

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 601 of 2020

Thursday, this the 09th day of September, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt Pushp Lata, W/o Late Sep Pramod Kumar No. 4270412 R/o Maholla New Sunderpur, Post Office- Lal Bagh, Tehsil & Distt- Darbhanga, Bihar, Presently residing at C/o Mr Ankur Kumar, 1321, Kidwai Nagar, Allahabad (U.P.) – 211006.

..... Applicant

Counsel for the Applicant : **Shri BB Tripathi, Advocate**

Versus

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi - 110011.
2. The Chief of Army Staff, Army Headquarters, Sena Bhawan, New Delhi – 110011.
3. Officer in Charge Records, Bihar Regiment Record, Danapur Cantt, Patna- 801503.
4. The Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Counsel for the Respondents : **Shri Shyam Singh,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

- “(a) *Issue an order, direction certiorari the order dated 07.01.2017, contained in Annexure No 1 passed by respondent No 3 whereby the claim of the applicant for grant of special family pension has been denied on the ground that the death of her husband is not attributable to military service with all consequential benefits.*
- “(b) *Issue an order, direction and command to the respondents particularly respondent No 3 to pay the Special Family Pension to the applicant as per Rule 12(D) of Entitlement of Rules, 1982 w.e.f. 16.07.2004 w.e.f. date of the grant of the Family Pension along with interest @ 10% per annum.*
- “(c) *Issue such other order/direction which may be deemed just and proper in the circumstances of the case.*
- “(d) *Allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and grounds raised in the application”*

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 01.08.1989. While he was posted to 14 Bihar Regiment located at Bhuj, Gujrat, he was granted 34 days leave from 13.06.2004 to 16.07.2004. In the night of 11/12.07.2004 the sudden flash flood hit the Darbhanga Town and the house of the applicant had flooded with heavy water and family of the applicant had shifted in the house of relative at Lal Bah Area Near Tower Chowk, Darbhanga on 12.07.2004. Husband of applicant had to join his duty at Bhuj, Gujrat on 16.07.2004 so he went to his house on

15.07.2004 to collect the luggage. Husband of the applicant drowned in the nearby Pokhar near his house. A court of enquiry was held and the court opined that '*Sep Pramod Kumar died on 15.07.2004 due to drowning in flood which had hit Darbhanga town on the night between 11 and 12 July 2004, there is no foul play involved*'. After death of her husband, applicant was granted ordinary family pension. She represented her case for grant of special family pension but the same was denied to her. Being aggrieved, the applicant has filed Original Application for grant of special family pension.

3. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Union of India & Ors vs. Surendra Pandey***, LAWS(SC) 2014 9 172, decided on 18.09.2014, ***Sukhwant Singh vs. Union of India & Ors***, LAWS(SC) 2012 3 69, decided on 13.03.2012, ***Union of India vs. S.K. Kapoor***, LAWS(SC) 2011 3 43, decided on 16.03.2011 and ***Madan Singh Shekhawat vs. Union of India***, LAWS(SC) 1999 8 6, decided on 17.08.1999. He further placed reliance :-

(a) In the case of ***Yadvinder Singh Virk vs. Union of India & Ors*** in Civil Writ Petition No. 6066 of 2007 (2009 SCC Online P & H) before the Hon'ble Mr. Justice Ajai Lamba, the Hon'ble Judge quoted an earlier judgment in the case of Ex Naik Kishan Singh vs. Union of India, 2008 (3) SLR 327.

(b) Judgment of a Division Bench of Delhi High Court in ***Ex. Sepoy Hayat Mohammed vs. Union of India***, 2008 (1) SCT 425.

(c) Judgment of AFT (RB) Kolkata passed order in **O.A. No. 52 of 2015, Debasish Ghosh vs. Union of India & Ors**, decided on 15.03.2016 in light of pronouncement of Hon'ble Supreme Court in Civil Appeal No. 1987 of 2011 in which the Hon'ble Supreme Court was pleased to quote from a judgment of AFT, Chandigarh Bench.

4. Learned counsel for the applicant further submitted that :-

(a) As per Section 95 (a) of the pension Regulations for the Army 1961 (Part-1), rates of consolidated Special Family Pension inclusive of children allowance and children education allowance shall be as under "**irrespective of whether the deceased pension of the Armed Forces, had completed 7 years of service or not**" but this aspect has also not been considered at the time of passing impugned order.

(b) In Section 213, it is provided that special family pension may be granted to the family of an individual if his death was due to or hastened by :

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

OR

(b) *the aggravation by military service of a wound, injury or disease, which existed before or arose during military service.*

Learned counsel for the applicant pleaded that 'a person is treated on duty when he is going to join duty or returning from duty'. In the instant case, husband of the applicant was returning on duty hence his death should be considered as attributable to military service. He submitted that in view of aforesaid rulings and judgments,

death of husband of applicant should be treated attributable to military service and special family pension be granted to the applicant.

