

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 519 of 2017

Wednesday this the 29th May, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

Smt. Sunita Jaiswal, Wife of Late Sgt. Nanhe Lal 645687,
Resident of Village - Majnai, PO- Majnai (Kuchera),
District – Faizabad, U.P.- 224158.

..... Applicant

Ld. Counsel for the : **Shri Virat Anand Singh, Advocate**
Applicant

Vs.

1. Air Marshal Appellate Authority Air HQ (VB) Rafi Marg,
New Delhi- 110106.
2. Deputy Director Appeals, Dte of Air Veterans, Air Head
Quarters AFRO Building, Subroto Park, New Delhi – 10.
3. Union of India through Secretary, Ministry of Defence,
New Delhi.

..... Respondents

Ld. Counsel for the : **Shri Namit Sharma,**
Respondents. **Central Govt. Counsel.**

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- “(i). to issue an order or direction directing the opposite parties to quash the order dated 24.02.2016 vide letter No. Va Se Mu/99798 Second/Appeal/SFP/AP-3 (Appeal) for grant of Special Family Pension contained in annexure No 5 to this petition.*
- (ii). to issue an order or direction directing the opposite parties to pay the Special family pension to the petitioner along with arrears with effect from 20.03.1998.*
- (iii). To pass any other order or direction which may deem fit and proper in the eyes of law.*
- (iv) to allow the petition with cost.”*

2. The brief facts as agreed by learned counsel for both the parties are that the husband of the applicant (Late) Sgt Nanhe Lal was enrolled in the Air Force on 21.08.1974 and expired on 20.03.1998 due to ‘Electrocution’ while hanging clothes after bath, on a galvanised wire stretched across the court yard in his service quarter, while on the posted strength of Air HQ (VB). The applicant preferred claim for grant of Special Family Pension. Her claim for the grant of Special Family Pension was rejected on the ground that there is no relationship between death and military service of the her husband and she was granted ordinary family pension which she is presently receiving. The applicant preferred First Appeal dated

06.01.2006 for grant of Special Family Pension which was rejected by the respondents vide order dated 24.04.2007 on the ground that death of the her husband was neither attributable to nor aggravated due to Air Force Service. She again preferred Second Appeal against the rejection of claim of Special Family Pension which was also rejected vide order dated 24.02.2015. It is in this perspective that the applicant has preferred the present Original Application for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that applicant's husband late Sgt Nanhe Lal while posted at Air Head Quarter (V.B.) was allotted quarter No SMQ No 17-B, OWC, Race Course, Air Force Station, New Delhi. On 20.03.1998 morning, the husband of the applicant while putting his wet clothes after bath on the galvanised iron wire in his house, suddenly received electric current from the wire and fell down crying in pain and died. The applicant preferred claim for grant of Special Family Pension which was rejected on the ground that there is no relationship between death and military service of her husband and she was granted ordinary family pension. She subsequently preferred First and Second Appeal against the rejection of her claim for grant of Special Family Pension which were also rejected. Learned counsel for the applicant pleaded that vide para 3 of Air Force letter dated 17.04.2015 (Annexed in O.A.) it was established that electrocution was due to deficient wiring in the

quarter for which Military Engineering Service (MES) authorities were responsible. He further submitted that the galvanised wire in the house is a part of the fixture of the house and has been provided by the Govt and therefore there is a casual connection between death of applicant's husband and his military service. He further submitted that in spite of clear evidence that death of the applicant's husband was connected with military service, the applicant was not granted Special Family pension. He pleaded that various Benches of Armed Forces Tribunal have granted Special Family Pension in similar cases. In support of his contention he relied on the judgment dated 26.05.2017 passed by this Tribunal in the case of **Capt (Mrs) Jyoti Singh vs Union of India** in **O.A. No 135 of 2010** and pleaded that the applicant be granted Special Family Pension.

4. On the other hand, learned counsel for the respondents has submitted that the death of the applicant's husband on 20.03.1998 was due to electrocution while hanging clothes on a galvanised wire stretched across the court yard in his service quarter. He submitted that after the death of the applicant's husband, she was granted ordinary family pension on the basis of report which declared that the death of the applicant's husband is not attributable to Air Force Service. Subsequently the applicant has requested for grant of special family pension in her First Appeal which was rejected by the competent authority stating that death of her husband was not

connected with military service. However he admitted that in the Second Appeal preferred by her, it was accepted as a case of death attributable to military service by majority members of Second Appeal Board on the ground that the galvanised wire for drying cloth was provided by Govt at Govt expense in the quarter and that electric current came into the wire due to deficient wiring of the Govt quarter by Military Engineering Service (MES). However JS & Addl. FA (DR) of MOD as a member of the Second Appeal Committee has not agreed with all other members of the appeal committee and hence the appeal has not yet been accepted.

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

6. The question which needs to be answered is whether the death of the applicant's husband is attributable to military service and if so is the applicant entitled to Special Family Pension?

7. After giving our anxious thought to this complete issue, following facts are absolutely clear to us:-

(a) That the death of applicant's husband took place due to electrocution when he was hanging wet clothes on a galvanised iron wire after bath, before becoming ready to go to office.

(b) That the galvanised iron wire for hanging cloth was provided in every Govt house by the authorities at Govt expense as a part of the house fixture.

(c) That another lady in a neighbouring Govt house also got a similar current while she was attempting to hang clothes on the galvanised iron wire in the house, however she was lucky to survive.

(d) That due to deficiency in the wiring and earthing in the house the current was going into the galvanised wire meant for hanging clothes.

8. Once the above mentioned facts are clear, we fail to understand as to why there should be any doubt on attributability of death. Every military person is authorised for free/subsidised Govt accommodation as part of his terms and conditions of service. In military camps the complete responsibility of providing safe water, safe electricity and ensuring safety of the house structure and its fixtures is the responsibility of Military Engineering Service (MES). Thus if there is a death of a soldier due to negligence/deficiency of MES service in a house, the death has to be accepted as attributable to military service.

9. Perusal of counter affidavit filed by the respondents indicates that in the Second Appeal the case of the applicant for grant of

Special Family Pension was approved by the Vice Chief of Air Staff, Dy DGAFMS (Pens) and JAG (Army). However JS & Addl AF (DR) is the only member of Second Appeal Board who has differed with the Vice Chief of IAF & other members of the appeal board resulting in rejection of the Second Appeal. We are however not impressed with the queries raised and observation of JS & Addl AF (DR) and are of the considered opinion that it is a fit case of death being considered as attributable to military service. Hence the death of applicant's husband is to be considered as attributable to military service.

10. So far as grant of Special Family Pension to the applicant is concerned, the applicant seems to be entitled to Special Family Pension in terms of the Regulation 189 of the ***Pension Regulation for the Air Force 1961, Part I*** which provides that a "Special Family Pension may be granted to the family of an individual if his death was due to a wound, injury or disease which was attributable to Air Force Service or the aggravation by Air Force Service of a wound, injury or disease which existed before or arose during air force service."

11. In view of the above, **Original Application No. 519 of 2017** deserves to be allowed and is accordingly allowed. The impugned orders passed by the respondents are set aside. The death of the applicant's husband is to be considered as attributable to military service. The respondents are directed to ensure payment of Special Family Pension to the applicant with effect from her date of Second

Appeal i.e. 08.02.2014 along with all other consequential benefits expeditiously say within a period of four months from today. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: May 2019
ukt/-