

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.3

O.A. No. 499 of 2018

Smt Anita Singh

By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others

By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>04.01.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p>1. This O.A. has been filed by the applicant for grant of Special Family Pension under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has made the following prayers:-</p> <p>(i) Issue/pass an order or direction of appropriate nature to the respondents to quash the rejection order bearing letter No Air HQ/99798/1st Appeal/05/2016/SFP/AV-III (Appeal) dated 23.05.2017.</p> <p>(ii) To quash the Injury Report, if any.</p> <p>(iii) To quash the findings of the Court of Inquiry dated 31.02.2015 (Annexure A-21).</p> <p>(iv) To quash the impugned order bearing letter No Air HQ/99798/3/950498/FP/DAV dated 04.11.2015 by which the death of applicant's son late LAC Gaurav Singh had been declared as being 'Not Attributable to Air Force Service'.</p> <p>(v) To declare the death of applicant's son late LAC Gaurav Singh as being attributable to Air Force service.</p> <p>(vi) To grant the consequential benefits to the applicant flowing from such declaration.</p> <p>(vii) To direct the official respondents more particularly respondent No 2 to constitute a high level of court of inquiry to investigate into the circumstances under which and what circumstances the applicant's son late LAC Gaurav Singh reached at SLN Lodge where he sustained serious burn injuries under mysterious circumstances.</p> <p>(viii) To direct the official respondents particularly respondent No 2 to hold a departmental inquiry to ascertain as to whether there has been falsification of official documents (injury report and the Court of Inquiry) within the meaning of Section 57 of the Army Act and Air Force Act and if yes by whom, with a further direction to take action against such persons as per law.</p>

- (ix) Issue/pass an order or direction of appropriate nature directing the respondents to grant special family pension in favour of the applicant.
- (x) Issue/pass an order awarding compensation of respondents.
- (xi) To issue/pass an order of appropriate nature directing the Air Force Authorities to re-investigate the matter i.e. under what circumstances applicant's son reached at SLN Lodge Yashwantpur and sustained burn injuries leading to his death.
- (xii) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (xiii) Allow this application with costs.

2. Brief facts giving rise to the present application is that son of the applicant viz late No. 950498 LAC Gaurav Singh was enrolled in the Indian Air Force (IAF) on 28.09.2011 and he expired on 27.01.2015 while on leave by sustaining burn injuries at SNL Lodge near Yashwantpur Railway Station. Since the deceased Airman was a bachelor, Death-cum-Retirement Gratuity amounting to Rs 1,63,458/- was paid to Smt Anita Singh (mother of the deceased soldier) vide PPO No 08/14/B/F/P/1399/2015. Claim for grant of Ordinary Family Pension was rejected by the pension sanctioning authority vide letter dated 13.08.2015 as combined annual income of the parents was more than the prescribed limit as Shri Udai Pratap Singh (father of the deceased soldier) being a Junior Commissioned Officer is in receipt of pay and allowances from Govt sources. Being aggrieved with the denial of Ordinary Family Pension, applicant preferred first appeal which was rejected vide order dated 23.05.2017. Thereafter, second appeal preferred by the applicant has not been decided as yet. This O.A. has been filed for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that No. 950498B late LAC Gaurav Singh was enrolled in the IAF on 28.09.2011. He further submitted that in the year 2014 the deceased soldier was issued with two concession vouchers by the Air Force from Bangalore to Sultanpur and back and he was to meet his father at Bangalore on 24.01.2015. It was further submitted that when the deceased soldier did not reach at Bangalore at the given date he enquired telephonically but his phone was found switched off.

4. Learned counsel for the applicant further submitted that husband of the applicant

was informed by Lt Col NJ Singh on 25.01.2015 at about 1100 hrs that his son attempted to commit suicide by burning and he sustained 60-70% burn injuries. It was further submitted that the deceased soldier was a responsible child and had a very aggressive personality and therefore, he could not have tried to commit suicide. His other submission is that though the Court of Inquiry (C of I) conducted on 31.03.2015 has opined death of her son as not attributable to military service, but in the said C of I no findings have been recorded as to what were the circumstances that led the deceased soldier reach at SLN Lodge, Yashwantpur on 24.01.2015 where he tried to commit suicide.

5. Further submission of learned counsel for the applicant is that the C of I has given its findings in a very mechanical manner without going into the facts which are required to be looked into by conducting a high level C of I to investigate the circumstances under which the applicant's son reached at SLN Lodge, Yashwantpur on 24.01.2015 and tried to commit suicide. The learned counsel pleaded for grant of Special Family Pension to the applicant being dependent mother of the deceased soldier w.e.f. next date of death of her son.

6. On the other hand learned counsel for the respondents submitted that late Airman was enrolled in the IAF on 28.09.2011 and he expired on 27.01.2015 while in service by sustaining burn injuries at SNL Lodge near Yashwantput Railway Station (committed suicide with deliberate self harm) during his leave period. He further submitted that since C of I conducted in this regard had considered the cause of death of the individual as neither attributable to nor aggravated by military service (NANA), claim for grant of Ordinary Family Pension claim and first appeal preferred for grant of Special Family Pension were denied on the ground that income in respect of parents of the deceased soldier is more than that prescribed under the rules.

7. Learned counsel for the respondents further submitted that applicant is

neither entitled to Ordinary Family Pension nor Special Family Pension in terms of Govt of India, MoD letter dated 26.08.1998 read in conjunction with letter dated 24.11.1999. Learned counsel for the respondents pleaded for dismissal of O.A. stating that claim for grant of Ordinary Family Pension and First Appeal filed for grant of Special Family Pension were rightly rejected by the respondents.

