

A.F.R.
Court No.2

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 177 of 2013

Thursday, this the 28th day of April 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Smt Prarthna Singh widow of No. 2607686Y Late Hav Clerk Surendra Pratap Singh, residing at C/o Smt. Rajrani Singh, GA – 342, Reserve Bank Colony, Kidwai Nagar, Kanpur, 208 011.

...Applicant

Ld. Counsel for the:
Applicant

**Shri APS Chauhan,
Advocate**

Versus

1. Union of India, Ministry of Defence through its Principal Secretary.
2. Additional Directorate General, Personnel and Services, Adjutant General Branch, Integrated HQ of Ministry of Defence (Army), 419, A – Wing, Sena Bhawan DHQ – PO New Delhi – 110011 through its Director General.
3. G4/VIII Section, PCDA(P), Allahabad through its Commanding Officer.
4. Madras Regiment Abhilekh Karyalaya, Records, the Madras Regiment, Pin – 900458.

.....Respondents

Ld. Counsel for the :
Respondents.

**Mrs Deepti Prasad Bajpai, Central
Govt Counsel assisted by Lt Col
Subodh Verma, OIC Legal Cell.**

ORDER (ORAL)

1. We have heard Ld. Counsel for the parties and perused the records.

2. This application under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred by applicant Smt Prarthna Singh widow of Late Hav Clerk Surendra Pratap Singh being aggrieved with non-payment of ex-gratia lump sum amount in terms of Government of India Letter dated 22.09.1998 as amended by 30.06.2010. By subsequent amendment, the amount of ex gratia lump sum compensation has been increased in the event of death occurring due to accidents in the course of duties to rupees ten lacs and death in the course of duties attributable to act of violence by terrorists etc. has also been made amounting to rupees ten lacs.

3. It is not disputed between the parties that the husband of the applicant, i.e. Late Hav Clerk Surendra Pratap Singh, was on duty and after end of duty he was going back to his residence and in the midway he suffered an accident and succumbed to the injuries caused in the accident. On account of non-payment of ex gratia lump sum compensation, the applicant, who is the wife of late Army personnel, has filed by the present Original Application.

4. The Government of India Circular dated 22.09.1998 filed along with the O.A. so far as it is relevant for adjudication of the present O.A., is reproduced as under:

“Clause (a) : Death Attributable to accidents while on duty.

1. Death as a result of an accident while travelling in a public, private or official vehicle or otherwise of a Group ‘D’ employee, Dispatch Rider, Messenger, Postman, Notice Server etc deputed to distribute dak, notices, etc, or of personnel on field duties.

2. Death occurring due to an accident while travelling on bonafied official duties in a service aircraft.

3. Accident during test flights of aircraft and non-schedules flight of chartered aircraft resulting in death of service personnel travelling on duty in public interest in such flights.

4. Death, in train accidents of personnel undertaking official journey on duty.

5. Accidents to ships, river steamers. tec resulting in death of service personnel undertaking journeys on duty by these modes of travel.

6. Death, as a result of accidents of Service personnel while proceeding on raids against anti-social elements, etc.

7. Death, due to contact with live electric power lines, of personnel deployed on flood/cyclone relief activities.

8. *Death due electrocution of Service personnel engaged in rectification of defects in generation and distribution of electricity.*

9. *Accidents while engaged in rectification of machinery and equipment.*

10. *Death due to accidental explosion of boilers, storage tanks of inflammable materials, chemicals etc.*

11. *Death due to fire accidents while on duty.*

12. *Death of Fire Fighting Staff engaged in fire-fighting operations.”*

5. Thus, on the aforesaid grounds ex gratia lump sum compensation is to be considered keeping in view the aforesaid Circular with regard to payment of ex gratia lump sum compensation on account of accident, on the face of the record, it appears that the applicant is entitled for ex gratia lump sum compensation on account of death of her husband who was on duty and while going back to his residence after attending duties met with a fatal accident.

6. Ld. Counsel for the applicant has relied upon several pronouncements of which may be mentioned as under:

- i. ***Rajanna vs. Union of India***, 1995 Supp (2) SCC 601,
- ii. ***Shakuntala Bai Pandey (Smt) vs. National Thermal Power Corporation Ltd***, 1995 Supp (3) SCC 680
- iii. ***Smt Daljeet Kaur vs. Union of India*** (UOI) and ors, (2003)134 PLR 410,

iv. ***Smt. Mamta Sharma vs. Union of India and ors***, OA. No. 27 of 2014 decided by order dated 18.09.2015 by Armed Forces Tribunal, Regional Bench, Huwahati,

v. ***Paramjit Kaur vs. Union of India and ors***, OA. No. 1954 of 2013 decided by Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir.

