

RESERVED
(Court No 2)

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

ORIGINAL APPLICATION No. 1067 of 2022

Friday, this the 10th day of November, 2023

"Hon'ble Mr. Justice Anil Kumar, Member (J)"

"Hon'ble Maj Gen Sanjay Singh, Member (A)"

Mrs Aarti Srivastava, W/o MR 07371L Late Col Ravindra Kumar Srivastava, Vill-Adarsh Nagar, PO-Rosa, Teh-Sadar, Distt-Shahjahanpur, Uttar Pradesh-242306.

..... Applicant

Ld. Counsel for the : **Shri JL Joel**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Govt of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, IHQ of MoD (Army), New Delhi-110011.
3. Integrated HQ of MoD (Army), Adjutant General's Branch, Addl Dte Gen MP (P&P), ORO/MP-7/Adjudication Cell, West Block-III, RK Puram, New Delhi-110066.
4. The PCDA (Pension), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the : **Shri Manu Kumar Srivastava**, Advocate
Respondents. Central Govt. Counsel

ORDER

1. Being aggrieved with denial of Special Family Pension (SFP) and Ex-gratia lump sum compensation, applicant has filed this application under Section 14 of the Armed Forces Tribunal Act, 2007 vide which the following reliefs have been sought:-

(i) To quash or set aside respondent No 3 vide letter No B/38046/04/2022/Offrs/SFP/2022/AG/PS-4 (1st Appeal) dated 06.09.2022 rejecting the First Appeal against Special Family Pension and Ex-Gratia lump sum compensation to the applicant and/or;

(ii) To direct the respondents to produce Court of Inquiry proceedings dated 12.12.2020 before this Hon'ble Tribunal and/or;

(iii) To direct the respondents to grant Special Family Pension along with Ex-Gratia lump sum compensation from the date of death of the applicant's husband as per rules with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal and/or;

(iv) Any other relief as this Hon'ble Tribunal may deem fit in the interest of justice and good conscience.

2. Brief facts of the case are that applicant's husband being posted in the capacity of Commanding Officer (CO), 411 Field Hospital, was electrocuted in Govt married accommodation on 23.08.2020 and died due to Cardiac Arrest. After death, Court of Inquiry (C of I) was conducted which held the death as attributable to military service. Claim for grant of Special Family Pension and Ex-gratia lump sum compensation was denied by the respondents vide letter dated 30.12.2021 and thereafter, first appeal was also rejected vide order dated 06.09.2022. It is in this perspective that this O.A. has been filed for grant of Special Family Pension and Ex-Gratia lump sum compensation.

3. Learned counsel for the applicant submitted that since applicant's husband's death was considered as attributable to military service (Annexure A-3) by a duly constituted C of I, she is entitled to grant of Special Family Pension and Ex-gratia lump sum compensation in accordance with Entitlement Rules for Casualty Pensionary Awards-2008 (Revised Edition). He pleaded for grant of Special Family Pension and Ex-gratia lump sum compensation to the applicant.

4. Per contra, learned counsel for the respondents submitted that applicant's husband died on 23.08.2020 due to 'Cardiac Arrest-Electric Shock' while at Govt married accommodation, therefore, the aforesaid incident has no relation to military duty. It was further submitted that there being no causal connection between death and military service, applicant is not entitled to Special Family Pension and Ex-gratia lump sum compensation.

5. Learned counsel for the respondents further submitted that in the instant case, death in respect of applicant's husband does not fall under the ambit of duty in accordance with Para 9 of Entitlement Rules-2008 for establishing causal connection between death and military service, therefore, declaration of attributability by Army authorities is not in consonance with provisions laid down on the subject issue and his death is not categorized under category 'C' of Govt of India, Min of Def letter dated 31.01.2001 for granting Special Family Pension and Ex-gratia lump sum compensation. He submitted that in such circumstances, applicant is not entitled to Special Family

Pension and Ex-gratia lump sum compensation. He pleaded for dismissal of O.A. stating that first appeal has rightly been rejected.

6. Heard Shri JL Joel, learned counsel for the applicant and Shri Manu Kumar Srivastava, learned counsel for the respondents and perused the record.

