlier.

CHANDIGARH

DATED: 08-11-2016 Deponent

**VERIFICATION:**

Verified that the contents of Para 1 to 3 of my above affidavit are true and correct to the best of my knowledge. No part of it is false and nothing material has been concealed there from.

CHANDIGARH

DATED: 08-11-2016 Deponent