

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION NO 196 OF 2015**Monday, this the 19th day of September 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)Smt Sangita Devi, wife of late 14808163A Naik (MT) Ram Narayan
resident of Village Anusuo Gaderian Purva Post: Jalapur, Tehsil:
Vidhuna, District-Auraiya (UP).

.....Applicant

Ld. Counsel for the: **Shri Rohit Kumar, Advocate**
Applicant

Versus

1. Chief of Army Staff, DHQ PO, New Delhi-110011.
2. Commandant cum Chief Records Officer ASC Centre (S)
Records Bangalore.
3. Union of India, Through Secretary Ministry of Defence, DHQ,
PO, New Delhi-110011

...Respondents

Ld. Counsel for the : **Dr. Shesh Narain Pandey, Central**
Respondents. **Govt Counsel assisted by Maj**
Soma John, OIC Legal Cell.

ORDER (ORAL)

1. Applicant's husband 14808163A Naik (MT) Ram Narayan died in an accident during course of duty. After his death, the applicant preferred application for payment of ex-gratia lump sum compensation which has been denied, hence she preferred the present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007.
2. We have heard Shri Rohit Kumar, Ld. Counsel for the applicant and Dr. Shesh Narayan Pandey, Ld. Counsel for the respondents assisted by OIC Legal Cell.
3. Admittedly the applicant's husband was enrolled in Indian Army on 27.10.1993. Later on he was promoted on the post of Naik. During course of service he met with a road accident on 17.11.2010 while returning back on motor cycle to his quarter No 240/17, Vajra Complex, Mall Road, Jalandhar Cantt. The applicant's husband sustained severe head injury and was immediately brought to Medical Inspection Room and later he was referred to MH, Jalandhar Cantt on 21.11.2010 where he succumbed to injuries. It is admitted that next of kin (NOK) Smt Sangita Devi having two minor children i.e. son Master Abhishek Kumar and daughter Kumari Ishiqua Pal.

4. The court of inquiry was conducted to investigate the circumstances under which Naik Ram Narayan met with an accident on 17.11.2010 resulting into his death on 21.11.2010. According to opinion of the court of inquiry Naik Ram Kumar was performing bonafide military duty when he met with the accident. According to opinion of the court of inquiry death of Naik Ram Narayan was attributable to military service in peace. After death, all retiral dues were released as pleaded in para 4 of the counter affidavit.

6. So far payment of ex-gratia lump sum compensation is concerned it was processed to PCDA (P), Allahabad. Report of court of inquiry and Adjudication Board was sent to PCDA (P), Allahabad but the same was returned back pointing out towards policy of 22.09.1998. It was noted that PCDA (P) that in view of policy dated 22.09.1998 (supra) the death in such circumstances is not in any way related to bonafide official military duties and there is no casual connection between the occurrence of death and Government service. Being aggrieved, the applicant submitted petition for ex-gratia lump sum compensation received by the office of Additional Directorate General, Personnel Service, Integrated Headquarters of MoD (Army). The order has been reproduced in para 8 of the counter affidavit which for convenience sake may be reproduced as under:-

“Case for grant of Ex-Gratia Lump Sum Compensation from Central Govt. to NOK of No

14808163A Late Nk/MT Ram Narayan of HQ 11 Corps (MT) has been examined by the competent authority i.e. AG/PS-4 (Imp-I). They have intimated that the circumstances of the death in respect of late Nk Ram Narayan do not meet any of the criteria of actual performance of bonafide duties' as per Govt. of India letter No 20/1/98/D (Pay/Services) dated 22 Sep 1998, as amended. Hence there are no grounds to interfere with the decision of PCDA (Pension) Allahabad not to grant Ex-Gratia Lump Sum Compensation'.

7. Subject to above, applicant was communicated in response to her application dated 31.07.2013 through letter of ASC Records (South) dated 10.09.1993.

