

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 278 of 2020**Monday, this the 7th day of April, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Upasna, Widow of Late Rfn Badan Singh (Army No 16014025A) of Rajputana Rifles, Resident of Village – Kuthond, Post – Kuthond, Tehsial – Jalaun, District- Jalaun (Uttar Pradesh)

..... Applicant

Counsel for the Applicant : **None for the Applicant**

Versus

1. Union of India through Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi- 110011.
3. Officer in Charge, The Records Rajputana Rifles, PIN- 900106, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Counsel for the Respondents : **Dr. Gyan 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/pass an order or direction to the respondents to issue PPO in favour of the applicant and release Special Family Pension wef 07.08.2017 with all lump sum amount of death cum retiral benefits.*
- “(b) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- “(c) To allow this application with cost.”*

2. We are deciding this matter on the basis of documents available on record.

3. Facts giving rise to instant Original Application in brief are that husband of applicant Late Rfn Badan Singh was enrolled in the Army on 09.07.2002. While he was posted to 20 RAJ RIF unit, he was granted 08 days Casual Leave from 05.08.2017 to 12.08.2017. On 06.08.2017 husband of applicant died. The matter was reported to concerned authorities. Applicant prayed for grant of Special Family pension but no action was taken by the respondents. Being aggrieved, the applicant has filed instant Original Application.

4. In the instant case, husband of the applicant died due to fire arm injury on 06.08.2017 while he was on leave. He served the Army for 15 years and 28 days. The incident was reported to civil police who carried out investigations and postmortem of the body and matter was intimated to concerned unit and the Record Office. Since casual leave is treated as duty hence, death of husband of applicant should be treated attributable to military service and special family pension along with retiral benefits be granted to the applicant.

5. Per contra, learned counsel for the respondents submitted that husband of the applicant died due to shooting himself using his private weapon while he was on 08 days casual leave. A Court of Inquiry was conveyed by Station Headquarter, Jhansi vide convening order dated 19.08.2017 and it was revealed that Rifle Man Badan Singh shot himself using his private weapon and his death was declared as neither attributable to nor aggravated by military service. 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 self sustained injury, there was no causal connection between death and military service and, therefore, applicant is not entitled to special family pension, as she is claiming.

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

7. Section 213 of Pension Regulations for the Army, 1961 provides 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.

8. In support, learned counsel for the respondents has placed reliance on Regulation 105 of the Pension Regulations for the Army (Part-1), 2008 which reads as under:-

(a) Special family pension may be granted to the family of service personnel if his death occurred in the circumstances mentioned in category B and category C of Regulation 82 of these Regulations due to or hastened by:-

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

(ii) was due to aggravation by service of a wound, injury or disease which existed before or arose during service and in case of death

after retirement/discharged. Provided that the service personnel had retired/discharged otherwise than voluntarily/ at own request on compassionate grounds before completion of terms of engagement.

(b) The question whether death is attributed to or aggravated by military service shall be determined under the Entitlement Rule For Casualty Pensionary Awards, 1982 contained in APPENDIX-IV to these Regulations.

Category – B and C of Regulation 82 Pension Regulations for Army (Part-1), 2008 reads as under:-

(i) Category – B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

(ii) Category C

Death or disability due to accidents in the performance of duties such as:-

- (i) Accidents while travelling on duty in Government vehicles or public/private transport.*
- (ii) Accidents during air journeys.*
- (iii) Mishaps at sea while on duty.*
- (iv) Electrocution while on duty etc.*
- (v) Accidents during participation in organized sports events/adventure activities/expeditions or training.*

9. In this case, a Court of Inquiry was convened and it was found that Late Badan Singh died due to self inflicted fire arm injury and death was considered neither attributable to nor aggravated by military service. After perusal of documents available on record, we

find that death of husband of the applicant has no causal connection with military service as husband of the applicant died due to self sustained fire arm injury, hence no case of Special Family Pension is made out. We hold that respondents have rightly not granted Special Family Pension to the applicant.

10. Further, as per investigation report, Late Sep Badan Singh was married to Smt Shashi (1st wife) who expired on 17.03.2013. Three children were born from wedlock of Smt Shanti (1st wife) and Ex late Badan Singh named Jyoti Chauhan, (daughter), Swati Chauhan, (daughter) and Ravi Karan Singh, (son). After death of 1st wife, deceased soldier married to Smt Upasana on 28.02.2017. No occurrence of first marriage was published by the deceased soldier. Smt Rama Devi, mother of Late Rfn Badan Singh submitted an application and legal notice for grant of family pension and AGI Fund in respect of minor children of deceased soldier. Respondents intimated mother of the deceased soldier to forward certain documents for grant of pensionary benefits to Ms. Jyoti Chauhan. Para 71 (b) of Pension Regulation for the Army 2008 (Part-1) reads as under:-

“Where a deceased is survived by a widow and has also left behind eligible child/children from another wife who is not alive, the eligible child of the deceased wife shall be entitled to the share of ordinary family pension which the mother would have received if

she had been alive at the time of death of the service personnel/pensioner.

Provided that the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full to such widow or child”.

11. Further para 68 of Pension Regulation for the Army 2008 (Part-I) reads as under:-

“the ordinary family pension shall first be payable to the surviving spouse and in his absence or in the event of disqualification or death, to the eligible child in the order of birth irrespective of the sex of the child and the younger of them will not be eligible for family pension unless the elder above himself becomes ineligible for the grant of ordinary family pension.”

12. In view of aforesaid rulings 50% share of ordinary family pension is to be notified in favour of most eligible child born out from first wedlock. Respondents have asked from mother of Ex Late Badan Singh to submit certain documents in favour of most eligible child (Ms Jyoti Chauhan) of first wife for grant of family pension. In counter affidavit, respondents have stated that on receipt of documents case of elder daughter (Ms. Jyoti Singh) of Ex late Badan

Singh born from first wife as well as case of applicant shall be forwarded to PCDA (P) for grant of ordinary family pension.

13. In view of above, Original Application is **disposed of** with the direction to the respondents to consider the claim of the applicant for grant of family pension in equal share (i.e. 50% each) between the applicant and Ms. Jyoti Chauhan, daughter of 1st wife as per rule. The respondents are further directed to take appropriate decision expeditiously, preferably within four months from the date of receipt of certified copy of this order.

14. No order as to cost.

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

Dated: 07 April, 2022