8. Heard Shri Vinay Pandey, learned counsel for the applicant and Shri Asheesh Agnihotri, learned counsel for the respondents and perused the material placed on record.

9. It is not disputed that No. 950498 Late LAC Gaurav Singh was enrolled in the IAF on 28.09.2011 and he expired on 27.01.2015 on account of sustaining burn injuries at SNL Lodge near Yashwantpur Railway Station on 24.01.2015. C of I conducted on 31.03.2015 has declared his death not attributable to military service. After death, applicant (mother of the deceased soldier) was granted Death cum retirement gratuity (DCRG) amounting to Rs 1,63,458/- vide PPO No 08/14/B/F/P/1399/2015. Claim with regard to grant of Ordinary Family Pension was rejected vide order dated 13.08.2015 as the combined annual income of the parents is more than the Govt prescribed limit i.e. Shri Udai Pratap Singh (father of the deceased soldier), who is serving in the Army as Junior Commissioned Officer (JCO), is in receipt of pay and allowances from the Govt sources. Thereafter, applicant preferred first appeal to the competent authority which was also rejected vide order dated 23.05.2017. However, second appeal preferred by the applicant has still not been decided.

10. Grant of Ordinary Family Pension to parents of a deceased soldier is dealt in accordance with Govt of India, MoD letter dated 26.08.1998 read in conjunction with Govt of India, MoD letter dated 24.11.1999 which stipulates that

“family pension to the presents will be admissible if the parents are wholly dependent on the Armed Forces personnel when he/she was alive and income criterion will be taken for single parent when only one of them is alive”. In the instant case since father of the deceased soldier is serving in the Army in the capacity of a JCO and applicant being dependent on her husband, she is not entitled to receive either Ordinary Family Pension or Special Family Pension. For convenience sake, the extract of letter dated 24.11.1999 are excerpted below:-

“(i) In terms of MoD letter dated 26 Aug 1998, parents who were wholly dependent on the deceased Armed Forces Personnel when he/she was alive will also be entitled to family pension with effect from 1st January, 1998 subject to the fulfilment of the other conditions prescribed in this regard. Doubts have been raised whether parents of Armed Forces Personnel who died/prior to 1st January, 1998, will also be entitled to family pension. It is clarified that family pension will be admissible in these cases subject to the following:-

- (a) The parents were wholly dependent on the Armed Forces Personnel when he/she was alive;*
- (b) The Armed Forces Personnel has not left behind a widow/widower, eligible son or daughter or a widowed/divorced daughter, who will have a prior claim to family pension in the order indicated.*
- (c) All other prescribed conditions are fulfilled. The family pension will, however, be payable only with effect from 1st January 1998. It will be the responsibility of the pension sanctioning authorities concerned to satisfy themselves based on a scrutiny of the service records and other relevant documents, that the parents were, in fact, wholly dependent on the deceased Armed Forces Personnel when he/she was alive and that he/she has not left behind any of the other specified beneficiaries who have a prior claim to the family pension.*
- (d) x x x x”*

11. Applicant’s claim for grant of Ordinary Family Pension was processed vide letter dated 04.11.2015 but it was rejected vide letter dated 22.12.2015 stating that since income of the parents of the deceased is higher than prescribed limit, they are not entitled to Ordinary Family Pension. For convenience sake, letter dated 22.12.2015 is reproduced as under:-

- “1. Ref your letter No Air HQ/99798/3/95098/6514/FP/DAV dated 04.11.2015.*
- 2. As father of late LAC Gaurav Singh is currently getting pension and the income of the parents from Government employment is (Rs 5,53,765/- only), which is more than the prescribed limit (i.e. Rs 3500/- +DA admissible) to sanction OFP as GOI No 1 below regulation 212 of Pension Regulations Part-I. Hence the claim for OFP is rejected.*
- 3. DCTG has been granted to mother of the deceased vide PPO No 08/14/B/F/P/*

1399/2015.”

12. On perusal of record we find that applicant's first appeal dated 02.04.2016 was rejected vide order dated 23.05.2017 on the ground that death of the deceased soldier was not attributable to military service as there was no causal connection between his death and the military service as also when he sustained fatal injury (suicidal act) he was not performing Air Force duty. For convenience sake order dated 23.05.2017 is reproduced as under:-

“1. I am directed to refer to your first appeal dated 02 Apr 16 and to say that the same has been considered by the Appellate Committee for First Appeal.

2. After examining all the material facts, the Appeal has been rejected for the following reasons:-

The individual sustained burn injuries at SNL Lodge near Yashwantpur Railway Station, Bangalore on 24 Jan 15 (between 2000 to 2100 hrs) and subsequently died due to 75% Deep Derma Burns with inhalation injury and acute renal failure at 1820 hrs on 27 Jan 15. As per Court of Inquiry findings, it is a case of suicide with deliberate self harm. There is no evidence of any service related cause. C of I and AFMSF-93 (Part II) considered death as not attributable to AF service. Individual was not in performance of AF duty at the time of suicidal act. Hence, death is not attributable to as per ER-2008.

3. Notwithstanding the above, you are entitled to make a second and final appeal to the Second Appellate Committee for Pension if so desired, within the stipulated period of six months from the date of issue of this letter and addressed to Dte of Air Veterans (AV-III Appeals), Air HQ, AFRO Building, Subroto Park, New Delhi-110010.”

13. In view of the above, we are of the view that applicant being dependent on her husband, who is in receipt of pay and allowances from the Army, is not entitled to receive either Ordinary Family Pension or Special Family Pension in respect of her deceased son.

14. Accordingly, the O.A. is dismissed.

15. No order as to costs.

16. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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