5. Per contra, learned counsel for the respondents submitted that it is not disputed that husband of applicant drowned in flood and died on 15.07.2004 during leave. However, for grant of the special family pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the death and military service. He further submitted that unless injury sustained/death during leave has causal connection with military service, armed forces personnel cannot be allowed disability pension/special family pension merely on the reason of being on duty. He further submitted that in the given facts, husband of applicant being on leave at home when he died due to flood, there was no causal connection between the injury sustained/death and military service and, therefore, applicant is not entitled to special family pension, as she is claiming. In support, learned counsel for the respondents has placed reliance on the following facts:-

(a) The injury/death of husband of applicant was opined as neither attributable to nor aggravated by military service and also not connected with military service by the Court of Inquiry.

(b) In terms of Para 213 of Pension Regulations for the Army, 1961 (Part-1) and Para 6 of Entitlement Rules for Casualty Pensionary Awards, 1982, applicant is not entitled to

Special Family Pension which was communicated to her vide letter dated 07.01.2017. Para 213 reads as under :-

“a special family pension may be granted to the family of an individual if his death was due to or hastened by :-

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

OR

(b) The aggravation by military service of a wound, injury or disease which existed before or arose during military service”.

Since the circumstances of death are not related to the duties of military services and was opined as neither attributable to nor aggravated by military service, hence, applicant is not entitled for special family pension.

6. We have heard Shri BB Tripathi, learned counsel for the applicant and Shri Shyam Singh, learned counsel for the respondents and have also perused the record.

7. After having heard the submissions of learned counsel of both sides we found that certain facts are admitted to both the parties and husband of applicant died in flood on 15.07.2004.

8. In this case, a Court of Inquiry was also convened, in which the court opined that *“Sep Pramod Kumar died on 15.07.2004 due to drowning in flood which had hit Darbhanga town on the night between 11 and 12 July 2004, there is no foul play involved”* and death of the husband of the applicant was not found attributable to military service.

9. The respondents have denied special family pension to the applicant on the reason that for getting special family pension, there must be some causal connection between the injury/death and military

service, and this being lacking in applicant's case, as there was no causal connection between the injury sustained/ death and military service, she is not entitled for the same.

10. This question has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the Hon'ble Apex Court. In a more or less similar matter, **Secretary, Govt of India & Others Vs. Dharamveer Singh**, decided on 20 September 2019, in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with '**Faciomaxillary and Compound Fracture 1/3 Femur (LT)**'. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave Report, dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under Column 3 (c) was that "No one was to be blamed for the accident. In fact respondent lost control of his own scooter". In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate

General, Personnel Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of ***Madan Singh Shekhawat v. Union of India & Ors***, (1999) 6 SSC 459 was allowed by the Tribunal holding that respondent was entitled to disability pension. Aggrieved by the same, this Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 points for consideration:-

(a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?.

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?.

(c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?.

11. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

12. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

“ In view of Regulations 423 clauses (a) , (b), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The

injury be connected with military service howsoever remote it may be. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributed to risk common to human being. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service”.

13. Regarding question number 3, the Hon’ble Apex Court held that if a causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon’ble Apex Court has discussed several cases decided by itself as well as the various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and, for such injury, resulting in disability, the injury would be considered attributable to or aggravated by military service.

14. The Hon’ble Apex Court while summing up took note of following guiding factors by the Armed Forces Tribunal, Regional Bench, Chandigarh, in the case of **Jagtar Singh v. Union of India & Ors**, Decided on November 02, 2020 in TA No 61 of 2010 approved in the case of **Sukhwant Singh** and **Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability pension is required to be dealt with accordingly. Those guiding factors are reproduced below for reference:-

“(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 conditionality 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 approach to generalise the 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, in other words, the act must flow as a matter of 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 functions as a Member of Force, nor is remotely connected with the functions of military 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 un-connected acts or omissions 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 matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief 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 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.”

15. We have considered the applicant's case in view of above guiding factors and we find that husband of applicant was on 34 days Balance of Annual Leave when he drowned in flood and died. Court of enquiry opined that the death of the deceased soldier was not attributable to military service being not connected with military duties

in any manner, and recommended that all financial benefits as applicable be given to the Next of kin of the deceased soldier hence applicant was granted ordinary family pension and special family pension was denied to her. We also find that rulings relied upon by the applicant being either based on different facts or overruled are of no help to her.

16. In the result, we hold that the claim of special family pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

17. No order as to cost.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 09 September, 2021

Ukt/-