8. It may be noted that earlier the applicant had preferred O.A. No.91 of 2014 which was decided by the Tribunal by the order dated 07.07.2014 directing the respondents to decide representation afresh within three months. In consequence there of the applicant preferred representation dated 13.07.2014 alongwith her previous representation dated 30.09.2013 which too was rejected by the impugned order after due processing through Headquarter.

9. A question cropped up whether denial of ex-gratia lump sum compensation is correct or not? The policy letter dated 22.09.1998 relied by the PCDA (P), Allahabad was subject

matter of consideration in O.A. No 177 of 2013, **Smt Prarthna Singh vs. Union of India & Ors** decided on 28.04.1016. After considering the policy (supra) we have observed as under :-

“5. For the purpose of payment of special family pension an Adjudication Board was constituted to assess the attributability and aggravation factor based on the court of inquiry proceedings and the death of the deceased. The Adjudication Board recorded a finding that the death was attributable to military service. Accordingly claim for special family pension was processed and sent to Principal Controller of Defence Accounts (Pensions), Allahabad (for short, PCDA (P), Allahabad) who notified the same with effect from 22.11.2010 till widowhood”.

10. In the case of **Smt Prarthna Singh** (supra) we have also considered Entitlement Rules for Casualty Pensionary Awards to the Armed Force Personnel, 2008 (in short, the rules). For convenience sake paras 8 and 9 of judgment in **Smt Prarthna Singh’s** case (supra) are reproduced as under :-

“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 HQrs 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.”

11. The facts of the present case as borne out of the record show that the applicant’s husband was returning to his residential quarter after discharging duties. The finding of court of inquiry also shows that the injury caused was attributable to military service since he was returning to his quarter at the end of duty. For convenience sake findings of the court of inquiry, as reproduced in O.A. are quoted below :-

“F. That the Court of Inquiry had recorded its findings as under :-

FINDINGS OF THE COURT

1. No. 14808163A Nk/MT Ram Narayan was posted to HQ 11 Corps MT since Oct 2009 and was performing MT driver duties of gypsy of Corps MT.

2. On 17 Nov 2010 at 2000hr No. 14808163A Nk/MT Ram Narayan while returning back to his quarter No 240/17, Vajra Complex on motor cycle met with an accident on mall road near Alfa Mess.

3. While Nk/MT Ram Narayan returning to his quarter on mall road a stray dog came suddenly in front of his motor cycle and he lost balance and collided into the footpath.

4. Nk/MT Ram Narayan while avoiding a stray dog fall from his motor cycle and sustained direct hit on the head and become unconscious, his helmet fell away. In that state took him to MI Room then further referred to MH, Jalandhar Cantt and then admitted. He was immediately evacuated to MI Room of MH Jalandhar Cantt on 17 Nov 2010 at 2030Hr.

5. No 14808163A Nk/MT Ram Narayan was admitted in ICU in comma state, diagnosis severe head injury caused by road accident. In spite of all possible care, his condition could not stabilize to evacuate to Command Hospital, Chandimandir.

6. No 14808163A Nk/MT Ram Narayan succumbed to injuries at 2330hr on 21 Nov 2010 at Military Hospital Jalandhar Cantt.

7. Post mortem carried out on 23 Nov 2010 at civil hospital Jalandhar Cantt and cause of death ascertained, head injuries.

8. *There is no foul play or any other angle of suspicion and is sheer case accidental death due to road traffic accident (RTA).*

9. *Since No 14808163A Nk/MT Ram Narayan was returning home after roll call his death is attributable to military service.”*

“G. *The opinion of court of inquiry, which reads as under :-*

OPINION OF THE COURT

1. *No 14808163A Nk/MT Ram Narayan met with an accident, while returning back from Corps MT after roll call to his quarter No 240/17, Vajra Complex. Nk/MT Ram Narayan was performing bonafide military duty when he met with an accident and sustained head injuries which led to his death.*

2. *There is no foul play involved in the death of No 14808163A Nk/MT Ram Narayan and his demise/death is attributable to military service in peace.*

*Copy of the court of inquiry proceedings filed as **Annexure A-3** with this original application.”*

12. Nothing has been brought on record by the respondents to indicate that opinion of the court of inquiry at any point of time or at a later stage was modified or set aside by any subsequent lawful proceedings. Accordingly the finding of court of inquiry which was kept open while granting special family pension, attained finality. In such situation no contrary opinion could have been formed by the respondents and even by the PCDA (P)

Allahabad to hold that the accident suffered by the applicant and the injuries caused thereby is not attributable to army service.

