

RESERVED
Court No. 1

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

O.A. No. 118 of 2017

Tuesday, this the 23rd day of April, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Smt. Rajwati Yadav, W/o 15337062-H SPR (Late) Dinesh Kumar Yadav, Resident of Sec- M-1/E-521, Ashiyana Colony, Kanpur Road, Lucknow.

.... Applicant

Ld. Counsel for the: **Shri Angrej Nath Shukla, Advocate.**
Applicant

Versus

1. Union of India through Ministry of Defence, New Delhi.
2. Officer-In- Charge, Records, Bengal, Engineer Group Records, PIN- 900477, C/O 56 APO
3. Office of PCDA (P), Gts-4, Section, Allahabad.

...Respondents

Ld. Counsel for the: **Shri Sunil Sharma, Advocate.**
Respondents.

ORDER

“(Per Hon'ble Mr Justice SVS Rathore, Member (J))”

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

“(a) to set aside the impugned order dated 02.11.2016 passed by the opposite party no.3 by which he has rejected the claim of applicant by misinterpreting the Rules contained as Annexure No.1 to this application.
 (b) to direct the opposite parties to consider and take necessary action for payment of Ex-Gratia claim of No.15337062-H SPR (Late) Dinesh Kumar Yadav.
 (c) to issue any other appropriate order or direction as this Hon’ble Tribunal deem fit and proper in nature and circumstances of the case.
 (d) to allow this application in favour of the applicant with cost.”

2. In brief the facts of the case are that the husband of the applicant late Dinesh Kumar Yadav expired during journey period while he was on one day casual leave to his home. Thereafter the applicant had applied for Ex-Gratia claim before the respondent no.2, who forwarded the same to respondent no.3. Respondent no.3 rejected the claim of the applicant on 3/6.10.2012 in a routine manner. Respondent no.2 issued a letter dated 20.07.2016 to the competent authority to resubmit the case of applicant for reconsideration of claim because it had wrongly been rejected. Thereafter she again preferred appeal by mentioning all the facts. The case of the applicant is that her husband died while he was on journey to avail the casual leave, therefore, the order rejecting the Ex-Gratia compensation is wrong. It has also been pleaded that the Court of Inquiry has held that the death of the applicant was attributable to military service.

3. During the course of arguments learned counsel for the applicant has drawn our attention towards letter dated 02.11.2016, Annexure No.1 to this O.A. and Annexure No.6, letter

No.20(1)/98/D(PAY/SERVICES) dated 22nd September, 1998, which deals with death in train accidents.

4. On behalf of the respondents it is admitted that the husband of applicant died while he was boarding the train to avail the casual leave and there was no causal connection between the cause of death and military duty and therefore the applicant is not entitled to get Ex-Gratia amount and the applicant is receiving the family pension.

5. Before proceeding further at this juncture we would like to refer the impugned letter No.G4/PHPII/15337062/2016,O/O PCDA(P) Allahabad dated 02.11.2016, relevant portion of which is reproduced below:-

“The main condition to be satisfied for the payment of the Ex-Gratia lump sum compensation in the specified circumstances is that the death of the employee concerned should have occurred in the actual performance of bonafide official duties. In other words, a causal connection should be established between the occurrence of death and government service.

Illustrative examples of cases under clause “a” given in appendix to the said letter (1-12)

In view of the above brought rule position and guidelines it is stated that the main condition for the grant of Ex-Gratia lump sum compensation is that death of the individual should occur during the performance of allotted/assigned task and that causal connection should exist between government service and death. In the instant case the individual was on his way for leave and was not performing any duty at the time of death.

Hence the RO may kindly clarify how Ex-Gratia claim can be admitted when the individual on his way home on casual leave. The claim along with all its connected documents is returned herewith unacted.”

Thus, the claim of the applicant was rejected on the ground that the applicant was not performing bonafide Army duty.

6. Learned counsel for the applicant has drawn our attention to Annexure-6 to the O.A. Sub clause - 4 of Annexure-6 letter No. 20(1)/98/D(PAY/SERVICES) dated 22nd September, 1998 is reproduced below:-

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

Thus, admittedly in the instant case the husband of applicant sustained injury and died while he was undertaking journey by train to avail casual leave, which fact finds support from the Court of Inquiry, which has held that the death of the individual is attributable to military service.

7. Apart from the above, it has been admitted by the respondents in their counter affidavit that as per the findings and the approval of the Court of Inquiry, the death of the individual is attributable to military service. As per service record of the deceased, next of kin (NOK) of the deceased is Smt Rajwati Yadav. Date of birth of the NOK is 11.07.1976. The PCDA (P) Allahabad had issued PPO F/011175/2012 dated 18.06.2012 in respect of Smt Rajwati Yadav for granting Special family pension @ 7326/- per month with effect from 19.11.2011. Thereafter 416 Engineer Brigade Camp had submitted the statement of case to BEG Records, Roorkee for grant of Ex-Gratia to the applicant vide letter No. 1272/FA/75/A dated 13.07.2012. Statement of case for

grant of Ex-Gratia compensation for ten lakhs in respect of applicant was submitted to PCDA (P) Allahabad vide BEG Records, Roorkee letter No. F-9428/R/FP/12/Pen dated 19.07.2011 and the same was rejected by PCDA (P) Allahabad vide letter No. G-4/08/12/56/VIII/G-617512 dated 03/06.10.2012.