7. Having heard the submissions of learned counsel for the parties, we find that there are certain facts admitted by both the sides, i.e., applicant's husband met with an electrocution accident while at Govt married accommodation on 23.08.2020 and died due to 'Cardiac Arrest due to Electric Shock'. C of I dated 24.08.2020 conducted by Station Headquarters, Dharangadhra opined his death to be attributable to military service, but initial claim for grant of Special Family Pension and Ex-gratia lump sum compensation was rejected vide order dated 30.12.2021 stating that his death is not attributable to military service. For convenience sake, Para 2 of order dated 30.12.2021 is reproduced as under:-

"2. In terms of the administrative powers delegated vide Min of Def letter No 4684/DIR (PEN)/2001 dated 14 Aug 2001, as amended vide letter dated 07 Nov 2001, after examining the case in the light of relevant rules and administrative/medical provisions, it has been decided by the Competent Authority that the cause of death of the officer due to "CARDIAC ARREST DUE TO ELECTRIC SHOCK" on 23 Aug 2020 is Neither Attributable to Nor Aggravated by military service. There is no causal connection between death and military service. Therefore, the initial adjudication for grant of Special Family Pension and Ex-gratia Lumpsum Compensation merits rejection".

8. After rejection of initial claim for Special Family Pension and Ex-gratia lump sum compensation, first appeal dated 31.01.2022

preferred by the applicant was also rejected by the Appellate Authority vide order dated 06.09.2022, which for convenience sake, is reproduced as under:-

"1. Reference your Noting No PC to MF 07371L/MPRS (O)/NE dated 25 Mar 2022.

2. The first appeal dated 31 Jan 2022 from Mrs Aarti Srivastava wife of MR-07371L Late Col Ravindra Kumar Srivastava for grant of Special Family Pension has been carefully examined by the Appellate Committee on First Appeals (ACFA).

3. MR-07371L Late Col Ravindra Kumar Srivastava died on 23 Aug 2020 due to 'CARDIAC ARREST DUE TO ELECTRIC SHOCK'. The circumstances of death do not indicate any causal connection with specific conditions of military service. The Committee has therefore, rejected the appeal.

4. Mrs Aarti Srivastava may be informed that in case she is not satisfied with the above decision, she may submit a second appeal to Second Appellate Committee on Pensions (SACP) through Officer's Record Office (ORO), Integrated HQ of Min of Def (Army), West Block-III, RK Puram, New Delhi-66.

5. The service/medical documents and all noting sheets alongwith case file is returned herewith."

9. Applicant has been denied Special Family Pension and Ex-gratia lump sum compensation for the reason that there is no causal connection between death of her husband and military service. We have observed that for grant of Special Family Pension and Ex-gratia lump sum compensation, 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 incident and military service, she has been denied Special Family Pension and Ex-gratia lump sum compensation.

10. Further, with regard to grant of Special Family Pension to next of kin of the deceased soldier, Para 9 of the Entitlement Rules-2008 is also relevant, which for convenience sake, is reproduced as under:-

"9. Duty. For the purpose of these Rules, a person subject to the disciplinary code of the Armed Forces shall be treated on 'duty'.

(i) When performing an official task or a task failure to do which would constitute an offence, triable under the disciplinary code applicable to him.

(ii) When moving from one place of duty to another place of duty irrespective of the mode of movement.

(iii) During the period of participation in recreation and other unit/sports activities organized or approved by service authorities and during the period of travelling in relation thereto."

11. In the present case, we are clear that since the deceased officer was not on duty when the electrocution accident occurred, resulting into his death subsequently, the applicant does not seem to be entitled to Special Family Pension and Ex-gratia lump sum compensation.

12. During the proceedings of Court of Inquiry, Shri Ramawatar Meena, Junior Engineer E/M at Dharangadhara Military Station stated that after the incident he alongwith his team visited residence of applicant's husband to find out if there was any fault in electrical connection of the premises but on investigation, it was found that all electric fittings were intact. In the C of I he appeared as witness No 8 and gave the following statement:-

"2. On 23 August 20 at around 1230 hrs myself along with my team of two individuals was sent to the

residence of MR 07371L Late Colonel RK Srivastav to identify the reason for any possible electrical fault for which we carried out a thorough check of all the electrical connections in the residence.

3. During the check we found out that there was no sign of any sparking or short circuit in any of the electric points and no faults were observed in the Multi Circuit Board. The plugs of all the electric equipments were again connected to the power sockets but no fault was found in that also thus it removes the possibility of tripping down of Multi Connection Board."

