

**COURT NO: 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 532 of 2022**Thursday, this the 16<sup>th</sup> day of February, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Smt. Jal Devi, W/o No. 14480580P Ex Nk Late Shri Ram Naresh Singh, R/o: Mrnhdibag, Kaimganj, District: Farrukhabad (U.P.) - 209502

..... **Applicant**

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

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi - 110011.
2. OIC Record, Records Artillery, PIN - 908802, C/o 56 APO
3. PCDA (P), Draupadighat, Allahabad (U.P.) - 211014.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Ashish Kumar Singh, Central Government Counsel.**

**ORDER (ORAL)****“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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

*“(i) That this Hon’ble Tribunal may kindly be pleased to direct the opp. parties to grant the Special Family Pension to the applicant for life with arrear from the date of death of her husband i.e. 01.07.2004 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of special Family Pension with 18% p.a. since due date to actual date of payment in the interest of justice.*

*(ii) That this Hon’ble Tribunal may kindly be pleased to award the cost Rs. 20,20,000/- (Rupees Twenty Lac and Twenty thousand only) to the applicant against the opposite parties.*

*(iii) That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.”*

2. The undisputed factual matrix on record is that the husband of the applicant Nk Late Shri Ram Naresh Singh was enrolled in the Indian Army on 29.09.1982. While deployed at Sattasar Ammunition Dump for guard duty on 30.06.2004, he collapsed and became unconscious. He was admitted in Military Hospital where he was declared dead. Cause of death was due

to "Sudden Cardiac Death Due to Myocardiac Infarction" and medical board declared the death of the applicant's husband as ATTRIBUTABLE TO MILITARY SERVICE. Applicant was granted enhanced rate of family pension. Her claim for grant of Special Family pension was rejected vide letter dated 08 May 2006. Being aggrieved, applicant has filed instant O.A. for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that husband of applicant died on 30.06.2004 while he was deployed in filed area at Sattasar Ammunition Dump for guard duties. He further submitted that applicant was fully fit in all respects at the time enrolment and the disease / disability which caused death of applicant's husband is due to service conditions. Further submission of learned counsel for the applicant is that since applicant's husband was on duty at the time of death and his death was considered as attributable to military service by Court of Inquiry as well as by Medical Authority and denial of Special Family Pension to applicant is arbitrary in nature. Relying upon Regulation 85 of Pension Regulations 1961, 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 on 30.06.2004, while husband of the applicant was on duty, became unconscious and admitted to hospital where he was declared death. A Court of Inquiry was held and death of husband of the applicant was considered as Attributable to Military Service. Nk Late Ram Naresh Singh has nominated applicant as his Next of Kin and heir to estate, hence death cum retirement gratuity and family pension was paid to her. Claim of the applicant for grant of Special Family Pension was processed but the same was rejected by PCDA (P), Allahabad vide letter dated 08.05.2006. PCDA (P), Prayagraj had sanctioned enhanced rate of Ordinary Family Pension to the applicant Rs. 3345/- per month with effect from 01 Jul 2004 to 30 Jun 2011 and thereafter, normal rate of ordinary Family Pension @ Rs. 2007/- per month with effect from 01 Jul 2011 till widowhood vide their Pension Payment Order No F/NA/010163/2006 (Army) dated 11 May 2006. Applicant was informed that if she is not satisfied, she may prefer an appeal to Additional Directorate General PS-4, Adjutant General Branch, Army HQ, HQ PO, New Delhi within one year from 16 May 2006. However, she did not prefer the same. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

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 29.09.1982. On 30.06.2004 while on duty, husband of the applicant suddenly collapsed and became unconscious and evacuated to Medical Hospital where he was declared dead. Applicant was granted enhanced rate of family pension after death of her husband. In terms of Para 213 of Pension Regulations for the Army, 1961 (Part-1) and Para 6 of Entitlement Rules for Casualty Pensionary Awards, 1982, applicant is entitled to Special Family Pension. Para 213 reads as under :-

***“a special family pension may be granted to the family of an individual if his death was due to or hastened by :-***

***(a) A wound, injury or disease which was attributable to military service.***

**OR**

***(b) The aggravation by military service of a wound, injury or disease which existed before or arose during military service”.***

7. Admittedly, in the Court of Inquiry as well as in Medical Board, the competent authority in their discretions have held the death of husband of the applicant as “attributable to military

service” hence the applicant is entitled to Special Family Pension in terms of Regulations 82 and 105 of Pension Regulations for the Army Part- I (2008), which read as follows:-

**PENSION REGULATIONS**

*82. For determining the pensionary benefits on death or disability which is attributable to or aggravated by Military service under different circumstance, the cases shall be broadly categorized as follows :-*

**Category B**

*Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be exemplified.*

**Explanation:**

*Invalidment case falling under Category B and Category C due to disease contracted or injury sustained or cause of death if accepted by medical authority and/or competent authority attributable to or aggravated by Military service the individual may be granted disability pension or special family pension as the case may be.*

**105. (a)** *Special Family Pension may be granted to the family of service personnel if his death occurred in circumstances mentioned in category B and Category C of the Regulation 82 of these regulations due to or hastened by :*

*(i) A wound, injury or disease which was attributable to military service or (ii) was due to aggravation by military service of a wound, injury or disease which existed before or arose during military service and in case of death after death after retirement /discharge. Provided that the service personnel had retired /discharged otherwise than voluntarily/at own request on compassionate ground before completion of terms of engagement.*

*(b) The question whether death is attributed to or aggravated by military service shall be determined under the Entitlement Rule for causality Pensionary Awards, 1982 contained in Appendix – IV) to these regulations.*

8. Once the death of husband of the applicant has been held to be Attributable to Military Service, in action/non payment of Special Family Pension is a matter of concern for the respondents. If this is the manner in which the Army Personnel are treated, it can be said that it is extremely unfortunate. The Army personnel are bravely defending the country even at the cost of their lives and we feel that they should be treated in a better and more humane manner by the governmental authorities, particularly in respect of their emoluments, pension and other benefits. ( As observed by the Hon'ble Supreme Court in the case of **Nand Lal Vs. state of Uttarkahand and anr** reported in (2010) 4 SCC 562). Since the circumstances of death of husband of the applicant are related to the duties of military services and was opined as attributable to military service, hence, applicant is entitled for special family pension.

9. In view of the foregoing reasons, the application deserved to be partly allowed. Husband of the applicant died on 30.06.2004 and applicant approached the Tribunal on 04.07.2022 after prolonged delay of more than 17 years. Due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass v.**

***Union of India and others (2007 (3) SLR 445)***, the arrear of Special Family Pension shall be restricted to three years preceding the date of filing of the instant O.A. The O.A. was filed on 04.07.2022. The impugned order passed by the respondents rejecting claim for grant of Special Family Pension is set aside. The respondents are, therefore, directed to issue fresh PPO in favour of the applicant granting Special Family Pension instead of Ordinary Family Pension and pay the arrear amount of pension to the applicant after adjustment of Ordinary Family Pension already paid to her within a period of four months from the date of receipt of a certified copy of this order failing which they have to pay interest @ 8% on the amount due from the date of its accrual till the date of actual payment.

10. No order as to costs.

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

**(Maj Gen Sanjay Singh)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : 16 February, 2023

Ukt/-