13. One important fact which has been omitted to be considered by the respondents or the PCDA (P) Allahabad is that on the basis of report of Adjudicatory Body the applicant has been paid special family pension holding that the death and injury caused thereon is attributable to army service. The Adjudicatory Body had relied upon opinion of the court of inquiry. Then under what circumstance a contrary view could have been taken by the respondents or its authorities including PCDA (P) Allahabad is not understandable. It is sheer non application of mind whereby PCDA (P), Allahabad has casually dealt with the matter of the deceased army personnel. We are left with no other option but to deprecate such action on the part of the PCDA (P) Allahabad.

14. Attention has been invited to a judgment of Armed Forces Tribunal, Regional Bench, Chandigarh in O.A. No. 3105 of 2012 decided on 24.07.2013 ***Mrs Daxina Kumari vs Union of India & Ors.*** The Chandigarh Bench of the Armed Forces Tribunal (supra) has also reiterated the same proposition of law as held by the Lucknow Bench in the case of ***Smt Prarthna Singh*** (supra). For convenience sake relevant portion of the order of ***Mrs Daxina Kumari*** (supra) is reproduced as under :-

“Learned counsel for the petitioner, during gthe course of arguments, had also relied upon the decision of

*Punjab and Haryana High Court in **Smt. Santosh Vs. Union of India and others, 2010 (1) SCT 518**, decided on 20.11.2009, the copy of which is Annexure A-8. In that case the deceased was discharging his duties at line of control in J&K. The death of deceased took place because of heart attack and it was held that the deceased was performing bonafide official duty in Gore Sector which is a coldest place. Such a situation cannot be separated from bonafide duty and the death had occurred directly due to accident in the course of performance of duty. It is, therefore, clear that the Hon'ble High Court of Punjab and Haryana has gone to the extent in granting this payment even if the death had occurred due to heart attack. But in the present case the deceased had died due to the accident while discharging the duties, therefore his widow was entitled to the ex gratia compensation as per rules applicable on the date of death of the husband of the petitioner which shall be payable to the applicant along with 10% interest from the date of filing of the petition till date of deposit. The petition is allowed accordingly. However, there will be no order as to costs."*

15. In view of the above there appears to be no room of doubt that death of the applicant's husband is attributable to army service and denial of payment of ex-gratia lump sum compensation suffers from vice of arbitrariness. The applicant's husband died on 21.11.2010 and since then she has been suffering from multiplicity of litigation, representations to authorities, mental pain and financial loss. We find a fit case where exemplary cost should be imposed in view of earlier judgment of this court in the case of **Smt Prarthana Singh**

(supra) as held in paras 10 and 11, which for convenience sake are reproduced as under :

“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."

16. We also reproduce the observations (supra) made with regard to functioning of PCDA (P), Allahabad as under :-

"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.

17. In view of the above, we are of the view that the case is liable to be allowed with exemplary cost.

18. Impugned order dated 16.03.2015 is **set aside** with all consequential benefits with regard to payment of ex-gratia lump sum compensation. Let entire amount be paid to the applicant along with interest @ 10% within a period of four months from the date of receipt of a certified copy of this order.

We quantify the cost to Rs one Lakh which shall be deposited in the Tribunal and will be released through cheque to Smt Sangita Devi by the Registry.

20. It is made clear that cost and the interest may be recovered from the salary of concerned personnel of PCDA (P), Allahabad who are accountable in denying of ex-gratia lump sum compensation.

19. O. A. is **allowed** accordingly.

(Air Marshal Anil Chopra)
Member (A)

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