7. One of the unique feature of the case in hand is that the Army authorities have considered death as attributable to military service and recommended payment of ex gratia lump sum compensation, but the Principal Controller of Defence Accounts (PCDA), Allahabad has rejected the same. We fail to understand as to under what circumstances, the PCDA has jurisdiction to interfere with the decision taken by the Army authorities. It is further borne out from the record that after due court of inquiry, a finding has been recorded that the husband of the applicant suffered fatal injuries from accident and she is entitled for ex gratia lump sum compensation. Opinion of the Court of Inquiry and the opinion of the competent authority of the Army should not have been turned down by the PCDA. For any flaw, he could have remanded the matter for reconsideration. There appears to be total non application of mind and exceeding of jurisdiction by the PCDA (P) who failed to comply with the order passed by the Army authorities supported by findings recorded in the Court of Inquiry. Needless to say that findings recorded in the Court of Inquiry

unless assailed before the appropriate forum and turned down, has to be complied with. The findings recorded by the Court of Inquiry could not have been over-turned by the PCDA (P), Allahabad in a mechanical manner. In the present case, the PCDA (P) has failed to comply with the decision taken by the competent authority with regard to payment of ex gratia lump sum compensation; as such the action of the PCDA (P) Allahabad suffers from arbitrary exercise of power.

8. The Government of India Circular Letter dated 18.01.2009 contains 'Entitlement Rules for Casualty Pensionary Awards to the Armed Force Personnel, 2008'. (in short, the Rules). Rule 12 contains the 'designated competent authority' to take decision in injury cases/re-assessment of disability. Rule 13 deals with 'death cases'. For convenience sake, Rules 12 and 13 of the Rules are reproduced as under:

"12. Competent Authorities;

(a) *Attributability/Aggravation:*

(i) Injury Cases:

Decision regarding attributability/aggravation in respect of injury cases in invalidment/retirement or discharge would be taken by the Service HQrs. in case of officers and OIC Records in case of PBOR, for the purpose of casualty pensionary awards.

(ii) *The decision regarding attributability/ aggravation in respect of discharge cases shall be taken by the Service HQs in case of officers and OIC Records in case of PBOR on the basis of the findings of the RMB/IMB as approved by the next higher medical authority which would be treated as final and for life*

(b) Assessment:

(i) *The assessment with regard to percentage of disability in both injury and disease cases as recommended by the Invaliding/Release Medical Board as approved by the next higher medical authority shall be treated as final and for life unless the individual himself requests for a review, except in the cases of disability/disabilities which are not of a permanent nature.*

(ii) *Where disablement is due to more than one disability, a composite assessment of the degree of disablement shall be made by reference to the combined effect of all such disabilities in addition to separate assessment for each disability. In case of overlapping disabilities, the composite assessment may not be the sum of individual disabilities.*

(c) Re-Assessment of Disability:

There shall be no periodical review by Resurvey Medical Boards for re-assessment of disabilities except for disabilities which are not of a permanent nature, for which there shall be only one reassessment of the percentage by a

Reassessment Medical Board. The percentage of disability assessed/recommended by the Reassessment Medical Board shall be final and for life unless the individual himself asks for a review.

13. Death cases:

(i) Due to Injury – Decision regarding /aggravation in respect death in injury cases for grant of special family pension shall be taken by Service HQrs in case of officers/OIC Records in case of PBOR.

(ii) Due to disease – Decision regarding attributability/aggravation shall be taken by Services HQrs/OIC Records, as the case may be, on the basis of medical opinion of DGAFMS or such medical authorities as prescribed by him.

Note: In case of battle casualty, the awards for liberalized family pension shall be decided by the Pension Sanctioning Authority based on the casualty report published by the authorities concerned.”

9. The aforesaid Rules have been supplemented by order dated 30.06.2010 enhancing the amount of ex gratia lump sum compensation. Another Circular dated 16.04.1996 issued by the Government of India deals with the claim for grant of ex gratia award in the event of death or disability. The amount has been enhanced by the subsequent one. Attention has not been invited to any Circular Order issued by the Government of India or Ministry of Defence where PCDA (P) has been conferred

power to reject decision taken by the competent authority for payment of ex gratia lump sum compensation. In the absence of any such authority to reject the claim, the PCDA (P) may at the most remand back the matter for re-consideration pointing out the illegalities, if any, but in case the competent authority (supra) passes any order for payment of amount in lieu of disability or death as ex gratia lump sum compensation, then it shall be binding on the PCDA (P). Denial without any authority enhances mental pain and agony upon on the dependents of the deceased Armed Forces personnel and may also result with corrupt practice to grease the palm of *Baboos* even for genuine and lawful payments. It may be taken notice that sometimes people are harassed in Government offices even for genuine and lawful cause only to fetch bribe and grease the palm and on being satisfied, payments are made without any if and but. The whole system seems to suffer from such menace on account of lack of penal provisions and accountability.

