

RESERVED

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

COURT NO-3

A.F.R.

Original Application No. 30 of 2012

Friday, this the 31st the day of May 2013

Hon'ble Mr. Justice Virendra Kumar Dixit, Judicial Member

Hon'ble Lt. Gen. B.S. Sisodia, Administrative Member

Smt Rajni Verma, aged about 33 years, widow of Late Sapper (Sepoy) Manoj Kumar Verma of 102 Engineer Regiment, resident of 221/2, Sector C, Shantipuram, Phaphamau, Post Office – Phaphamau, District, Allahabad (UP)-211013.

.....Applicant

By Legal Practitioner - Shri P. N. Chaturvedi and Shri K.K. Singh Bisht

Versus

1. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110001.
2. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad
3. State Bank of India, Shantipuram Branch-14577 661, Basant Vihar Colony, Near Lal Bahadur Shastri Homeopathic

Medical College, Allahabad - 211013 (through its Branch Manager)

Respondents

Counsel for the Respondents - Shri Sunil Sharma, Senior Standing Counsel

ORDER

“Per Justice Virendra Kumar Dixit, Judicial Member”

01. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs :-

“(i) Issue/pass an order or direction to quash the order passed by PCDA (P) Allahabad dated 08.06.2010 (Annexure No A-1 (ii) which has been communicated to the applicant vide Record Office, Bombay Engineer Group, Kirkee letter dated 20.02.2011 (Annexure No A-1 (i) by which she has been arbitrarily and illegally being asked to refund the Ex-Gratia Compensation Award.

- (ii) Issue/pass an order or direction to the respondents not to harass the applicant widow of deceased Sapper Manoj Kumar Verma because of the fact the she is all alone to fend herself against all odds and agonies of life.*
- (iii) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (iv) Allow this application with costs”.*

02. In brief, the facts of the case are that the husband of the applicant No 15563741P Late Sapper (Sepoy) Manoj Kumar Verma of 102 Engineer Regiment of Bombay Engineer Group expired on 01.07.2004 due to train accident near Kalyani Railway Station where he had gone on OUT PASS for his rail reservation and rail reservation for the personnel of his unit i.e, 102 Engineer Regiment, who were going on a Mission to the South Africa. After holding the necessary investigation by military authorities, his death was attributed to Military Service and the widow and mother of the applicant were granted Special Family Pension @ 70% and

30% respectively. Subsequently, the Ex-Gratia Award to the extent of Rs. 5 Lakh was also paid to the applicant vide PPO No F/Ex Gratia/12/2006 dated 27 March 2006. The Ex-Gratia Award of Rs 5. Lakh already paid to the widow vide PPO No F/Ex Gratia/12/2006 dated 27 March 2006 was cancelled by CDA (Pension), Allahabad vide their letter No. G-4/VII/RO_Corr/Vol-III dated 08.06.2010 addressed to The Officer-in-Charge, Records, The Bombay Engineer Group, Kirkee, copy of which was sent to the applicant and the Banker of the applicant by Records Office Bombay Engineer Group, Kirkee vide letter No. 15563741F/120/F/Pen dated 24 March 2011 stating that Late Sapper Manoj Kumar Verma died in a train accident while proceeding to book reservation tickets and he was not on bonafide official duty. **(Annexure A-1(i) and A-1 (ii) of the O.A.)** Based on the said communication, the State Bank of India, Shantipuram Branch, Allahabad wrote a letter to the applicant to refund Rs. 5 lakhs paid to her as Ex-Gratia award for onward submission to Records Bombay Engineer Group, Kirkee as the

same was not entitled to the applicant. (Refer Annexure A-2 to O.A.) Aggrieved by this, the applicant has filed this Original Application.

03. Heard Shri P.N. Chaturvedi and Shri K.K. Singh Bisht, Learned Counsels for the applicant and Shri Sunil Sharma, Ld. Sr. Standing Counsel for the State and perused the impugned order dated 08.06.2010 including other relevant documents.

04. Learned Counsel for the applicant has submitted that Record Office Bombay Engineer Group, Kirkee letter dated 24.03.2011 (**Annexure A-1 (i)**) is totally illegal and arbitrary because of the sheer reason that Ex-Gratia Award had been granted to the applicant (widow of Late Sapper Manoj Kumar Verma) after due deliberations and, considering the death of the applicant having occurred while being on duty. The applicant was ordered by the Superior Military authorities to go to the Railway Station for the purpose of getting rail reservation done for various personnel of the Unit, including officers proceeding on Mission to South Africa and while performing this official task he died due to a train

