

Reseved
Court No. 2
(Ser No. 30)

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

Original Application No. 444 of 2022

Wednesday, this the 19th day of April, 2023

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”

Smt Rajni Devi, W/o No 16019036W Late Rfn Dinesh Kumar Solanki, R/o Vill & Post – Roopwas Pachgain, Distt – Bulandshahar (UP).

..... Applicant

Ld. Counsel for the Applicant: **Shri KK Misra**, Advocate

Versus

1. Union of India, through its Secretary Min of Defence, New Delhi.
2. Chief of Army Staff, Army HQs, New Delhi.
3. Officer-in-charge, Records, Rajputana Rifles, Delhi Cantt.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj, Uttar Pradesh - 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri JN Mishra**,
Central Govt. Counsel.

ORDER

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

“(a) To quash Records, Rajputana Rifles, Delhi Cantt letter No RNE/FP/(DIS)/16019036W dated 29 March 2022 (Annexure A-6 to this O.A.) and direct the respondents to grant Special Family Pension to the applicant from the date of death of her husband, i.e. 18.03.2014, as per her entitlement, alongwith its arrears with interest.

(b) Any other relief which the Ho’ble Tribunal think just and proper may be granted to the applicant.

(c) Cost of the case may be awarded in favour of the applicant.”

2. This application has been preferred for seeking grant of Special Family Pension on the death of husband of the applicant Rfn Dinesh Kumar Solanki who died due to hemorrhage and shock and injury to liver and cervical spine. The injuries were caused to her husband by an accident near Pari Chowk, Noida (UP) when he was returning from his leave station i.e. Bulandshahar to Noida (UP) on his motor cycle on 18.03.2014 at 600 hrs to join duty. Subsequently, he was evacuated to Base Hospital, Delhi Cantt. He was operated on 18.03.2014 and 21.03.2014. During the course of treatment he died on 24.03.2014 in Base Hospital, Delhi Cantt. Thereafter, a Court of Inquiry (C of I) was assembled at Station Headquarters Delhi Area/RAJ RIF Centre which declared his death

as neither attributable to nor aggravated by military service. After death of her husband she was granted Ordinary Family Pension by PCDA (P) Allahabad vide PPO No. F/NA/20145/2015. Applicant submitted an application dated 28.02.2022 for grant of Special Family Pension to PCDA (P) which being rejected vide order dated 29.03.2022, this O.A. has been filed for grant of special family pension.

3. Submission of learned counsel for the applicant is that the applicant's husband while being attached to Raj Rifles Centre, Delhi Cantt was granted one day casual leave with permission to prefix 16/17.03.2014 and while returning from leave to join his duty he met with an accident while driving on his motorcycle on 18.03.2014 at 0600 hrs at Pari Chowk (Noida) and succumbed to injuries on 24.03.2014 at Base Hospital Delhi Cantt while under treatment. It was further submitted that C of I conducted by the order of Station Headquarters, Lucknow declared his death as neither attributable to nor aggravated by military service but keeping in view that he was returning from leave to join his duties, his death should be regarded as attributable to military service and applicant should be granted Special Family Pension instead of Ordinary Family Pension which she is receiving vide PPO No F/NA/20145/2015.

4. On the other hand, learned counsel for the respondents submitted that since the C of I has declared death of applicant's husband as neither attributable to nor aggravated by military service, applicant is only entitled to Ordinary Family Pension and not Special Family Pension as claimed. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the material placed on record.

6. There is no dispute that applicant's husband was granted one day casual leave and while returning from leave to join duty, he met with an accident on 18.03.2014 at 0600 hrs at Pari Chowk (NOIDA). He died in Base Hospital, Delhi Cantt while under treatment on 24.03.2014. 7. The question, therefore, arises for determination by this Tribunal is "whether the applicant whose husband died due to the injuries caused by an accident near Pari Chowk, Noida (UP) when he was returning from his leave station i.e Bulandshahar to Noida (UP) by his motor cycle on 18.03.2014 at 600 hrs to join duty, was on duty or not and is entitled for grant of Ordinary Family Pension or Special Family Pension?"

8. Para 4.1 of Government of India, Ministry of Defence letter dated 31.01.2001 deals with attributability and aggravation of cases for grant of pensionary benefits on death/ disability which reads as

- a) *Enemy action in international war.*
- b) *Action during deployment with a peace keeping mission abroad.*
- c) *Border skirmishes.*
- d) *During laying or clearance of mines including enemy mines as also minesweeping operations.*
- e) *On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating mine-field laid by enemy or own forces in operational areas near international borders or the line of control.*
- f) *War like situations, including cases which are attributable to/aggravated by :-*
 - (i) *Extremist acts, exploding mines etc., while on way to an operational area*
 - (ii) *Battle inoculation training exercises or demonstration with live ammunition.*
 - (iii) *Kidnapping by extremists while on operational duty.*
- (g) *An act of violence/attack by extremists, anti-social elements etc while on operational duty.*
- (h) *Action against extremists, antisocial elements, etc. Detach/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*
- (j) *Operations specially notified by the Govt. from time to time.*

4.2 *Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.*

Notes:-

- (i) *The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*
- (ii) *The question whether a death/disability is attributable to or aggravated by military service will be determined as per*

provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time

(iii) In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/ discharge/invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defense letter No.1(I)99/D(Pen/Ser) dated 7.7.99.

