

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 403 of 2021**

Wednesday, this the 12th day of January, 2022

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

Smt Sushma W/o No 6947790M (Late) Pawan Kumar, resident of village-Jagat Kheda, near Cent Martin Academy, Kalli Paschim, Lucknow.

..... Applicant

Learned counsel for the : **Shri Angrej Nath Shukla**, Advocate
Applicant

Versus

1. Union of India through Directorate General of Ord Services (OS-8C), Master General of Ord Branch, IHQ of MoD (Army), New Delhi-110001.
 2. Office of PCDA (P), Gts-4 Section, Draupadighat, Allahabad (U.P.).
 3. Senior Record Officer, A.O.C. Records, PIN-900453, C/o 56 APO.
 4. Officer Commanding, HQ Lucknow.
 5. Zila Sainik Welfare Office, Raibareli, U.P.
-Respondents

Learned counsel : **Shri Vishwesh Kumar**, Advocate
Respondents Central Govt Counsel

ORDER (Oral)

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

(i) To direct the opposite parties/appointing authority to consider the case of application for allowing special family pension regarding which she has submitted application on 31.03.2021 as contained as Annexure No-1.

(ii) To issue any other appropriate order or direction as this Hon'ble Tribunal deem fit and proper in nature and circumstances of the case.

(iii) To allow this application in favour of the applicant with cost.

2. Facts giving rise to this application in brief are that applicant's husband was enrolled in the Indian Army on 29.11.2003. In the year 2016 while serving with 11 Field Ordnance Depot (FOD) his posting order was received to proceed on posting to 3 Rashtriya Rifles (RR). Accordingly, he was posted out to his new unit with 30 days leave-cum-posting w.e.f. 30.06.2016. On 14.07.2016 he met with a road accident on Allahabad-Lucknow National Highway while driving his scooty and succumbed to injuries on the spot. He was brought dead to the hospital and the post-mortem revealed "coma as a result of Ante Mortal Head Injury-contributing failures in crush injury to lower limbs causing shock/hemorrhage". A Court of Inquiry was held on 04.11.2016 which opined his death as 'not attributable to military service.' Applicant is in receipt of enhanced rate of Ordinary Family Pension @ Rs 18,119/- p.m. vide PPO No. F/NA/20123/2017 dated 22.02.2017. On 31.03.2021 applicant forwarded an application for grant of Special Family Pension but it

was rejected by the competent authority saying that since there was no causal connection of death to military service, she is not entitled to Special Family Pension. Applicant has filed this O.A. for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that husband of the applicant was on annual leave. During the leave her daughter became seriously ill. On 14.07.2016 while travelling on his active scooty to Raebareli for treatment of daughter, the scooty was hit by an over speeding civil truck from behind on Allahabad-Lucknow National Highway near Munshiganj Bypass in which he was seriously injured. Applicant's learned counsel further submitted that her husband was admitted in Base Hospital, Lucknow on same day and was declared brought dead. Further submission of learned counsel for the applicant is that in the said accident applicant's right leg was also amputated and she was declared 85% physically disabled (Annexure No 2). Learned counsel for the applicant further submitted that keeping in view of certain pronouncements of Armed Forces Tribunal and the Hon'ble Apex Court, applicant is entitled to Special Family Pension.

4. Per contra, learned counsel for the respondents submitted that applicant's husband, being on annual leave was travelling on his scooty alongwith his wife and daughter, met with a road accident resulting in his death on the spot. He further submitted that a Court of Inquiry was held on 04.11.2016 which opined the death as not attributable to military service. Respondents' learned counsel

further submitted that keeping in view of death of applicant's husband as not attributable to military service she was granted enhanced rate of Ordinary Family Pension as there was no causal connection of death with military service. Further submission of learned counsel for the respondents is that applicant's representation dated 31.03.2021 was rejected vide order dated 05.05.2021 on the ground that death of applicant's husband was not related to military service. He pleaded for dismissal of O.A. on the ground that applicant is not entitled to Special Family Pension in terms of order dated 20.07.2011 delivered by AFT, Principal Bench, New Delhi in O.A. No 203/2010 titled **Smt Shakuntla Devi vs Union of India & Ors**, order dated 15.07.2011 passed by the Hon'ble Apex Court in Civil Appeal No. 4281 of 2006 titled **Union of India & Ors vs Jujhar Singh** and order dated 20.09.2019 passed by the Hon'ble Apex Court in Civil Appeal No 4981 of 2012 titled **Secretary, Govt of India vs Dharambir Singh**.

