

AFR

Court No. 2

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION NO 203 of 2015

Wednesday, this the 13th day of July 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Mrs Poonam Tomar wife of IC-47390Y late Major Arvind Tomar of 18 RR Battalion resident of village Siroli, Bareilly by Pass Road, Kichha, Udham Singh Nagar-263148, Uttarakhand.

.....Applicant

Ld. Counsel for the: **Wg Cdr (Retd) A.K. Singh, Advocate.**
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff Integrated Head Quarter Ministry of Defence (Army) New Delhi.
3. C.O. 18 RR Battalion, C/O 99 APO.
4. PCDA (P) Allahabad.

.....Respondents

Ld. Counsel for the : **Mrs Deepti Prasad Bajpai, Advocate,**
Respondents **Govt Counsel assisted by Col SK Varshney, OIC, Legal Cell.**

ORDER (Oral)

1. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the denial of grant of Special Family Pension and ex-gratia amount.

2. We have heard Wg Cdr (Retd) A.K. Singh, Ld. Counsel for the applicant and Mrs. Deepti Prasad Bajpai, Ld. Counsel for the respondents assisted by OIC Legal Cell and perused the records.

3. Applicant's husband late Major Arvind Tomar was an officer of the Indian Army, commissioned on 19.12.1987 in Guards (Mechanised Infantry). In April 1994 he was posted at 18 RR, Manipur. While posted at Manipur late Major Arvind Tomar applied for grant of casual leave for a period of 13 days which was sanctioned by the competent authority with effect from 04.03.1996 to 16.03.1996. Admittedly in the service record his home town has been mentioned as of Meerut (UP) where his parents resided. However when late Major Arvind Tomar was granted casual leave, the applicant (his wife Mrs Poonam Tomar) and his children were at Kichha, District Udhampur (Now falling in Uttarakhand).

4. On 04.03.1996 late Major Arvind Tomar proceed for leave and on 05.03.1996 he arrived Kichha to pick up his wife and

children. On 06.03.1996 applicant's husband proceeded to Meerut, the recorded place of residence, to join his parents. While moving from Kichha to Meerut alongwith his wife and children, the applicant's husband met with an accident in Moradabad and succumbed to injuries.

5. The applicant, being legally wedded wife of late Major Arvind Tomar was granted usual family pension. She also applied for grant of Special Family Pension and ex-gratia amount in accordance to Regulation 85 of Pension Regulations 1961.

6. The Court of Inquiry vide its report dated 01.05.1996 held that the accident in which applicant's husband died was attributable to Military service. In spite of opinion expressed by Court of Inquiry, the respondents denied payment of Special Family Pension and ex-gratia amount, hence an appeal was filed which was rejected by the competent authority on 12.05.2000. Copy of the impugned order has been filed as **Annexure No 1** to the O.A.

7. Being aggrieved the present O.A. has been filed by widow of late Major Arvind Tomar.

8. Relevant portion of Regulation 85 of Pension Regulations 1961 is reproduced as under :-

“85. A special family pension may be granted to the family of an officer if his/her death was due to or hastened by a wound, injury or disease which was attributable to military service or the aggravation by military service of a wound, injury or disease which existed before or arose during the military service provided that”

9. While considering attributability of Military Service we should not exclude any word from the aforesaid provision contained in Regulation 85 (supra). It is well settled proposition of law that meaning should be given to each and every word of the statutory provision and no word or provision shall be deemed to be redundant keeping in view the well settled proposition of interpretative jurisprudence. While considering Regulation 85 the words ‘attributable to military service’ and ‘hastened by a wound’ are important.

10. In the present case there appears no room of doubt that husband of the applicant was in military service and proceed on leave from military service to join his parents at his native place in Meerut. The death was due to wounds caused by fatal accident while he was moving towards Meerut to join his parents to avail casual leave sanctioned and granted by the competent authority of the respondents. The place and time of the accident co-related to the military service and follow up steps in view of decision taken by the Army authorities to sanction casual leave in pursuance to which applicant’s

husband proceeded to join his parents at Meerut and the cause of accident whatsoever may be the genesis is to avail casual leave granted by army authorities to join his parents at Meerut. The causation of accident is to enjoy leave granted by the authorities of Army by joining the parents at Meerut.

11. The Entitlement Rules for Casualty Pensionary Awards, 1982 (for short, Entitlement Rules) deals with the condition whereby service personnel become non-effective on or after first January, 1982. Note 2 of para 12 and para 13 of Entitlement Rules are relevant for the disposal of the present controversy, and are quoted as under :-

“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 authorized 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.

1. (d) *When proceeding to his leave station or returning to duty from his leave station, to travel at public expenses i.e. on railway warrants, on concessional voucher, or 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.

2. (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.

3. (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 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 'on duty' at the relevant time. This benefit will be given more liberally to the claimant in cases occurring in active service as defined in the Army/Navy/Air Force Act."

