

(hereinafter referred as “OA”) dated 22.11.2018, which is causing prejudice to the widow petitioner.

2. Learned counsel for the petitioner submits that in the present case, the husband of the petitioner had died on 04.02.1999 while serving the Armed Forces with a disease called “***A V MALFORMATION LEAVING CEREBRAL EDEMAL AND INFECTION***”.

3. Learned counsel for the petitioner submits that keeping in view the Regulation dated 22.11.1983 amended vide Instructions dated 21.08.1984 clearly describes that the death or disablement resulting from such diseases other than venereal disease contracted during the service shall be regarded as attributable to the military services hence, the respondents are under obligation to grant the Special Family Pension on their own.

4. Learned counsel for the petitioner further argues that the widow petitioner widow was not informed about the reason of the death of her late husband and ultimately, when the petitioner widow came to know about the same, she approached the respondents for the release of the Special Family Pension, which request was not looked into and was kept pending by the respondents for 17 years, which led to the filing of the OA before the AFT on 22.11.2018.

5. Learned counsel for the petitioner submits that in the present case, the widow petitioner was entitled for the Special Family Pension from the date her late husband has unfortunately died on 04.02.1999 due to an ailment i.e. A V Malformation leaving Cerebral Edemal and Infection, which was attributable to the military service hence, restriction of the arrears

to 3 years prior to the date of filing of OA only on the ground that the petitioner has approached the AFT late, is incorrect and the same is contrary to the settled principle of law.

6. Learned counsel for the respondent-Union of India on the other hand submits that the husband of the petitioner unfortunately died on 04.02.1999 and no effort was made by the petitioner to claim the Special Family Pension upto the date of filing of the OA dated 22.11.2018 hence, the restriction of the arrears for a period of three years prior to the date of the OA i.e. 22.11.2018, is perfectly valid and legal and the order passed by the AFT dated 03.12.2019 (Annexure P-1) may kindly be upheld.

7. We have heard the learned counsel for the parties and have gone through the records of the present case with their able assistance.

8. A bare perusal of the above given facts would shows that the husband of the petitioner had died on 04.02.1999 from a disease and infection, which was directly attributable to the military service. The said fact is also clear from the Regulation dated 22.11.1983 amended on 21.08.1984 (Annexure P-7) wherein, it has been mentioned that the communicable diseases and the diseases due to infection which leads to death or disablement, will be treated as attributable to the military servants. The relevant paragraph No.16 of the Entitlement Rules for Casualty Pensionary Awards, 1982 amended on 21.08.1984 is as under:-

“Communicable diseases and diseases due to infection

16. *Death or disablement resulting from such diseases, other than venereal diseases, contracted during service shall be regarded as attributable to military service.’ Where the disease may have been*

contracted prior to enrolment or during leave, the question of determining the incubating period in a particular case will arise and an opinion of this point should be expressed.”

9. Keeping in view the above fact, the cause of the death of the husband of the petitioner was directly attributable to the military service hence, the respondents were under obligation to grant the benefit of Special Family Pension admissible to the petitioner under the 1982 Rules.

10. In case, the benefit of Special Family Pension at the time of the death of the employee were known to the Union and the still the benefit was not given, the benefit admissible to a claimant including arrears, cannot be denied only on the ground that the said claimant had approached the AFT at a later stage.

11. In the present case, the wife of the deceased employee never knew about the cause of the death though, the same was known to the authorities concerned.

12. The petitioner did not knew about the Regulation dated 22.11.1983 amended on 21.08.1984 (Annexure P-7) that the disease A V Malformation Leaving Cerebral Edema and Infection was attributable to the military service though, the same was known to the authorities concerned. The respondents were under obligation to grant family member of the deceased Officer, the benefits of Special Family Pension admissible after his death on 04.02.1999.

13. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.3086 of 2012*** titled ***“Balbir***

Singh Vs. Union of India and ors.”, decided on 08.04.2016, wherein also, the question was with regard to limiting of the benefit of admissible arrears to the period of three year wherein the relief of entire arrears granted to the claimant, Hon’ble the Supreme Court of India held as under:-

“XXX....The Tribunal was therefore justified in restoring the service element of the pension in favour of the appellant. The question however is whether the arrears could have been restricted to three years only. The Tribunal in our view need not have done so. That is because the appellant had a right to receive service element of the pension in light of Regulation 186 (supra), which right was valuable and ought to have been protected.

We accordingly allow this appeal and modify the order passed by the Tribunal with the direction that the appellant shall be paid service element of the pension with effect from the date the saidy payment was stopped by the respondents. We however grant to the respondents three months time to calculate and release the arrears in favour of the appellant. In case the needful is not done within the time stipulated, the arrears payable to the appellant shall start earning interest at the rate of 9% from the date the period of three months expires till actual payment of the amount.”

14. Learned counsel for the respondent has not been able to dispute the said proposition of law settled by the Hon’ble Supreme Court of India in ***Balbir Singh’s case (supra)*** which fact when applied in the present case, the denial of the arrears to the claimant in the facts and circumstances of the present case by the Tribunal vide order dated 03.12.2019 (Annexure P-1), was incorrect.

15. Keeping in view the totality of the circumstances, the petitioner is entitled for the benefit of arrears of the Special Family Pension from the date, the husband of the petitioner had died.

16. Present petition is allowed.

17. Let the entitlement of the petitioner be calculated by the respondents and the same be released to the petitioner within a period of **8 weeks** from the receipt of copy of this order.

18. Pending application, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

06-08-2025
Sapna Goyal

(VIKAS SURI)
JUDGE