13. During the course of hearing, learned counsel for the applicant stressed that as per Para 13 (b) (iv) of Guidelines issued by Adjutant General's Branch [MP-8 (I of R), applicant is entitled to Special Family Pension. We have perused the aforesaid Para and we find that on death of a soldier Special Family Pension is admissible to the NOK when this is connected due to accidents in the performance of duties through electrocution while participation in organized sports events/adventure activities/expeditions/training. In the instant case, applicant's husband being not involved in organized sports events/adventure activities/expeditions/training, she does not seem to be entitled to Special Family Pension. For convenience sake, extract of Para 13 (b) (iv) is given as under:-

"13. In case death of an Armed Forces Personnel happens under the circumstances as mentioned below, SFP at 60 percent of reckonable emoluments last drawn by the deceased soldier, shall be granted to the nominated heir:-

(a) X X X X X

(b) Death due to accidents in the performance of duties such as:-

(i) to (iii) X X X X

(iv) Electrocution while participation in organized sports events/adventure activities/expeditions/training."

14. The questions which need to be answered are of two folds:-

(a) Whether death of applicant's husband was attributable to military service?

(b) If yes, is the applicant entitled to Ex-gratia lump sum compensation and Special Family Pension?

15. The Government of India, Ministry of Defence letter No. 20(1)/98-D(Pay/Services) dated 22.09.1998 with regard to conditions of governing the payment of Ex-gratia lump-sum compensation and guidelines reads as under :-

"I am directed to refer to Government of India, Ministry of Personnel, Public Grievance & Pension, Department of Pension & Pensioners' Welfare O.M. No.45/55/97- P&PW(C) dated 11.9.98 and state that the President is pleased to decide that the families of Defence Service personnel who die in harness in the performance of their bonafide official duties, shall be paid the ex-gratia lump sum of Rs five lakhs.

Note: This amount has been enhanced to Rs 20 Lakhs vide Govt of India, Min of Def letter dated 17.08.2010.

16. Coming to the first limb i.e. is the death attributable to military service?" We observe that applicant's husband died due to 'Cardiac Arrest due to Electric Shock' while he was at place of residence which was provided by Govt. He was not on a bonafide military duty when he was electrocuted, therefore, in our opinion his death has no relation with military service. The competent authority seems to have rightly rejected her claim for grant of Special Family Pension.

17. Coming to the second issue, "is the applicant entitled for Special Family Pension and Ex-gratia lump sum compensation. From the

perusal of policy with regard to payment of Special Family Pension and Ex-gratia lump sum compensation, it is obvious that if a soldier dies in performance of his bonafide military duty, then his NOK shall be entitled to Special Family Pension and Ex-gratia lump sum compensation. In the case in hand, we are clear that death in respect of applicant's husband was not due to harness and, therefore, the competent authority has given their opinion that his death is not attributable to military service. More so, it is apparent that death of husband of the applicant has no causal connection with military service.

18. Since husband of the applicant, as per the provisions of Rule 12 of the Entitlement Rules for Casualty Pensionary Awards-1982, was not on bonafide military duty, therefore, death in respect of applicant's husband which occurred on 23.08.2020 is to be deemed as 'NANA' and hence deceased officer's NOK is not entitled to grant of Ex-gratia lump sum.

19. Admittedly, death of applicant's husband has no causal connection with military service as held by the Appellate Authority at Army Headquarters stating that the circumstances of death do not indicate any causal connection with specific conditions of military service. Thus, in our opinion the refusal by the Competent Authority for grant of Ex-gratia lump sum compensation and Special Family Pension to applicant is only on the ground that there is no causal connection of death with military service.

20. In view of the above, we are of the view that since death in respect of applicant's husband has no causal connection with military service, applicant is not entitled to Special Family Pension and Ex-Gratia lump-sum compensation in view of the observations hereinabove.

21. Original Application deserves to be dismissed. It is accordingly **dismissed.**

22. No order as to costs.

23. Miscellaneous application (s), pending if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 10.11.2023

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(Justice Anil Kumar)
Member (J)

RESERVEDCourt No 2

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 1067 of 2022

Mrs Aarti Srivastava

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="391 1580 529 1607"><u>10.11.2023</u></p> <p data-bbox="391 1615 1003 1647"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="391 1655 1003 1688"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p data-bbox="488 1749 764 1782">Judgment pronounced.</p> <p data-bbox="488 1803 911 1835">O. A. No. 1067 of 2022 is dismissed.</p> <p data-bbox="488 1857 1284 1889">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="407 2005 764 2072">(Maj Gen Sanjay Singh) Member (A)</p> <p data-bbox="391 2064 464 2091"><i>rathore</i></p> <p data-bbox="1008 2005 1300 2072">(Justice Anil Kumar) Member (J)</p>

