

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

**Original Application No. 86 of 2021**

**Thursday, this the 29<sup>th</sup> day of July, 2021**

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt Neelam Singh W/O No. 16017511H Late Rfn Jitendra Singh, Resident of House No. 133, Village-Gudaura, Post-Bijnaur, District-Lucknow, Pin-226002.

.... Applicant

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

**Versus**

1. Union of India through Ministry of Defence, Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
2. Deputy Director (AG/PS-5), IHQ of MoD (Army), Adj't's Branch, Addl Dte Gen Personal Service Room No 18, Plot No-108, West 'L' Block, Church Road, New Delhi-110001.
3. Records the Rajputana Rifles, Pin-900106, C/O 56 APO.
4. Welfare Officer, HQ Central Command (A), Lucknow (UP)-226002.
5. Office of PCDA (P), Gts-4 Section, Allahabad.

... Respondents

Ld. Counsel for the: **Mrs. Anju Singh**, Advocate  
Respondents. Central Govt Counsel.

## ORDER

1. The present O.A. has been filed by applicant for grant of Special Family Pension under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has sought the following reliefs:-

(a) To set aside the impugned order dated 12.04.2018 passed by the opposite party No-3 by which he has rejected the claim of applicant by misinterpreting the letter No 20(1)/98/D(Pay/Services) and not considering the amended letter No 20(2) 2016/D(Pay/Services) by which ex-gratia compensation has been enhanced, 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 16017511H Late Rfn Jitendra Singh according to existing rate of ex-gratia lump sum compensation.

(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. Facts giving rise to Original Application in brief are that No. 16017511N Rfn Jitendra Singh (late husband of applicant) was granted four days advance of annual leave for the period from 06.11.2010 to 09.11.2010. He met with a road accident on 06.11.2010 and succumbed to his injuries in Command Hospital, Lucknow on 15.11.2010. Applicant is in receipt of Ordinary Family Pension vide PPO No F/NA/011567/2011. On 13.02.2018 applicant had submitted an appeal to respondents for grant of ex-gratia compensation. During pendency of aforesaid appeal, O.A.

No. 385 of 2018 was filed by applicant for issuance of directions to respondents to decide appeal dated 13.02.2018. This O.A. was disposed off vide order dated 21.08.2018 directing the respondents to decide applicant's representation within three months. Meanwhile, appeal/representation forwarded by applicant was also decided by the competent authority stating that applicant is not entitled to ex-gratia compensation. An Execution Application No. 237 of 2018 was also filed which was dismissed as infructuous vide order dated 27.11.2020. Subsequently, letter dated 12.04.2018 was forwarded to applicant intimating her about inadmissibility of ex-gratia compensation. Thereafter, applicant filed O.A. No. 580 of 2019 for grant of Special Family Pension which was dismissed vide order dated 04.02.2021 with the conclusion that death of applicant's husband was not attributable to military service and hence applicant is not entitled to Special Family Pension. Applicant has now filed this O.A. for grant of ex-gratia compensation.

3. Submission of learned counsel for the applicant is that applicant's husband died in a road accident while on leave which is regarded as duty as held in the case of **Yadvinder Singh Virk vs Union of India & Ors**, CWP No 6066 of 2007 (2009 SCC Online P & H). His further submission is that the Hon'ble Delhi High Court in the case of **Ex Sepoy Hayat Mohammed vs Union of India & Ors**, 2008 (1) SCT 425 has held as under:-

*"The case of the petitioner is that irrespective of the fact that petitioner was on leave, he would continue to be subjected to military law and the injury of the petitioner in view of Section 2(2) of the Army Act should not be viewed myopically a 'not on military duty at that*

*point of time' but viewed in a broader spectrum of 'being in military service'.*

Further relying upon judgments passed by this Tribunal in O.A. No. 105 of 2017, **Smt Poonam Shukla vs Union of India & Ors** and O.A. No. 118 of 2017, **Smt Rajwati Yadav vs Union of India & Ors**, learned counsel for the applicant pleaded that applicant be granted ex-gratia lump compensation.

4. Per contra, submission of learned counsel for the respondents is that since Court of Inquiry dated 23.11.2010 has opined death of No 1601751H Late Rfn Jitendra Singh as neither attributable to nor aggravated by military service, therefore applicant is not entitled to ex-gratia compensation. His further submission is that applicant is not eligible for grant of ex-gratia compensation in terms of Govt of India, Min of Def letters dated 21.10.2008 and 02.11.2016. His submission is that since death in respect of applicant's husband has no causal connection with military duty, therefore, applicant is not entitled to ex-gratia compensation. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the records.

6. At the very outset, it may be observed that previous representations/appeals filed for grant of ex-gratia compensation were rejected on the ground that death in respect of No. 16017511N Rfn Jitendra Singh was not attributable to military service. We also notice that O.A. No. 580 of 2019 was filed for grant of Special Family Pension but the same was dismissed vide order dated 04.02.2021 on the ground that death in respect of No.

16017511N late Rfn Jitendra Singh (applicant's husband) was not attributable to military service.

7. Govt of India, Min of Def letters dated 21.10.2008 and 02.11.2016 stipulate that ex-gratia grant from Central Govt is applicable to the families of the defence service personnel, who die in following conditions:-

*“(a) Death occurring due to accidents in course of performance of duties.*

*(b) Death in the course of performance of duties attributed to acts of violence by terrorists, anti-social elements etc.*

*(c) Death occurring in border skirmishes and action against militants, terrorists, extremists, sea pirates.*

*(d) Death occurring while on duty in the specified high altitude, inaccessible border posts, on account of natural disasters, extreme weather conditions.*

*(e) Death occurring during enemy action in war or such war like engagements, which are specifically notified by Ministry of Defence and death occurring during evacuation of Indian Nationals from a war-torn zone in foreign country.”*

8. Thus, keeping in view of aforesaid factual position, we are clear that death in respect of No. 16017511N Rfn Jitendra Singh was not caused in the circumstances aforesaid.

9. From the pleadings on record and arguments advanced by learned counsel for the parties it transpires that No. 16017511N Rfn Jitendra Singh met with an accident on 06.11.2010 and succumbed to injuries on 15.11.2010 at Command Hospital, Lucknow while he was on leave. The Court of Inquiry dated 23.11.2010 concluded that death in respect of No. 16017511N Rfn Jitendra Singh was not attributable to military service.

10. In view of the above we are of the view that since death in respect of applicant's husband has got no connection with military service, applicant is not entitled to ex-gratia compensation.

11. The O.A. being devoid of merit is hereby **dismissed**.

12. No order as to costs.

13. Pending applications, if any, are disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 29<sup>th</sup> July, 2021  
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