accident near Kalyani Railway Station. If the deceased soldier had denied obeying the senior's order, it would have constituted an offence table under the Army Act. It is also submitted that the widow and mother of the deceased soldier has been sanctioned Special Family Pension which indicates that Late Sapper Manoj Kumar Verma was on official duty and his death was attributed to Military Service. Learned Senior Stating Counsel has submitted that that the case of the applicant is not covered for ex-gratia lump-sum compensation, as per MOD letter No. 20 (i)/98/D (Pay/Services) dated 22.04.1998 (Para 4 of the C.A.) and there is no doubt that the applicant was sanctioned Ex-Gratia award but the competent authority re-examined the case and rejected the claim vide order dated 8.6.2010. As a consequence of the cancellation of the award, the amount paid to the applicant is liable to be returned by the applicant. He has further submitted that as per paragraph 12(d) of the Entitlement Rule, 1982 the journey period while returning to duty from leave station is to be treated as duty provided that the individual is

entitled to travel at public expense i.e, Railway Warrants, Concession Voucher, Government Transport or when road mileage is payable for journey. Payment of Ex-Gratia compensation due to inadvertent mistake cannot confer a legal right to the applicant to claim the same unless the rules on the subject permits. It is also submitted that the entitlement for claiming a Special Family Pension and award of Ex-Gratia Compensation under different circumstances cannot be concluded that the receipt of special family pension may be a ground for claiming Ex- Gratia compensation. It is further submitted that the competent authority has rightly reviewed the award of Ex-Gratia payment as the death of the applicant's husband did not occur while discharging bonafide duty, as such the applicant is not entitled for any relief sought by her and the same is liable to be rejected.

5. In the instant case the husband of the applicant was a Sapper of 102 Engineer Regiment of Bombay Engineering Group died on 01.07.2004 in a train accident near Railway Station where he had

gone on **Out Pass** for regular reservation. Admittedly, after conducting the investigation by the Military authorities, his death was attributed to Military Service and the applicant and her mother-in-law were granted special family pension at the rate of 70% and 30% respectively and it was paid to the applicant. It is also admitted that the ex-gratia compensation award of Rupees five lacs had already been paid to the widow but later on, it was cancelled by the CDA (P) Allahabad vide letter dated 08.06.2010 addressed to the Officer Incharge Records, Bombay Engineering Group, Kirkee on the ground that husband of the applicant was not on official duty when he died in a train accident.

6. The entitlement aspect has been mentioned in Regulation 213 of Pension Regulations for the Army, 1961 and the same is reproduced below :-

“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 military service”.

7. The term ‘duty’ has been explained in Rule 12 of the Entitlement Rules for Casualty Pensionary Awards, 1982 which is reproduced below :-

DUTY

“ 12. A person subject to the disciplinary code of the Armed Forces is on ‘duty’ :-

(a) When performing an official task or a task, failure to do which would constitute an offence, triable under the disciplinary code applicable to him.

(b) When moving from one place of duty to another place of duty irrespective of the mode of movement.

(c) During the period of participation in recreation and other unit activities organised or permitted by Service

Authorities and during the period of travelling in a body or singly by a prescribed or organised route”.

8. In the case of **Union of India and Others Vs. Rajpal.** (2009) 1 SCC page 216 in **Para 26** of the judgment it was held by Hon'ble Apex Court that it is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.....”

9. The rules and regulations are guidelines and must be judiciously applied and implemented, keeping in mind, the honour and welfare of all ranks in the Armed Forces. It is undisputed fact that husband of the applicant had gone on **Out Pass** with valid authority issued by the Competent authority.

10. In view of the facts of the case and Rules 12 of the Entitlement Rules of Casualty Pensionary Awards, 1982 and Regulation 213 of Pension Regulations for the Army, 1961, we are of the considered view that husband of the applicant was on

official bonafied duty when he was caught in a train accident and died. Moreover, as per conditions governing the payment of ex-gratia lumpsum compensation and guidelines in deciding the issue regarding death of a defence personnel, all evidence “both direct and circumstantial” shall be taken into account and benefit of reasonable doubt to the claimant. The impugned order dated 24.03.2011 passed by the respondents for recovery of ex-gratia lumpsum compensation is unjust, arbitrary and against the Principles of natural justice.

11. Thus in the result, O.A. succeeds and is allowed with costs. The impugned order issued by the PCDA (P) Allahabad dated 08.06.2010 (Annexure A-1 (ii) to the O.A.) and order dated 20.04.2011 (Annexure A-1 (i) to the O.A.) are hereby quashed. The respondents shall not recover the ex-gratia lumpsum compensation granted and paid to the applicant.

(Lt. Gen. B.S. Sisodia)

(Justice V.K. Dixit)

Administrative Member

Judicial Member

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