8. The above averment of the respondents makes it evidently clearly that since death of the applicant was held to be attributable to military service, therefore, the applicant was sanctioned special family pension. At that stage the PCDA (P) raised no objection and issued PPO for special family pension but when the claim of the applicant for grant of Ex-Gratia payment was forwarded, the same was rejected by the PCDA (P) on the ground that death of the applicant's husband has no connection with Army duty. We simply fail to understand as to how two different stands have been taken by the PCDA (P) without any substance and basis. Virtually the grounds on which special family pension can be sanctioned are the same on which lump-sum Ex-Gratia payment is made. Surprisingly the PCDA (P) issued PPO for special family pension holding that the death of applicant's husband was attributable to military service but when her claim for Ex-Gratia payment was made, the same was denied on the ground that applicant's husband died in a train accident while boarding the train. This stand of PCDA (P) for rejecting the claim of Ex-Gratia payment to the applicant was absolutely without substance. The Army authorities finding her claim of Ex-Gratia lump sum payment to be

genuine and bonafide have forwarded her claim to the PCDA (P) for sanctioning for Ex-Gratia payment.

9. Learned counsel for the applicant has placed reliance on the judgment of this Tribunal in O.A. No. 105 of 2017, **Smt. Poonam Shukla vs. Union of India and others** decided on 27.11.2018. The only argument on behalf of the respondents in reply is that the husband of the applicant sustained injury and died while he was boarding the train to avail casual leave and therefore it has no causal connection with military duty and hence the applicant is not entitled to Ex-Gratia amount. However, he could not cite any case law in support of his submission. The aforementioned case on which the learned counsel for the applicant has placed reliance is absolutely identical with the facts of this case. It is admitted in the counter affidavit in Para-6 that “***As per the findings and the approval of the Court of Inquiry, the death of the individual is attributable to military service.***” Thus when the Court of Inquiry has already held that the death of the individual is attributable to military service, the stand taken by the respondents is contrary to the finding of Court of Inquiry holding that there was no causal connection between the death of individual and the Army duty. Therefore, the case of the applicant is fully covered by the decision of this Tribunal in O.A. 105 of 2017 Smt. Poonam Shukla vs. Union of India & others (supra), wherein this Tribunal observed in Para Nos.19, 20 and 21 as under:-

“19. Admittedly, in this case the husband of the applicant was travelling to avail his PAL. Therefore, in view of the above he has to be deemed to be on military duty and has rightly been held so by the Court of Inquiry. The Court of Inquiry was held in this matter and the finding of the Court of Inquiry is as under :-

“(a) The cause of death of No. 13995992A LNK (Dvr MT) Raghvendra Shukla is accidentally falling down from the train

(b) The Individual died due to train accident during journey period of PAL 2011.

Therefore, death of individual is attributable to military service.”

20. Admittedly, in view of the findings of the Court of Inquiry the claim of the applicant for Special Family Pension was forwarded by the Record Office, which was admitted and Special Family Pension was sanctioned to the applicant. In pursuance of the order dated 02.09.2016, passed by this Tribunal in the earlier Original Application No.227 fo 2017 Smt. Poonam Shukla Versus Union of India, a speaking order was passed by the competent authority on 22.03.2017 on the ground which are mentioned in para 7 and 8 of the impugned order, the relevant part reads as under :-

“7. Thus, the Ex-Gratia lump sum compensation may not be sanctioned in cases where the deceased soldier was on duty in terms of Entitlement rules but not in actual performance of bonafide official duties in accordance to para – 1 of Annexure of GOI, MOD letter dated 22.09.1998 (read with illustrative examples of the death cases in the Appendix appended with Govt. Letter dated 22.09.1998.

8. That, the individual in the present case died due to falling from train while proceeding on PAL and is hence not performing any bonafide official duty. Therefore Ex-Gratia lumpsum compensation in the instant case is inadmissible as per existing Govt. orders/clarification.”

21. Thus the refusal by the competent authority for grant of Ex-Gratia lump-sum compensation was only on the ground that the applicant was not performing any bonafide official duty. Thus keeping in view of the earlier pronouncement of the several Armed Forces Tribunals that have attained finality by lapse of time and no contrary view on the point could be brought to our notice in spite of

availing an opportunity for this purpose, we are of the view that applicant is entitled for grant of Ex-Gratia lump-sum compensation and therefore, the Original Application deserves to be allowed and order of PCDA (P) rejecting the claim of the applicant deserves to be set aside.

10. Accordingly, Original Application deserves to be allowed and is hereby **allowed**. The respondents are hereby directed to pay Rs.10.00 Lakhs as Ex-Gratia lump-sum compensation to the applicant within four months from the date a certified copy of this order is produced before them, failing which they will have to pay interest @ 9% on the amount from the date of its accrual till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: April 23, 2019
JPT

(Justice SVS Rathore)
Member (J)