

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 501 of 2018**

Friday, this the 13th day of August, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)

Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Geeta Pal (W/o No. 14640558-L CFN (Late) Ramesh Chandra, R/o House No. 587A/821, "B" Block, Gandhi Nagar, Post : Telibagh, Lucknow (UP)-226002.

.... **Applicant**

Ld. Counsel for the: **Shri Shailendra Kumar Singh, Advocate and**
Applicant **Shri Ashish Kumar Singh, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi-110011.
3. Dte. Gen. of EME (EME Pers), Master Gen. of Ord. Branch, IHQ of MoD (Army), PIN : 908704, C/o 56 APO.
4. O IC Records, EME Records, PIN : 900453, C/o 56 A P O.
5. PCDA (P) (Army) Draupadi Ghat, Allahabad (UP)-211014.

... **Respondents**

Ld. Counsel for the: **Dr. Shailendra Sharma Atal, Advocate**
Respondents **Central Govt Counsel.**

ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (A) *To issue order or direction to the Respondents to grant SPECIAL FAMILY PENSION with effect from 05.06.2012 as her husband died while being on CASUAL LEAVE.*
- (B) *To issue order or direction to the Respondents to pay arrears of difference after necessary adjustment from ORDINARY FAMILY PENSION already granted to her and SPECIAL FAMILY PENSION along with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.*
- (C) *Any other relief as considered deemed just and proper by the Hon'ble Tribunal in the nature and circumstances of instant case be awarded in favour of the applicant.*
- (D) *To impose a suitable costs on respondents as deemed fit and proper by this Hon'ble Tribunal in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Corps of EME of Indian Army on 11.07.1998. While serving with Armd Static Workshop, EME, Ahmednagar Applicant's husband No. 14640558-L CFN Ramesh Chandra was granted 13 days Casual Leave from 04.06.2012 to 16.06.2012 along with Prefix on 03.06.2012 and Suffix on 17.06.2012. In route from Ahmednagar, while applicant's husband going from Telibagh to Gadarian Khera [his native village (Home)] on Motor Cycle, on 04.06.2012 at 18.30 hours, met with road accident with a Mini Truck in Lucknow (Raibareilly Road under Police Station Mohanlal Ganj, Lucknow) and died. Consequent to death of applicant's husband, a Court of Inquiry was ordered to investigate the circumstances under which he died. As per the opinion and directions of GOC HQ Madhya UP Sub Area, the death of the applicant's husband was considered as

'ATTRIBUTABLE' to military service. Accordingly, the claim for grant of Special Family Pension in favour of the applicant was sent to Principal Controller of Defence Accounts (Pension), Allahabad [PCDA (P), Allahabad]. The PCDA (P), Allahabad had rejected the claim of Special Family Pension vide letter dated 20.02.2013. However, PCDA (P), Allahabad sanctioned Ordinary Family Pension to the applicant vide P.P.O. dated 03.05.2013 with effect from 05.06.2012 and the applicant is in receipt of ordinary family pension. The applicant preferred representation dated 22.09.2016 which too was rejected by the PCDA (P), Allahabad vide letter dated 13.02.2017 annexing therewith copy of letter dated 20.02.2013 treating the death of applicant's husband as **'NOT ATTRIBUTABLE'** to military service. It is in this perspective that the applicant has preferred the present Original Application for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that husband of applicant died on duty on 04.06.2012 while he was on Casual Leave and proceedings for his native Village. He further submitted that applicant was fully fit in all respects at the time of enrolment and the injury which caused death of applicant's husband is considered attributable to military service as per opinion of Court of Inquiry and directions of GOC HQ Madhya UP Sub Area. Further

submission of learned counsel for the applicant is that since applicant's husband was on duty at the time of death, his death should be attributable to military service and denial of Special Family Pension to deceased soldier's wife by the PCDA (P), Allahabad is arbitrary in nature. Relying upon Rule 14 of Entitlement Rules for Casualty Pensionary Awards, 1982, learned counsel for the applicant contended that NOK-wife of the deceased soldier is entitled to Special Family Pension.

