

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 177 of 2020****Wednesday, this the 29th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt. Jyoti Bhandari, Widow of No. 18005899-Y Late L.NK Manoj Singh Bhandari, Resident of Village – Haripura, Post Office- Haripura Harshan (Bazpur), District- Udham Singh Nagar (Uttarakhand) Pin code-262401

.... Applicant

Ld. Counsel for the: **Shri KKS Bisht**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Bengal Engineer Group Records, PIN -900477, C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad-211014.

... Respondents

Ld. Counsel for the **Shri Rajiv Pandey**, Advocate
Respondents.

ORDER (Oral)

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

(a) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the Records, respondent No.3 letter No. FM-10892/R/FP/14/Pen dated 23 October 2017 (Annexure **No.A-1(iii)**) vide which the Special Family Pension claim of the applicant was rejected in arbitrary, capricious and illegal manner.

(b) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside letter No. B/38046/24/2018/AG/PS-4(Imp-II) dated 12 February 2019 {**Annexure No. A-1(iv)**} passed by the **Appellate Committee on First Appeals**, rejecting the Special Family Pension (SFP) claim of the applicant in an arbitrary, capricious and illegal manner.

(c) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the letter Order No. B/38046A/335/2019/ AG/PS-4(2nd Appeal) dated 30 January (Annexure No. A-1(v) passed by the Second Appellate Committee on Pensions (SACP), rejecting the second Appeal with respect of Special Family Pension (SFP) claim of the applicant in an arbitrary, capricious and illegal manner.

(d) Issue/pass an order or direction of appropriate nature to the respondent to grant her Special Family Pension (SFP) with effect from 29.08.2017 for life along with arrears @ 18% per annum till date of actual payment to which she is entitled as a matter of right.

(e) Issue/pass an order or direction of appropriate nature to the respondents to grant her Ex-Gratia Compensation Award of Rs. 10 Lac.

(f) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(g) Allow this application with costs.

2. Brief facts of the case giving rise to this application are that the applicant's husband was enrolled in the Indian Army on 07.09.2010 and he died on 28.08.2017 at R&R Hospital, Delhi due to disability **FD "COLLOIDAL CYST OF THIRD VENTRICLE WITH ACUTE OBSTRUCTIVE HYDROCEPHALUS"**. Certificate of attribution (AFMSF-93 Part II) dated 21.09.2017 issued by R&R Hospital, Delhi Cantt held

that death of her husband was neither attributable to nor aggravated by military service (NANA). Claim for grant of Special Family Pension in respect of applicant was rejected by Bengal Engineer Group, Records vide order dated 23.10.2017 on the ground of death being NANA. Thereafter, applicant preferred first and second appeals against rejection of Special Family Pension which were also rejected vide order dated 12.02.2019 and 30.01.2020 respectively. Applicant is in receipt of Ordinary Family Pension vide PPO No. 156201800529 dated 17.04.2018. This O.A. has been filed for grant of Special Family Pension and Ex-Gratia lump-sum-compensation of Rs 10 Lacs.

3. Ld. Counsel for the applicant pleaded that as per Appendix IV of Pension Regulations for the Army, 2008 which deals with Entitlement Rules for Pensionary Awards, 1982 as well the Armed Forces Medical Regulations of 1983. The relevant provisions in this case are Rules 5, 9, 14 (b) and 20 of Entitlement Rules for Casualty Pensionary Awards, 1982 applicant is entitled to Special Family Pension. The learned counsel has quoted relevant rules which are reproduced below:-

“5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-

Prior to and during service.

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

Onus of Proof.

9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This

benefit will be given more liberally to the claimants in field/afloat service cases.

Disease

14. In respect of disease, the following rules will be observed:-

(a) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:

(i) That the disease has arisen during the period of military service, and

(ii) That the disease has been caused by the conditions of employment in military service.

(b) If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.

(c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services.”

4. He pleaded that since applicant's husband died while in service, therefore, his death should be attributable to military service and applicant should be entitled to Special Family Pension alongwith Ex-Gratia lump-sum-compensation.

5. Per contra, the respondents have contended that as per para 105 of Pension Regulations for the Army, 2008 (Part-1), Special Family Pension is granted to the family of an individual if death is due to or hastened by;-

(a) A wound, injury or disease which was attributable to military service.