10. Admittedly, the applicant's husband died 18.03.2011 and since then the widow is running from pillar to post in vain for payment of ex gratia sump sum compensation. Almost six years have passed. In such circumstances it is a fit case where the respondents should be saddled with exemplary costs (vide ***Ramrameshwari Devi and others V. Nirmala Devi and others***, (2011) 8 SCC 249; ***A. Shanmugam V. Ariya***

Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others, (2012) 6 SCC 430; ***Indian Council for Enviro-Legal Action V. Union of India***, (2011) 8 SCC 161; ***Ram Krishna Verma V. State of U.P.***, (1992) 2 SCC 620; ***Kavita Trehan V. Balsara Hygiene Products Ltd.*** (1994) 5 SCC 380; ***Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.***, (1999) 2 SCC 325; ***Padmawati V. Harijan Sewak Sangh***, (2008) 154 DLT 411; ***South Eastern Coalfields Ltd. V. State of M.P.***, (2003) 8 SCC 648; ***Safar Khan V. Board of Revenue***, 1984 (supp) SCC 505; ***Amarjeet Singh V. Devi Ratan***, (2010) 1 SCC 417; ***Centre for Public Interest Litigation and others V. Union of India and others***, (2012) 3 SCC 1, and ***National Textile Corporation (Uttar Pradesh) Limited V. Bhim Sen Gupta and others***, (2013) 7 SCC. Considering the facts and circumstances of the case we are of the view that exemplary costs should imposed upon the respondents, which we quantify to Rs. one lac.

11. Tears flowing from eyes of widows and children of deceased Armed Forces personnel because of running from pillar to post discourage common man to join the Army and work for nation's cause. Such temptation to cause mental pain and agony to the citizens by *Baboos* should be nipped in bud.

12. *James F. Byrness* had rightly said, to quote:

“Power intoxicates men. When a man is intoxicated by alcohol, he can recover, but when intoxicated by power, he seldom recovers.”

In *William Shakespeare’s* words, to quote:

*“One fire burns out another’s burning;
One pain is lessen’d by another’s anguish”*

13. As held (supra), admittedly, in case PCDA (P) found that order for payment of ex gratia lump sum compensation was substantially illegal or suffers from some procedural irregularity on account of non-compliance of statutory provision, or fraud has been committed, he may remand it back pointing out the defects, if any, to look into it and take a fresh decision, but lacks jurisdiction to reject the claim by an ex parte order denying service benefits to retired Army personnel or his dependents.

14. The PCDA (P) is the last rung of the system to make payment of pensionary and other benefits to retired Army personnel. The PCDA (P) and its office must be humble, compassionate and helpful to retired Army personnel who have served the country in their golden years of life. It should never be forgotten that everyone in service shall retire and the same treatment may be imparted to him.

15. In view of above observations and findings:

(i) we allow the O.A. and set aside order dated 15.11.2012 (Annexure No. 1), order 29.03.2012 (Annexure No. 10) and order dated 15.09.2011 (Annexure No. 7) and direct the respondents to pay ex gratia lump sum compensation to the applicant in terms of aforesaid order along with interest at the rate of 10% per annum after the date of death of applicant's, husband i.e. 01.04.2011, expeditiously, say within two months from the date of production of a certified copy of this order.

(ii) Cost of Rs. one lac shall be deposited by the respondents within two months in this Tribunal which shall be paid by the Registry to the applicant through cheque forthwith.

(iii) The cost and interest is recoverable from the salary of Principal Controller of Defence Accounts, (P) Allahabad and others, if any, accountable in rejecting the claim.

Subject to observations and directions made above, we allow the O.A.

(Air Marshal Anil Chopra)
Member (A)
anb

(Justice D.P. Singh)
Member (J)

An oral prayer has been made by Ld. Counsel for the respondents for grant of Leave to Appeal before Hon'ble Supreme Court.

Since no general question of public importance is involved in the case, as such prayer for leave to appeal is rejected.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)