4. On the other hand, learned counsel for the respondents submitted that since the death of the applicant's husband was considered by PCDA (P), Allahabad as '**NOT ATTRIBUTABLE**' to military service, therefore, applicant is not entitled to Special Family Pension in terms of Para 213 of Pension Regulations for the Army, 1961 (Part – I) as his death cannot be treated as on route. During the course of arguments he submitted that since applicant's husband was not travelling in Public transport while performing journey between duty station and the leave station, as provided in Note 2 (d) of Rule 12 of Entitlement Rules to Casualty Pensionary Awards, 1982. Therefore, applicant is not entitled to Special Family Pension. He further submitted that for grant of Special Family Pension there should be causal connection of such death with the Military Service. Since the applicant died while on casual leave,

there is no causal connection of the death with the military service. He pleaded for dismissal of Original Application.

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

6. Admittedly the applicant's husband was enrolled in Indian Army on 11.07.1998. During Casual Leave from 04.06.2012 to 16.06.2012, he (applicant's husband) proceeded from his duty place i.e. Armd Static Workshop, EME, Ahmednagar to native Village (Gadarian Khera), in the way from Telibagh to Gadarian Khera (native Village), Raibareilly on Motor Cycle on 04.06.2012 at 18.30 hours met with road accident with a Mini Truck in Lucknow (Raibareilly Road under Police Station Mohanlal Ganj, Lucknow) and died.

7. Before proceeding further, we would like to determine whether applicant's husband was on duty when he died due to 'road accident'. With regard to definition of "duty" we rely on Appendix II of Clause 12 of Entitlement Rules for Casualty Pensionary Award which defines the word duty, which for convenience sake is reproduced as under:

"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.*

Note: 1

(a) *Personnel of the Armed Forces participating in*
 (i) *Local/national / international sports tournaments as member of service teams, or,*
 (ii) *Mountaineering expeditions / gliding organised by service authorities, with the approval of Service Hqrs will be deemed to be "on duty" for purposes of these rules.*

(b) *Personnel of the Armed Forces participating in the above named sports tournaments or in privately organised mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be on duty for purposes of these rules, even though prior permission of the competent service authorities may have been obtained by them.*

(c) *Injuries sustained by the personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, or disability arising from such injuries, will continue to be regarded as having occurred while „on duty for purposes of these rules.*

Note: 2

The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional courses or exercises for the Defence Services for the purpose of the grant of disability family pension on account of disability/death sustained during the courses.

(d) *When proceeding from his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher, on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for the journey.*

(e) When journeying by a reasonable route from one's quarter to and back from the appointed place of duty, under organised arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available.

(f) An accident which occurs when a man is not strictly on duty as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Thus for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed „on duty“ at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act.”

8. Thus, keeping in view the aforesaid rule and the fact that the deceased soldier while granted Casual Leave was proceeded from his duty place i.e. Armd Static Workshop, EME, Ahmednagar to his native Village, in the way from Telibagh, Lucknow to his native Village (Gadarian Khera) met with a road accident, he seems to be on duty.

9. Additionally, respondents while filing counter affidavit (para 3 and 5) have also admitted that as per opinion of Court of Inquiry and directions of GOC HQ Madhya UP Sub Area, the death of the applicant's husband was considered as '**ATTRIBUTABLE**' to military service, which makes it clear that applicant's husband was on duty when his death took place.

10. In this case we would like to mention that none of the parties have produced copy of Court of Inquiry report including its opinion and findings to establish cause of death. In the instant case applicant is in receipt of Ordinary Family Pension but she is entitled to Special Family Pension on account of death of applicant's husband while on duty.

11. We are of the view that the denial of Special Family Pension on the ground that applicant's husband was not travelling in Public transport while performing journey between duty station to leave station is not tenable. The applicant's husband met with an accident in route while proceeding from his duty station (Ahmednagar) to his leave station (native Village). We are further of the view that death of applicant's husband is attributable to military service as has been considered by Court of Inquiry as well as GOC HQ Madhya UP Sub Area and as it occurred while he was on military duty.

12. In view of the above, we **allow** this Original Application. The impugned orders dated 20.02.2013 and 13.02.2017, rejecting the claim of applicant for grant of Special Family pension, are set aside. The respondents are directed to release Special Family Pension to applicant with effect from the next date of death of her

husband. Difference of arrears may be worked out and paid to applicant within three months.

13. Let entire amount be paid to the applicant within a period of four months from the date of receipt of a certified copy of this order.

Default will invite interest @ 8% p.a.

14. No order as to cost.

15. Pending applications, if any, are disposed off accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 13 August 2021
AKD/-