(b) Was due to aggravation by service of wound, injury or decease which existed before or arose during military service, and in case of death after retirement/discharge.

6. His submission is that since the aforesaid conditions are not fulfilled in the case of applicant's husband, therefore, she is not entitled to Special Family Pension. He has further submitted that applicant's husband died on account of "**COLLOIDAL CYST OF THIRD VENTRICLE WITH ACUTE OBSTRUCTIVE HYDROCEPHALUS**" which is a slow growing, benign fluid collection that occurs in the ventricles of the brain once they reach a critical size, these cysts can cause obstruction of normal flow of CSF, increasing the pressure within the brain, as held by the competent medical authorities, in terms of Para 12, Chapter VI, Guide Lines to Medical Officers, 2002 amendment 2008 and his death was neither attributable to nor aggravated by military service and there is no causal connection to military service. Hence applicant is not entitled for grant of Special Family Pension. The pension sanctioning authority while adjudicating the case of applicant has rejected grant of Special Family Pension claim on the basis of views expressed by medical authorities which held his death as NANA. Respondents' learned counsel further submitted that case of applicant's husband is not covered under paragraph-6 of Entitlement Rules for Casualty Pensionary Awards, 1982 and according to which there should be causal connection between death and military duty and since in this case there was no causal connection of death with military duty, therefore applicant is not entitled to Special Family Pension. His further contention is that main condition to be satisfied for grant of Special Family Pension and the payment of Ex-Gratia lump sum compensation in the specified circumstances is that the

death of the employee concerned should have occurred in the actual performance of a bonafide official duty. The Ex-Gratia lump sum compensation may not be sanctioned in cases where the deceased soldier was not on duty in terms of Entitlement Rules. The Ld. Counsel for the respondents submitted that the question whether death was attributable to or aggravated by military service is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982. He pleaded the O.A. to be dismissed.

7. After hearing both the sides and perusing the evidence on record, the questions which need to be answered are three folds:-

(a) Whether the disease was attributable to military service as per Entitlement Rules?

(b) Whether the disease was aggravated by military service or decease existed before or arose during military service

(c) If yes, is the applicant entitled for Ex-Gratia lump sum compensation and Special Family Pension?

8. 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 following ex-gratia lump sum compensation:-

(a)	<i>Death occurring due to accident in the course of performance of duties.</i>	<i>Rs.10.00 lakhs”</i>
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Subsequently, this table has been modified in the year 2010.

9. Coming to the first limb i.e. is the death attributable to military service?” We find that the cause of death of husband of applicant (Late L/Nk Manoj Singh Bhandari) is neither attributable to nor aggravated by military service as held by the competent medical authority, therefore, death of applicant’s husband shall be deemed to be NANA.

10. In view of above, we are of the considered opinion that since death of applicant’s husband had no relation with military service, therefore it was neither attributable to nor aggravated by military service.

11. Coming to the second issue that is “whether the applicant entitled for Ex-Gratia lump sum compensation as also Special Family Pension?”

12. From the perusal policy with regard to payment of Special Family Pension it is obvious that NOK of deceased incumbent is entitled to Special Family Pension if a soldier dies in performance of his bonafied duties. In the case in hand we are clear that death in respect of L/Nk Manoj Singh Bhandari was not due to harness and, therefore, the competent authority has given their opinion that his death was not attributable to military service. More so, it is apparent that L/Nk Manoj Singh Bhandari died due to **“COLLOIDAL CYST OF THIRD VENTRICLE WITH ACUTE OBSTRUCTIVE HYDROCEPHALUS”** which has no causal connection with military service.

13. 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, the death/disease which occurred on 28.08.2017 is to be deemed as NANA and hence deceased soldier's NOK is not entitled to grant of Ex-gratia lump sum.

14. Admittedly, the husband of the applicant died due to disease **“COLLOIDAL CYST OF THIRD VENTRICLE WITH ACUTE OBSTRUCTIVE HYDROCEPHALUS”** which has no causal connection with service as held by the medical authorities and the pension sanctioning authority. Thus, the refusal by the competent authority for grant of Ex-Gratia lump-sum compensation and Special Family Pension to applicant is only on the grounds aforesaid.

15. 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.

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

17. No order as to costs.

18. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 29th September, 2021
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