5. We have heard Shri Angrej Nath Shukla, learned counsel for the applicant and Shri Vishvesh Kumar, learned counsel for the respondents and have also perused the record.

6. After having heard the submissions of learned counsel for the parties, we find that there are certain facts admitted to both the sides, i.e., applicant's husband was enrolled in the Indian Army on 29.11.2003 and he met with an accident while on annual leave on 14.07.2016 when he was riding his scooty in which he was hit by a civil truck and died on the spot. The Court of Inquiry opined the

death as not attributable to military service. Applicant's representation dated 31.03.2021 was rejected vide order dated 05.05.2021, para 2 of which being relevant is reproduced as under:-

"2. It is intimated for your kind information that as per para 5 of Entitlement of Rules for Casualty Award 2008, there should be causal connection between death/injury and military duty, whereas your husband was on 30 days Part of Annual leave cum posting to 3 Rashtriya Rifles (Jammu & Kashmir) wef 30 June 2016 to 29 July 2016 and while on leave he met with an accident which resulted in his death on spot of the accident. A constituent Court of Inquiry as per military law was conducted to investigate circumstances of death and its attributability. The said Court of Inquiry found that death of your husband was occurred due to a road accident while on leave, which no way was connected to Military Service/Duty. Further, the competent authority i.e. GOC, HQ Madhya UP Sub Area issued direction on the Court of Inquiry that the death of your husband is "Not Attributable to Military Service". Therefore, you are not eligible for Special Family Pension and Ex-Gratia Compensation. However, you have been granted Enhanced Rate of Ordinary Family Pension @ 18,119/- (Rupees eighteen thousand one hundred nineteen only) per month vide PCDA (P) Allahabad PPO No F/NA/20123/2017 dated 22 Feb 2017."

7. The respondents have denied Special Family Pension to the applicant on the reason that death of her husband was not attributable to military service and there was no causal connection of death with military service. We have observed that for getting disability pension, in respect of injury sustained/death during the course of employment, there must be some causal connection between the injury sustained/death and military service, and this being not the case in respect of the applicant, as there was no

causal connection between the disability and military service, she was denied Special Family Pension.

8. During the course of hearing, in support of claim for grant of Special Family Pension, learned counsel for the applicant has cited certain case laws which are discussed hereunder:-

(i) Union of India vs SK Kapoor decided by the Hon'ble Apex Court on 16.03.2011. This case is related to quashing of charge sheet/dismissal order which has no relevance with the case in hand.

(ii) Mrs Poonam Tomar vs Union of India & Ors decided by AFT, Lucknow on 13.07.2016. In this case while applicant's husband was proceeding on leave he met with an accident in which he died. The Court of Inquiry opined the death as 'attributable to military service' and applicant was granted Special Family Pension and Ex-gratia payment on the ground that there was causal connection of death with military service.

(iii) Mrs Poonam Shukla vs Union of India & Ors decided by AFT, Lucknow on 27.11.2018. In this case applicant's husband was proceeding on part of annual leave and while travelling by Awadh Assam Express on 22.02.2011 he fell down from the train and ultimately he died. The Court of Inquiry opined the death as 'attributable to military service' and applicant was granted Special Family Pension on the ground that there was causal connection of death with military service.

(iv) Union of India & Ors vs Surendra Pandey decided by the Hon'ble Apex Court on 18.09.2014. In this case the respondent-applicant was travelling on authorized leave and he met with an accident enroute and he was injured. The Court of Inquiry opined the injury as 'neither attributable to nor aggravated by military service'. AFT, Lucknow vide order dated 10.05.2010 allowed disability pension to applicant. This order when challenged in the Hon'ble Supreme Court was upheld and applicant was granted disability pension. Thus, this case has no relation to the case in hand, as the accident occurred enroute to leave station, and thus this has a causal connection with duty.