(iv) Where an Armed Forces personnel is invalided out of service due to non-attributable/non-aggravated causes, Invalid pension/gratuity shall be paid in terms of Para 9 of Ministry of Defense letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defense letter No. 1 (I)/99/D(Pen/Ser) dated 07.06.99.”

9. Admittedly, the applicant's husband was enrolled in Indian Army on 20.06.2005. On 18.03.2014 at 0600 hrs husband of the applicant met with an accident near Pari Chowk, Noida (UP) while he was returning from his leave station i.e Bulandshahar to Noida (UP) by his motor cycle at 600 hrs to join duty. Subsequently, he was evacuated to Base Hospital, Delhi Cantt where he was operated on 18.03.2014 and 21.03.2014. During the course of treatment he died on 24.03.2014. Applicant was granted Ordinary Family Pension.

10. 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 entitled to Special Family Pension. Para 213 of the aforesaid Regulation 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”.

11. On the basis of the C of I the competent authority in its discretion has held the death of applicant’s husband as “not attributable to military service” and the applicant was denied grant of Special Family Pension.

12. The respondents have denied Special Family Pension on the ground that the C of I has declared death of applicant’s husband as neither attributable to nor aggravated by military service. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Court of Inquiry for declaring death of applicant’s husband as not attributable to Military Service is not convincing and doesn’t reflect the complete truth on the matter. Since the applicant was returning from sanctioned leave to join his duty, his death ought to be attributable to military service.

13. Before proceeding further, we would like to determine whether applicant’s husband was on duty when he died due to ‘hemorrhage and spinal injury’. With regard to definition of “duty” we rely on Appendix IV of Clause 9 of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel-2008 which defines the word duty, 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 is on “duty”:

(a) When performing an official task or a task,

failure to do which would constitute an offence triable under the disciplinary code applicable to him.

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

(c) During the period of participation in recreation and other unit activities organised or permitted by Service Authorities and during the period of travelling in a relation thereto.

Note 1: *Personnel of the Armed Forces participating in Local/national/ international sports tournaments as member of service teams, or, Mountaineering expeditions / gliding organised by service authorities, with the approval of Service Hqrs will be deemed to be “on duty” for purposes of these Rules.*

Note 2: *Personnel of the Armed Forces participating in the above named sports tournaments or in privately organised mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be „on duty for purposes of these rules, even though prior permission of the competent service authorities may have been obtained by them.*

Note 3: *Injuries sustained by the personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, or disability arising from such injuries, will continue to be regarded as having occurred while „on duty for purposes of these Rules.*

Note: 4 *The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional courses or exercises for the Defence Services for the purpose of the grant of disability family pension on account of disability/death sustained during the courses.*

(d) *When proceeding on leave valid out pass from his leave station or returning to duty from his leave station on lave/valid out pass.*

Note 1: *Armed Forces personnel while travelling between his place of duty to leave station and vice-versa is to be treated on duty irrespective of whether he has availed railway warrant/concession vouchers/cash TA etc or not for the journey. This would also include journey performed from leave station to duty*

station in case the individual return early.

Note 2: *The occurrence of injury should have taken place in reaching the leave station from duty station or vice versa using the commonly available/adopted route and mode of transport.*

(e) When travelling by a reasonable route from one's official residence to and back from the appointed place of duty, irrespective of the mode of conveyance (whether private or provided by the Government).

(f) Death or injury which occurs when an individual is not strictly 'on duty' e.g. on leave, including case of death/disability as a result of attack by or action against extremists or anti social elements may also be considered attributable to service, provided that it involved risk which was due to his belonging to the Armed Forces and that the same was not a risk faced by a civilian. Death and disability due to personal enmity is not admissible.

Note: *For the purpose of these Rules, leave shall include casual leave. Leave/casual leave shall not be treated as duty except in situations mention above."*

14. Thus, keeping in view the aforesaid ruling and the fact that the deceased soldier was returning from his home to join duty, he seems to be on duty.

15. Additionally, respondents while filing counter affidavit (para iii) have also admitted that the deceased soldier was returning from Bulandshahar (Home Town) to NOIDA (UP) (duty station) and while riding on motorcycle he met with an accident near Pari Chowk, Noida and succumbed to injuries while under treatment at Base Hospital, Delhi Cantt on 24.03.2014, which makes it clear that applicant's husband was on duty when his death took place.

16. In the instant case applicant is in receipt of Ordinary Family Pension but she is entitled to Special Family Pension on account of

death of applicant's husband while on duty.

17. We are, therefore, of the considered opinion that death of applicant's husband is attributable to military service as it occurred while he was on bonafide military duty.

18. In view of the above, we **allow** this O.A. and direct the respondents to release Special Family Pension to applicant with effect from the next date of death of her husband. Difference of arrears may be worked out and paid to the applicant within four months from today. However, due to law of limitation as held by the Hon'ble Supreme Court in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, the applicant is entitled to receive Special Family Pension w.e.f. three years preceding the date of filing of this O.A. This O.A. was filed on 24.05.2022. The impugned order passed by the respondents rejecting Special Family Pension is set aside

19. Let entire amount be paid to the applicant within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

20. No order as to cost.

21. Pending applications, if any, are disposed off accordingly.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 19.04.2023

rspal/-

(Justice Anil Kumar)
Member (J)