

E- Court No 1

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Original Application No. 581 of 2019

Wednesday, this the 25th day of August 2021

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

Smt Sangeeta, Next of Kin of No 13998130M, L/Nk (HK) Achhe Lal (Late), Resident of H. No -19, Sadar Bazar, Ramdas Ka Hata, Lucknow.

.....**Applicant**

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

Versus

1. Union of India through Department of Ex-Servicemen Welfare Ministry of defence, Room No- 227B, B Wing Sena Bhawan, New Delhi- 110010.
2. Ministry of Personal PG & Pensioners Deptt of Pension & Pensioners Welfare 3rd Floor Lok Nayak Bhawan, Khan Market, New Delhi – 110003.
3. COAS Sectt IHQ of MoD (Army), South Block, New Delhi- 110011.
4. Addl Dte Gen of Pers Services Adjutant General's Branch (PS-5), Integrated HQ of MoD (Army), DHQ, PO, New Delhi- 110011.
5. Army Medical Corps Record Office, Pin- 900450, C/o 56 APO.

6. Welfare Officer, HQ Central Command (A), Lucknow (U.P.)-226002.
7. Office of the Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad

.....Respondents

Counsel for the Respondents - **Shri Arun Kumar Sahu,**
Central Govt Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs :-

- “(a) To set aside the impugned order dated 19.09.2019 passed by the opposite party no. 5 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. 13998130M L/Nk (HK) Achhe Lal (Late).*
- (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) Allow this application in favour of the applicant with cost”.*

2. Counter affidavit filed by learned counsel for the respondents is taken on record.

3. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 21.02.1998 and expired on 14.04.2012 due to road traffic accident and sustained injury when his motor cycle collided with a truck while on his way from Kanpur to Lucknow to re-join duty at his unit on expiry of casual leave. A Court of Inquiry of the deceased soldier was held and death of deceased soldier was found as attributable to military service in peace area. The applicant filed claim for grant of Special Family Pension but the same was rejected vide letter dated 27.11.2012 and applicant was granted enhanced rate of Ordinary Family Pension @ Rs. 6475/- per months from 15.04.2012 to 14.04.2022 thereafter normal rate of Ordinary Family Pension @ Rs. 3,885/- per month from 15.04.2022. The applicant preferred an application for grant of Ex Gratia lump sum compensation but the same was rejected vide letter dated 19.09.2019 stating that death of her husband was not established as course of performance of duty. Being aggrieved, the applicant has filed this Original Application for grant of grant of Ex Gratia compensation.

4. Learned counsel for the applicant submitted that death of the husband of the applicant took place while her husband was returning back to his unit to join duty after availing casual leave, hence he was on duty. Court of inquiry opined that death of deceased soldier is considered as

attributable to military service. As per Para 12 (D) of Entitlement Rules *“The individuals will be treated on duty when proceeding from his duty station to his leave station or returning from his leave station, irrespective of the mode of conveyance whether private or provided by the Government.”* He further submitted that as per Appendix Clause (a): 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, e.c.t./ or of personnel on field duties will be considered as attributable to military service.* His claim for grant of Ex Gratia was submitted but the respondents have wrongly rejected his claim. He submitted that applicant is entitled for grant of Ex Gratia in terms of Govt of India, Min of Defence letter dated 02.11.2016.

5. Per Contra, learned counsel for the respondents submitted that death of the husband of the applicant was found attributable to military service by the Court of Inquiry and the applicant was considered on duty as he was coming back to join his duty. Applicant was granted enhanced rate of Ordinary Family Pension @ Rs 6,475/- per month from 15.04.2012 to 14.04.2022 and thereafter normal rate of Ordinary Family Pension @ Rs 3,885/- per month from 15.04.2022 vide PPO No F/NA/011890/2012 . Learned counsel for the respondents further submitted that applicant was not granted Ex Gratia as death of her husband was not established as course of

performance of duty in terms of Govt of India, Mon of Def letter dated 04.06.2010. Learned counsel for the respondents submitted that applicant has been granted her legitimate dues competent authority has rightly rejected the award of Ex-Gratia payment as the death of the applicant's husband did not occur while discharging bonafide duty, as such the applicant is not entitled for any relief sought by her and the same is liable to be rejected.

6. We have heard learned counsel for the parties and have also perused the record.

7. In the instant case the husband of the applicant died while met with an accident while coming back to his unit after availing casual leave. Admittedly, after conducting the investigation by the Military authorities, death of the husband of the applicant was considered as attributed to Military Service and the applicant was granted enhanced ordinary family. It is also admitted that the ex-gratia compensation award was rejected on the ground that husband of the applicant was not on official duty when he died in road accident.

8. The term 'duty' has been explained in Rule 12 of the Entitlement Rules for Casualty Pensionary Awards, 1982 which is reproduced below :-

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”.*

9. The rules and regulations are guidelines and must be judiciously applied and implemented, keeping in mind, the honour and welfare of all ranks in the Armed Forces. It is undisputed fact that husband of the applicant met with an accident while returning back to unit after availing casual leave.

10. Applicant has prayed for grant of Ex Gratia lump sum compensation in terms of Govt of India, Min of Def letter dated 02.11.2016 but the claim of the applicant for grant of Ex Gratia is not covered under this policy letter as this letter is applicable with effect from 01.01.2016 and the applicant died in the year 2012.

11. Case of the applicant is covered under para 2 (a) to Govt of India, Min of Def letter dated 04.06.2010 and this policy letter is applicable with effect from 01.01.2006 which read as under:-

‘the existing rate of ex gratia lump sum compensation to the next of kin of the deceased defence personnel have already been revised as under:-

(a)	<i>Death occurring due to accident in course of duties</i>	<i>Rs. 10.00 lakhs</i>
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12. Husband of the applicant is deemed to be on official bonafied duty when he met with an accident and died. Moreover, as per conditions governing the payment of ex-gratia lump sum compensation and guidelines in deciding the issue regarding death of a defence personnel, all evidence "both direct and circumstantial" shall be taken into account and benefit of reasonable doubt be given to the claimant. The impugned order passed by the respondents rejecting ex-gratia lump sum compensation is unjust, arbitrary and against the Principles of natural justice.

13. Thus in the result, O.A. succeeds and is **allowed**. The impugned order passed by the respondents rejecting claim for grant of ex gratia lump sum compensation is quashed and the applicant is held entitled to grant of Ex-Gratia lump-sum grant of Rs 10 lakhs on demise of her husband. Respondents are directed to pay Rs 10 lakhs to the applicant within a period of four months from today. Default will invite interest @ 8% per annum.

14. No order as to costs.

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

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

Dated : 25 August, 2021
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