(v) Madan Singh Shekhawat vs Union of India decided by the Hon'ble Apex Court on 07.08.1999. In this case the appeal filed against order dated 01.10.1997 passed by the Hon'ble Rajasthan High Court was dismissed on the ground that there was no causal connection of injury sustained with military service.

(vi) Sukhwant Singh vs Union of India & Ors decided by the Hon'ble Apex Court on 13.03.2012. In this case the applicant had filed appeal against order of AFT, Regional Bench Chandigarh which was dismissed by the Hon'ble Apex Court saying that the applicant was on two month's annual leave when he met with an accident on 18.04.1994 in which his brother died and he himself received serious injuries that led to the amputation of his left leg above the knee. It was held that accident resulting in injury had no causal connection with military service.

(vii) Debhasish Ghosh vs Union of India decided by AFT, Kolkata on 14.03.2016. In this case disability pension was granted to appellant on the ground that he was travelling on 21.03.2005 from his home town to Sealdah (Kolkata) for booking of his return journey ticket. While travelling in the train due to excessive rush he was pushed out of the train compartment and fell down between the running train and the platform which resulted in the wheels of the train crushing his legs. Subsequently, both his legs were amputated. (In this case the applicant was proceeding to the station for booking train tickets for return journey to join duty and this is construed to have a causal connection with military duty).

9. From the aforesaid it is amply clear that facts of case laws provided by the applicant are different with the case in hand and these are not helpful to the applicant. In all these cases the accident resulting in injury has been shown to have some causal connection with military duty.

10. This question has been considered time and again not only by the various Benches of AFT, but by the Hon'ble High Courts and the Hon'ble Apex Court also. In a more or less similar matter, ***Secretary Govt of India & Others Vs. Dharamveer Singh***, decided on 20 September 2019 in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with **'Faciomaxillary and Compound Fracture 1/3**

Femur (LT)'. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave Report, dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under column 3 (c) was that "No one was to be blamed for the accident. In fact respondent lost control of his own scooter". In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of **Madan Singh Shekhawat vs. Union of India & Ors, decided on 17.08.1999 was allowed holding that respondent was entitled to disability pension. Aggrieved by the same, a Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 points for consideration:-**

(a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?

11. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

12. While deciding the second question the Hon'ble Apex Court held that while deciding the question of admissibility of disability pension, it has to be seen that there must be some causal connection between the injury or death and military service. The injury or death must be connected with military service or the injury or death must occur in the performance of military duty. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service. In the present case there seems to be no causal connection of accident with military duty.

13. Regarding question number 3, the Hon'ble Apex Court held that if any causal connection has not been found between the

disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well as the various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or proceeding on leave, it shall be treated to have causal connection with military service and for such injury, resulting in disability, the injury would be considered as attributable to or aggravated by military service.

14. The Hon'ble Apex Court while summing up has also taken note of the guiding factors of the Armed Forces Tribunal, in the case of **Jagtar Singh v. Union of India & Ors**, decided on November 02, 2010 in T.A. No. 60 of 2010, approved in the case of **Sukhwant Singh** and **Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability is to be required to be dealt accordingly. Those guiding factors are reproduced below for the ready reference:-

"(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.

*(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by **Rule 12 of the Entitlement Rules, 1982**, it would neither be the legislative intention nor to our mind would it be the*

permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

15. We have considered the applicant's case in view of above guiding factors and we find that while availing leave on 14.07.2016 the applicant's husband was travelling on his scooty to Raebareli for

treatment of his daughter which was hit by an over speeding civil truck from behind on Allahabad-Lucknow National Highway near Munshiganj by pass at Village-Jhakrasi and in the said accident he succumbed to his injuries on the spot. The activity in which the death was caused being not connected with his military service in any manner, applicant is not entitled to Special Family Pension as the death is not attributable to military service as held by the Court of Inquiry dated 04.11.2016. Since death of applicant's husband has no causal connection with military service, the applicant is not entitled to Special Family Pension.

16. In the result, we hold that claim of the applicant for grant of Special Family Pension has been rightly rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

17. No order as to costs.

18. Pending misc applications, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 12th January, 2022

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(Justice Umesh Chandra Srivastava)
Member (J)