4. "13. In respect of accidents or injuries, the following rules shall be observed:-

5. Injuries sustained when the man is "on duty" as defined, shall be deemed to have resulted from military service, but in cases of injuries due to service negligence/misconduct the question of reducing the disability pension will be considered.

6. In cases of self-inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where

attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.”

(emphasis applied)

12. A plain reading of the aforesaid entitlement Rule, para 12 Note 2 and para 13 shows that Army personnel when proceed to his leave station or returns to duty from leave station shall deemed to be “on duty” for the purpose of grant of disability/family pension on account of disability or death sustained during the course. In case Note 2 (d) is read with Note 2 (f) conjointly, then it may be reasonably inferred that if the accident occurs when Army personal is not strictly on duty as defined may also be attributable to service and as explained by para 13 injury sustained in such situation shall be deemed to have resulted from military service.

13. In the present case admittedly applicant’s husband belongs to Meerut where his parents were residing. While going to Meerut he had gone to pick up his wife and children and proceeded to join his parents. The chain of journey at the face of records shows and pin points that the aim and object to enjoy casual leave was to reach Meerut where his parents were residing.

14. The Hon’ble Supreme Court in the case reported in Mil LJ 1999 SC 116 **Madan Singh Sekhawat vs. Union of India &**

Ors, in identical situation ruled that where an individual while traveling at his own expense from duty station to his home station on authorized Casual Leave, met with an accident and discharged from service as his right hand was amputated, shall be entitled for disability pension as provided under the rules when travelling to his leave station on authorized casual leave.

15. In another case reported in Mil LJ 2014 SC12, **Union of India and Anr vs. Ex Naik Surendra Pandey**, their Lordships of the Supreme Court reiterated the aforesaid proposition of law and held that when an Army Personal was granted annual leave and injured in an accident while travelling to place where his family actually resided but which was other than the place up to which he was given railway warrant, he cannot be denied family pension. Their lordships held that travel beyond place up to which the person was granted railway warrant was an incidental extension of journey but was for a cause for which he was authorized to undertake journey, namely to join his family after long interval. The Hon'ble Supreme Court had relied upon an earlier judgment reported in (2012) 12 SCC 228 **Sukhwant Singh vs. Union of India, Through the Secretary, Ministry of Defence and Ors.** whereby their Lordships had summed up, to quote:

“In Sukhwant Singh v. Union of India, through the Secretary, Ministry of Defence and Ors. : (2012) 12 SCC

228, a two -Judge bench of this Court upon a review of the case law, summed up the legal position in the following words:

"To sum up in our view the following principles should be the guiding factors for deciding the question of attributability or aggravation, where the disability or fatality occurs, during the time the individual is on authorized leave of any kind.

(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 conditionally 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 in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act omission or commission 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 n other words the act must flow as a matter or 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 function as a member of Force nor is remotely 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 casual 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 omission 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 matter connected aggravated or attributable to military service and the matter entirely private act cannot be treated as legitimate basis for claiming the 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 nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 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 behavior.

(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."

16. In **Naik Surendra Pandey** (supra) Hon'ble Supreme Court further interpreted the words "in course of his employment" as under :-

"The question is whether the extension of journey from Sewan (which would be the ordinary rail terminus for his travel) to Hajipur for his onward travel to Patna would be an incidental extension of the authorized journey in terms of time and space of what was authorized by the appellants. Our answer to that question is in affirmative. We say so keeping in view the language used in para (f) to Note 2 of Rule 12 of the Entitlement Rules and in particular the expression 'provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service'. One of the incidents of the military service which the respondent was rendering in the Army was his remaining away from his family for long intervals on account of the nature of the duties enjoined upon him in larger national interests. When authorized to proceed on an annual leave of two months that incident would extend to his obligation to join his family for such moral and material support as the family would require of him and as would be expected of a disciplined soldier serving in the armed forces. Suffice it to say that the expression 'obligations or incidents of service' appearing in Note 2 (supra) are wide enough to include a situation where personnel travel on authorized leave to join their family at a place other than the place for which he is given a railway warrant. In the instant case the Railway Warrant issued to the

respondent may have authorized his journey only up to Sewan, but the fact that he continued his journey by train up to Hajipur to reach Patna to join his family is incidental to the primary object for which he was authorized annual leave. We hardly need mention that Entitlement Rules for Casualty Pensionary Awards, 1982 are beneficial in nature and ought to be liberally construed as was done by this Court in **Madan Singh Shekhawat vs. Union of India and Others** (1999) 6 SCC 459 and in **Union of India and Others vs. Jujhar Singh** (2011) 7 SCC 735. In Madan Singh's case (supra) the question that fell for consideration was whether a person was on duty while he was travelling back to join at the place of his posting on a motorcycle which mode of transport was strictly speaking not at public expense. This Court relying upon certain earlier decisions referred to therein, held that the expression 'at public expense' ought to be liberally construed and should include a return journey that was authorized no matter it was undertaken by a means other than a travel warrant issued at public expense. This Court observed:

"We, therefore, construe the words 'at public expense' used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even as army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorized to avail the leave for leaving the station of posting, an army personnel uses what is known as 'travel warrant' which is issued at public expense, the same will not be issued if the person concerned is travelling unauthorisedly. In namely, 'at public expense' are used rather loosely proceeding or

returning from such journey authorisedly, meaning thereby that if such journey is undertaken even on casual leave but without authorization to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorized.”

(emphasis supplied)

17. Keeping in view the aforesaid proposition of law, there appears to be no room of doubt that extended journey of the applicant's husband to pick up his wife and children from Kichha and then proceed to Meerut shall not create a ground to deny Special Family Pension and ex-gratia payment. The controversy in question seems to be squarely covered by the aforesaid judgment in **Madan Singh Shekhawat's** case (supra) and the applicant seems to be entitled for beneficial provision with regard to Special Family Pension.

18. Attention has been invited to Golden Jubilee Celebration of the 18 Guards held in the year 2012. The calendar published by the Army contains name of applicant's late husband (Captain Arvind Tomar, as he then was) while serving in the **Operation Rakshak** of the Army which we intend to reproduce as under :-

**“GUARDS MEN IN COUNTER INSURGENCY
OPERATIONS –IN MOUNTED ROLE**

*For the first time in the history of Indian Army
Infantry Combat Vehicles (ICVs) entered the fray of*

counter insurgency operations in 1993. Militants had declared Sopore Town in District Baramulla a “Liberated Zone”. On 26 Oct 93, one platoon of ICVs under Captain Arvind Tomar assisted in construction of BSF posts at the Sopore Bus Stand. Capt Arvind Tomar gave the militants the first taste of accurate 30 mm cannon fire, which shook the very foundation of terrorism. Thus, EIGHTEEN gained the singular distinction of fielding a Mechanised Company in a Mounted Role in the valley for the first time.

Consequently the Company was moved to Anantnag town, another strong hold of militants. The Company moved 195 Kms on tracks to its new development area and had the unique distinction of escorting “Holy Chari Mubark” in Aug 94.”

19. Family of such brave personnel of the Indian Army should not be treated in a shabby and mechanical manner by the respondents ignoring the report of court of inquiry. The respondents should be liberal while implementing beneficial provisions under the Pension Regulations as held by Hon’ble Supreme Court (supra), if a matter relates to a person who served the nation with outstanding courage and performance and found place in the Calendar of an Army Unit, then there should not be casual approach while deciding an issue?

20. While parting with the case we would like to observe and wonder as to why the respondents have not followed the opinion expressed by the Court of Inquiry which seems to be well reasoned opinion for the grant of Special Family Pension.

The authorities concerns seem to proceed mechanically without applying mind in depth to Para 85 of the Pension Regulations, 1961 and the Entitlement Rules (supra) resulting into mental pain and agony to the applicant - widow. The applicant's husband succumbed to accidental injuries in the year 1996 and since then the applicant is travelling from pillar to post for payment of Special Family Pension and ex-gratia amount and suffered mental pain and agony. By entering into litigation, she also suffered mental pain and agony and seems to be entitled to exemplary cost in view of the cases reported in :-

1. ***Ramrameshwari Devi and others V. Nirmala Devi and others***, (2011) 8 SCC 249;
2. ***A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*** represented by its President and others, (2012) 6 SCC 430;
3. ***Indian Council for Enviro-Legal Action V. Union of India***, (2011) 8 SCC 161;
4. ***Ram Krishna Verma V. State of U.P.***, (1992) 2 SCC 620;
5. ***Kavita Trehan V. Balsara Hygiene Products Ltd.*** (1994) 5 SCC 380;
6. ***Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.***, (1999) 2 SCC 325;
7. ***Padmawati V. Harijan Sewak Sangh***, (2008) 154 DLT 411;

8. **South Eastern Coalfields Ltd. V. State of M.P.,**
(2003) 8 SCC 648;

9. **Safar Khan V. Board of Revenue, 1984 (supp)**
SCC 505;

21. Payment of exemplary cost which we quantify to Rs Two lakhs, is a token for the services rendered by the brave heart, namely, the husband of the applicant late Major Arvind Tomar. We further mention that it would be open for the respondents to recover the cost from the salary of the officers responsible for denying payment of special family pension and ex-gratia amount contrary to the opinion expressed by the Court of Inquiry.

22. In view of above, we allow the O.A. and set aside Order No.8(5)/99/D (Pen.A&AC) dated 12.05.2000 with all consequential benefits and direct the respondents to pay Special Family Pension and ex-gratia amount keeping in view the observations made hereinabove expeditiously, and in any case not beyond four months from the date of production of certified copy of this order along with interest at the rate of 10% per annum. Interest shall be payable from 01 Jan 1997.

23. O. A. is **allowed** accordingly.

Copy of the order be supplied to Ld. Counsel for the parties free of cost within two days.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D.P. Singh),
Member (J)